

JOINT BUDGET COMMITTEE



STAFF FIGURE SETTING FY 2017-18

DEPARTMENT OF LAW

JBC WORKING DOCUMENT - SUBJECT TO CHANGE
STAFF RECOMMENDATION DOES NOT REPRESENT COMMITTEE DECISION

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HOW TO USE THIS DOCUMENT

The Department Overview contains a table summarizing the staff recommended incremental changes followed by brief explanations of each incremental change. A similar overview table is provided for each division, but the description of incremental changes is not repeated, since it is available under the Department Overview. More details about the incremental changes are provided in the sections following the Department Overview and the division summary tables.

Decision items are discussed at the beginning of the most relevant division. Within a section, decision items are listed in the requested priority order, if applicable.

DEPARTMENT OVERVIEW

The Attorney General is one of five independently elected constitutional officers of the State. As the chief executive officer of the Department of Law, the Attorney General represents and defends the legal interests of the people of the State of Colorado and serves as the legal counsel and advisor to state agencies. The Department's FY 2016-17 appropriation represents 0.3 percent of statewide operating appropriations and 0.2 percent of statewide General Fund appropriations.

SUMMARY OF STAFF RECOMMENDATIONS

DEPARTMENT OF LAW						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
FY 2016-17 APPROPRIATION						
HB 16-1405 (Long Bill)	\$77,471,983	\$15,003,005	\$15,612,031	\$45,073,913	\$1,783,034	480.4
Other legislation	692,711	135,942	0	556,769	0	3.1
SB 17-165 (Supplemental Bill)	315,799	56,728	16,648	240,186	2,237	1.0
TOTAL	\$78,480,493	\$15,195,675	\$15,628,679	\$45,870,868	\$1,785,271	484.5
FY 2017-18 RECOMMENDED APPROPRIATION						
FY 2016-17 Appropriation	\$78,480,493	\$15,195,675	\$15,628,679	\$45,870,868	\$1,785,271	484.5
R1 Legal allocations and billings	(760,273)	0	0	(760,273)	0	0.0
R2 IT Security asset maintenance and FTE	254,101	64,062	22,403	163,884	3,752	0.0
R3 Appellate FTE retention	256,468	256,468	0	0	0	3.0
R4 Consumer protection FTE and charities unit	178,483	66,550	275,760	(163,827)	0	3.0
R5 Financial fraud investigators	223,577	0	186,127	37,450	0	2.0
R6 POST on-line training	500,010	0	500,010	0	0	0.0
R7 POST audit FTE	0	0	0	0	0	3.0
NP Department of Education legal services	167,042	0	0	167,042	0	0.9
NP Non-prioritized requests	96,320	26,881	14,695	51,453	3,291	0.0
Centrally appropriated line items	2,531,225	710,087	360,396	1,412,866	47,876	0.0
Custodial funds adjustment	56,990	0	56,990	0	0	1.0
Annualize prior year legislation	29,500	(4,703)	0	34,203	0	0.2
Fund source adjustments	0	287,478	0	(287,478)	0	0.0
Annualize SB 17-165 (Supplemental Bill)	(315,799)	(56,728)	(16,648)	(240,186)	(2,237)	(1.0)
Annualize prior year budget actions	(262,301)	(259,310)	(3,846)	855	0	(2.9)
Indirect cost assessment adjustments	(209,758)	0	205,066	(404,068)	(10,756)	0.0
Adjust anticipated grant funding	(10,365)	0	0	(10,365)	0	0.0
TOTAL	\$81,215,713	\$16,286,460	\$17,229,632	\$45,872,424	\$1,827,197	493.7
INCREASE/(DECREASE)	\$2,735,220	\$1,090,785	\$1,600,953	\$1,556	\$41,926	9.2
Percentage Change	3.5%	7.2%	10.2%	0.0%	2.3%	1.9%
FY 2017-18 EXECUTIVE REQUEST						
Request Above/(Below) Recommendation	\$479,324	\$235,703	\$218,562	\$25,059	\$0	2.8

DESCRIPTION OF INCREMENTAL CHANGES

R1 LEGAL ALLOCATIONS AND BILLINGS: The recommendation includes a change in the administration of monthly legal allocations and billings to client agencies, resulting in an estimated reduction of \$760,273 reappropriated funds needed for legal services provided to state agencies. Currently, the Department bills client agencies each month for the hours of legal services actually provided to the client during that month. Similar to other common policies, the Department is proposing (and staff is recommending) to base each client agency's annual appropriation on prior years' usage of legal services and then bill agencies in twelve equal monthly installments rather than bill monthly based on actual usage.

R2 IT SECURITY ASSET MAINTENANCE AND FTE: The recommendation includes an increase of \$254,101 total funds (including \$64,062 General Fund) to improve information technology (IT) security based on the recommendations of a recent external audit of the Department's IT security procedures. The recommendation, which builds on a FY 2016-17 supplemental appropriation, includes:

- \$188,389 total funds (including \$64,062 General Fund) for the Information Technology Asset Maintenance line item, including \$174,304 total funds to purchase additional IT security tools as recommended in the audit and \$14,085 to align the appropriation for annual computer replacement with FTE increases provided to the Department in recent years.
- \$65,712 reappropriated funds from indirect cost recoveries to support an additional position focused on IT security protocols recommended in the audit. The position would supplement one existing security administrator. The Department reports that an additional FTE is not necessary because the Administration has more appropriated FTE than can be filled with the current spending authority. The recommendation is \$16,710 reappropriated funds below the request based on modifications to align with the Committee's common policies.

R3 APPELLATE FTE RETENTION: The recommendation includes \$256,468 General Fund and 3.0 FTE to allow the Department to retain 3.0 attorney FTE in the Appellate Unit originally provided through a FY 2013-14 decision item to reduce the backlog of appellate cases. While the FY 2013-14 decision item anticipated that the 3.0 FTE would no longer be necessary after FY 2016-17, the Department and staff agree that the ongoing workload warrants retaining the FTE on an ongoing basis. The *base* request eliminates the positions as anticipated in the original decision item; request R3 adds the funding and FTE back to retain the existing FTE.

R4 CONSUMER PROTECTION FTE AND CHARITIES UNIT: The recommendation includes a net increase of \$178,483 total funds (including \$66,550 General Fund) and 3.0 FTE to augment staffing of the Consumer Protection Section. The recommendation includes two components: (1) realigning and refinancing a portion of the staff currently focused on mortgage and foreclosure fraud based on a decrease in mortgage-related workload; and (3) adding 3.0 centralized administrative staff supported by custodial cash funds to support the consumer protection division. Staff recommends denying a third component requested by the Department: an increase of \$348,635 total funds (including \$231,000 General Fund) and 2.8 FTE to establish a permanent unit focused on oversight of charitable organizations and charitable assets.

R5 FINANCIAL FRAUD INVESTIGATORS: The recommendation includes an increase of \$223,577 total funds and 2.0 FTE to add two additional financial fraud investigators to the Special

Prosecution Unit. The recommendation includes funds for an additional criminal investigator II position to support additional insurance fraud investigations and an additional criminal investigator III (chief investigator) position to both conduct investigations and oversee investigative teams in both the insurance fraud unit and the securities fraud unit. The recommendation is \$61,547 below the request largely as a result of modifications to align the appropriation with the Committee's common policies.

R6 POST ON-LINE TRAINING: The recommendation includes an increase of \$500,010 cash funds from the P.O.S.T. Board Cash Fund to provide online peace officer training to 11,905 peace officers statewide. According to the Department, the initiative would focus particularly on rural peace officers and would provide training to 88 percent of the 13,500 certified peace officers in Colorado. The Department's request anticipates operating the program for two years (costing \$500,010 per year) using the existing fund balance within the P.O.S.T. Board Cash Fund.

R7 POST AUDIT FTE: The recommendation adds 3.0 FTE to the Peace Officers Standards and Training (P.O.S.T.) Board Support line item in response to an external audit of the P.O.S.T. Board. The audit recommended restructuring the P.O.S.T. Board staff and adding additional FTE for oversight purposes. The Department has already hired the additional staff within existing resources *in FY 2016-17* but is asking the General Assembly to reflect the FTE in the FY 2017-18 Long Bill to align with anticipated staffing levels.

NP DEPARTMENT OF EDUCATION LEGAL SERVICES: The request includes an increase of \$167,042 reappropriated funds and 0.9 FTE to support additional legal services provided to the Department of Education. The staff recommendation for this line item is pending the Committee's decision during figure setting for the Department of Education, scheduled for Thursday, March 9.

NP NON-PRIORITIZED REQUESTS: The recommendation includes adjustments to line items impacted by requests to be presented during figure setting presentations for other departments, including the Governor's Office of Information Technology and the Department of Personnel.

CENTRALLY APPROPRIATED LINE ITEMS: The recommendation includes a combination of previously acted on and pending adjustments to centrally appropriated line items for the following: state contributions for health, life, and dental insurance; salary survey; merit pay; short-term disability; supplemental state contributions to the Public Employees' Retirement Association (PERA) pension fund; vehicle lease payments; workers' compensation; legal services; administrative law judge services; payments to risk management and property funds; Carr Judicial Center leased space; and Payments to OIT. This total includes the following major changes:

- An increase of \$1,376,910 total funds (including \$358,136 General Fund) for salary survey increases, including \$1,008,795 total funds for attorney salary increases and \$376,391 total funds for classified employees.
- An increase of \$403,570 total funds (including \$86,610 General Fund) for supplemental PERA payments.
- An increase of \$395,471 (including \$149,459 General Fund) for various types of insurance (health, life, and dental; short-term disability; workers' compensation; and risk management/property funds).
- An increase of \$345,773 total funds (including \$115,882 General Fund) for various other centrally appropriated line items.

CUSTODIAL FUNDS ADJUSTMENT: The recommendation includes an increase of \$56,990 custodial cash funds and 1.0 FTE to reflect the Department's use of consumer protection custodial funds. Because custodial funds are continuously appropriated to the Department, these funds will be shown in the Long Bill for informational purposes only.

ANNUALIZE PRIOR YEAR LEGISLATION: The recommendation includes adjustments to reflect the FY 2017-18 impact of legislation that was passed in 2016, including the following acts: S.B. 16-058; S.B. 16-197; H.B. 16-1097; H.B. 16-1160; H.B. 16-1211; H.B. 16-1280; H.B. 16-1234; and H.B. 16-1404.

FUND SOURCE ADJUSTMENTS: The recommendation includes an increase of \$287,478 General Fund which is offset by a decrease of that amount of reappropriated funds from indirect cost recoveries.

ANNUALIZE S.B. 17-165 (SUPPLEMENTAL BILL): The recommendation includes a decrease of \$315,799 total funds to reflect the second-year impact of the Department's FY 2016-17 supplemental appropriation bill.

ANNUALIZE PRIOR YEAR BUDGET ACTIONS: The recommendation includes adjustments related to prior year budget actions. The \$259,310 reduction in General Fund is largely driven by a reduction of \$256,468 and 3.0 FTE from the Appellate Unit to eliminate 3.0 attorney FTE added through a FY 2013-14 decision item. The FY 2013-14 decision item added 6.0 attorney FTE to reduce a backlog of appeals and anticipated eliminating 3.0 FTE at the end of FY 2016-17. Please note that request R3 (discussed above) seeks an increase of \$256,468 General Fund to retain the 3.0 attorney FTE in question.

INDIRECT COST ASSESSMENT ADJUSTMENTS: The recommendation includes a net decrease in the Department's indirect cost assessments.

ADJUST ANTICIPATED GRANT FUNDING: The recommendation includes a decrease of \$10,365 reappropriated funds to reflect the total amount of grant funding anticipated to be available from the Department of Public Safety for efforts to investigate and prosecute multi-jurisdictional auto theft. Section 24-31-108 (1) (b) (I), C.R.S., continuously appropriates grant funds to the Department of Law, and these funds are reflected in the Long Bill for informational purposes only.

MAJOR DIFFERENCES FROM THE REQUEST

The primary difference between the staff recommendation and the Department's request is staff's rejection of the request for \$348,635 total funds (including \$231,000 General Fund) and 2.8 FTE to create a charities oversight unit within the Consumer Protection section. Based on a lack of workload data to justify the requested increases, staff recommends that the Department prioritize charity enforcement work as appropriate within existing resources and return to the General Assembly with another request if necessary based on additional workload data.

(1) ADMINISTRATION

The Administration section of the Long Bill includes central appropriations for the entire Department, including funding for employee benefits, facilities, vehicles, and information technology. This section also includes funding for the following Department sections:

- *Office of the Attorney General* – includes the Attorney General, the Chief Deputy Attorney General, the Chief of Staff, the Solicitor General, and associated administrative staff;
- *Office of Community Engagement* – created in the FY 2015-16 Long Bill, leads and supports the Department’s partnership efforts with outside agencies as well as the Safe2Tell program;
- *Human Resources* – hires new employees, manages employee benefits, and consults with employees and managers regarding applicable state and federal personnel laws and regulations;
- *Financial Services/Budgeting* – includes accounting, financial reporting, payroll, and budgeting functions;
- *Information Technology Services* – handles the Department’s computer needs including maintenance, computer training, and operation of the Attorney General’s website; and
- *Legal Support Services* – produces a significant number of the Department’s documents including legal briefs and other court-related manuscripts, distributes mail, oversees the Department’s vehicle fleet, files materials with courts, and manages general office documents.

The above sections are supported by General Fund and by indirect cost assessments that are collected from the Department’s various sections and transferred as reappropriated funds to this section. The central appropriations that relate to the entire department reflect the same funding sources that support each section within the Department.

ADMINISTRATION						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
FY 2016-17 Appropriation						
HB 16-1405 (Long Bill)	\$17,048,396	\$4,022,106	\$1,441,677	\$11,272,858	\$311,755	52.2
Other legislation	135,942	135,942	0	0	0	1.0
SB 17-165 (Supplemental Bill)	144,709	56,728	16,648	69,096	2,237	0.0
TOTAL	\$17,329,047	\$4,214,776	\$1,458,325	\$11,341,954	\$313,992	53.2
FY 2017-18 RECOMMENDED APPROPRIATION						
FY 2016-17 Appropriation	\$17,329,047	\$4,214,776	\$1,458,325	\$11,341,954	\$313,992	53.2
R2 Security asset maintenance and FTE	254,101	64,062	22,403	163,884	3,752	0.0
R4 Consumer Protection FTE and charities unit	0	0	0	0	0	0.0
R5 Financial fraud investigators	3,360	0	3,360	0	0	0.0
NP Non-prioritized requests	96,320	26,881	14,695	51,453	3,291	0.0
Centrally appropriated line item adjustments	2,511,427	699,790	360,396	1,403,365	47,876	0.0
Annualize SB 17-165 (Supplemental Bill)	(144,709)	(56,728)	(16,648)	(69,096)	(2,237)	0.0
Annualize prior year legislation	(4,703)	(4,703)	0	0	0	0.0
Annualize prior year budget actions	(4,703)	0	0	(4,703)	0	0.0
TOTAL	\$20,040,140	\$4,944,078	\$1,842,531	\$12,886,857	\$366,674	53.2
INCREASE/(DECREASE)	\$2,711,093	\$729,302	\$384,206	\$1,544,903	\$52,682	0.0
Percentage Change	15.6%	17.3%	26.3%	13.6%	16.8%	0.0%

ADMINISTRATION						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
FY 2017-18 EXECUTIVE REQUEST	\$20,064,913	\$4,952,141	\$1,842,531	\$12,903,567	\$366,674	53.2
Request Above/(Below) Recommendation	\$24,773	\$8,063	\$0	\$16,710	\$0	0.0

DECISION ITEMS – ADMINISTRATION

→ R2 IT SECURITY ASSET MAINTENANCE AND FTE

REQUEST: The request includes an increase of \$270,811 total funds (including \$64,062 General Fund) to improve information technology (IT) security based on the recommendations of a recent external audit of the Department’s IT security procedures. The request, which builds on a FY 2016-17 supplemental approved by the Committee, includes the following increases:

- \$188,389 total funds (including \$64,062 General Fund) for the Information Technology Asset Maintenance line item, including \$174,304 total funds to purchase additional IT security tools as recommended in the audit and \$14,085 total funds to align the appropriation for annual computer replacement with FTE increases provided to the Department in recent years. This portion of the request builds on appropriations approved in the FY 2016-17 supplemental and adds \$43,613 total funds (including \$12,490 General Fund) above the adjusted FY 2016-17 appropriation.
- \$82,422 reappropriated funds from indirect cost recoveries (including \$70,515 for personal services and \$11,907 for operating expenses) to support an additional position focused on IT security protocols recommended in the audit. The position would supplement one existing IT security administrator. The Department reports that an additional FTE is not necessary because the Administration has more appropriated FTE than can be filled with the current spending authority. This component was *not* included in the FY 2016-17 supplemental request or bill.

RECOMMENDATION: Staff recommends that the Committee approve an increase of \$254,101 total funds, including \$64,062 General Fund (an increase of \$109,325 total funds, including \$12,490 General Fund, above the FY 2016-17 supplemental). The recommendation is \$16,710 reappropriated funds below the request as a result of modifications to align with the Committee’s common policies. The table on the following page shows the funding approved through FY 2016-17 supplemental S1, the level requested through FY 2017-18 R2, and the FY 2017-18 staff recommendation.

R2 – SECURITY ASSET MAINTENANCE AND FTE SUMMARY					
LINE ITEM	FY 2016-17 SUPPLEMENTAL	FY 2017-18 INCREMENTAL CHANGE	FY 2017-18 REQUEST R2	FY 2017-18 STAFF REC.	CHANGE FROM REQUEST
Personal Services – RF	\$0	\$70,515	\$70,515	\$59,099	(\$11,416)
Operating Expenses – RF	\$0	\$11,907	\$11,907	\$6,613	(\$5,294)
IT Asset Maintenance	<u>\$144,776</u>	<u>\$43,613</u>	<u>\$188,389</u>	<u>\$188,389</u>	<u>\$0</u>
General Fund	51,572	12,490	64,062	64,062	0
Cash Funds	17,292	5,111	22,403	22,403	0
Reapp. Funds	73,309	24,863	98,172	98,172	0
Federal Funds	2,603	1,149	3,752	3,752	0
Total	<u>\$144,776</u>	<u>\$126,035</u>	<u>\$270,811</u>	<u>\$254,101</u>	<u>(\$16,710)</u>
General Fund	51,572	12,490	64,062	64,062	0
Cash Funds	17,292	5,111	22,403	22,403	0
Reapp. Funds	73,309	107,285	180,594	163,884	(16,710)
Federal Funds	2,603	1,149	3,752	3,752	0

ANALYSIS: As discussed during the FY 2016-17 supplemental process, the Department contracted with an external vendor for an audit of the Department's IT security systems and procedures in FY 2015-16. The audit included evaluations of external and public systems, an organizational profiling assessment using publicly available sources, and assessments of security risk, social engineering exposure, and password strength for departmental systems. According to the Department, external IT security audits are recognized industry-wide as a best practice to provide unbiased accountability in IT systems.

The Department received the audit report and recommendations in April 2016, which did not allow for incorporation of the recommendations into the original FY 2016-17 budget request and appropriation. Although the audit was generally positive, it did identify a variety of risks and provided recommendations to address those risks. Please note that while the content of the audit and the Department's specific proposed solutions are not appropriate for inclusion in a public document, the Department has provided the audit and estimates to the JBC Staff.

Based on the audit findings and recommendations, the Department requested (and the Committee approved) an increase of \$144,776 total funds in FY 2016-17 to purchase additional security tools. Request R2 builds on the supplemental appropriation, including the following three components.

- *New IT Security Professional (Administration, Personal Services line item):* The request includes an increase of \$82,422 reappropriated funds from indirect cost recoveries to support an additional IT security professional (this component was not included in the FY 2016-17 supplemental);
- *Security Tools (Information Technology Asset Maintenance line item):* The request includes a total of \$174,304 total funds for IT security tools (an increase of \$29,528 above the FY 2016-17 supplemental approved by the Committee); and
- *Equipment Replacement Alignment (Information Technology Asset Maintenance line item):* The request includes an increase of \$14,085 total funds to align the Department's appropriation for information technology replacement with current staffing levels as a result of growth in the Department's staff (this component was also not included in the FY 2016-17 supplemental).

The following sections briefly analyze each component of the request.

New IT Security Professional: The request includes an increase of \$82,422 reappropriated fund from indirect cost recoveries to support an additional IT security professional as recommended in the external audit. The Department currently has 1.0 FTE IT security administrator and is requesting the additional resources to support a second position. The Department currently has vacant FTE in the Administration, Personal Services line item and does not require an additional FTE.

According to the Department, the increased workload to implement the recommendations of the audit and maintain security going forward will require additional support. The additional staff will allow the existing security administrator to focus more on policy and planning. Finally, the two positions will provide backup (for each other) for security needs on a daily basis.

Staff agrees that the recommendations of the external audit will increase the Department's IT security workload and that the additional position should improve the Department's information security. Given the highly confidential nature of much of the Department's work, staff agrees that IT security must be a priority for the Department.

Staff therefore recommends approving an appropriation of \$65,712 reappropriated funds associated with the requested FTE. The recommendation is \$16,710 below the Department's request based on adjustments to align with the Committee's common policies (a reduction of \$5,294 based on the common policy funding amount for office furniture and a reduction of \$11,416 associated with centrally appropriated items that are typically not funded in the first year for new FTE).

R2 – NEW IT SECURITY PROFESSIONAL						
	FY 2017-18 REQUEST		FY 2017-18 STAFF REC.		FY 2018-19 IMPACT	
	RF	FTE	RF	FTE	RF	FTE
Administration, Personal Services						
Salary/Personal Services	\$52,956	0.0	\$52,956	0.0	\$52,956	0.0
PERA (10.15%)	5,375		5,375		5,375	
Medicare (1.45%)	768		768		768	
AED (4.4%) /1	2,648		0		2,648	
SAED (4.25%) /1	2,648		0		2,648	
STD (0.022%) /1	117		0		117	
Estimated HLD /1	6,004		0		6,004	
Subtotal, Personal Services	\$70,515	0.0	\$59,099	0.0	\$70,515	0.0
Administration, Operating Expenses						
Supplies (\$500)	\$500		\$500		\$500	
Computer (\$900)	900		900		0	
Office Suite Software (\$330)	330		330		0	
Office Equipment (\$8,767)	8,767		3,473		0	
Telephone (\$450/FTE)	450		450		450	
Cell phone (\$80 per month)	960		960		960	
Subtotal, Operating Expenses	\$11,907		\$6,613		\$1,910	
Total FTE Related Funds, Request R2	\$82,422	0.0	\$65,712	0.0	\$72,425	0.0
1/ These amounts would be addressed through centrally appropriated line items rather than within Personal Services.						

Security Tools: As part of the FY 2016-17 supplemental process, the Committee approved an increase of \$144,776 total funds (including \$51,572 General Fund) for the purchase of additional IT security

tools and software. Request R2 builds on the supplemental appropriation and adds an additional \$29,528 total funds for the second year of implementation of the Department's security plan in response to the audit. The cost estimates are based on verbal quotes from vendors of the specific tools sought by the Department.

The Committee has expressed concerns about the potential for duplication of effort with OIT. As discussed during the Department's FY 2017-18 budget hearing with the Committee, the Department of Law is generally exempt from the Governor's Office of Information Technology (OIT) charter. However, the Department does fall under the authority of OIT's Office of Information Security and the Chief Information Security Officer. The Department reports that it works closely with OIT on cyber security issues, that its cyber security efforts are harmonized with those of OIT, and that OIT is aware of and supportive of the Department's efforts. As part of that alignment, the Department is requesting the additional resources to ensure compliance with the Colorado Information Security Policies and has also chosen to implement the Center for Internet Security Critical Security Controls.

Based on the confidential nature of much of the Department's data and information and the risks associated with insufficient IT security, staff recommends approving the Department's request to continue with the purchase of tools in response to the audit.

Equipment Replacement: In addition to supporting the purchase of new software and equipment, the Information Technology Asset Maintenance line item supports the Department's annual replacement cycle for IT equipment (primarily laptop and desktop computers). By common policy the General Assembly typically provides funding to purchase a computer, software licensing, and related equipment when adding new FTE. However, the common policy does not address necessary increases in IT replacement funding to maintain a replacement schedule (for example, the Department's goal is to replace desktop computers every four years).

- The General Assembly provided an increase of \$116,484 total funds in FY 2014-15 to align with the Department's staffing levels from FY 2013-14 (a total of 452.5 FTE).
- Since FY 2013-14, the Department's appropriated FTE have grown from 452.5 to 484.5 in FY 2016-17, an increase of 32.0 appropriated FTE.

The Department is requesting an increase of \$14,085 total funds to both align with the appropriated staff in FY 2016-17 and to adjust the funding sources for the Information Technology Asset Maintenance line item to align with the fund sources supporting the Department's staff.

LINE ITEM DETAIL — ADMINISTRATION

PERSONAL SERVICES

This line item provides funding to support personal services expenditures in the Administration section. Like all subsequent personal services appropriations in this document, this appropriation funds salaries of regular employees, as well as the associated state contribution to the Public Employees Retirement Association (PERA) and the state share of federal Medicare taxes. Also included are wages of temporary employees, payments for contracted services, and termination/retirement payouts for accumulated vacation and sick leave.

STATUTORY AUTHORITY: Section 24-31-101 and 102, C.R.S.

REQUEST: The Department requests \$3,876,422 reappropriated funds and 46.2 FTE for FY 2017-18. The request includes an increase of \$70,515 reappropriated funds associated with request R2 (IT Security Asset Maintenance and FTE, discussed above) to hire an additional IT security professional as recommended in a recent external audit of the Department’s information technology security systems and procedures.

RECOMMENDATION: Staff recommends an appropriation of \$3,865,006 reappropriated funds and 46.2 FTE, including an increase of \$59,099 associated with request R2 (IT Security Asset Maintenance and FTE, discussed above). The recommendation is \$11,416 below the request because of modifications to align the appropriation associated with request R2 with the Committee’s common policies for the addition of new FTE. The following table details the recommended change from the FY 2016-17 appropriation.

ADMINISTRATION, PERSONAL SERVICES				
	TOTAL FUNDS	GENERAL FUND	REAPPROPRIATED FUNDS	FTE
FY 2016-17 APPROPRIATION				
HB 16-1405 (Long Bill)	\$3,805,907	\$0	\$3,805,907	46.2
TOTAL	\$3,805,907	\$0	\$3,805,907	46.2
FY 2017-18 RECOMMENDED APPROPRIATION				
FY 2016-17 Appropriation	\$3,805,907	\$0	\$3,805,907	46.2
R2 Security asset maintenance and FTE	59,099	0	59,099	0.0
TOTAL	\$3,865,006		\$3,865,006	46.2
INCREASE/(DECREASE)	\$59,099	\$0	\$59,099	0.0
Percentage Change	1.6%	n/a	1.6%	0.0%
FY 2017-18 EXECUTIVE REQUEST				
Request Above/(Below)				
Recommendation	\$11,416	\$0	\$11,416	0.0

OFFICE OF COMMUNITY ENGAGEMENT

Created in FY 2015-16, this line item supports statewide community engagement efforts, including 2.0 FTE added in the FY 2015-16 appropriation to lead a newly created Office of Community Engagement as well as 5.0 FTE dedicated to the Safe2Tell program (which had been funded as a separate line item prior to FY 2015-16). The office is charged with improving relationships with partner organizations and agencies regarding domestic violence prevention, consumer protection outreach and education, safe communities and safe schools, and anti-human trafficking efforts.

The Safe2Tell program provides students and the community with a means to anonymously report information concerning unsafe, potentially harmful, dangerous, violent, or criminal activities – or the threat of these activities – to appropriate law enforcement and public safety agencies and school officials. Safe2Tell also makes presentations to students and communities around the state to educate youth about the dangers of the “Code of Silence” which often keeps children from telling authorities of potential dangers. The appropriation includes \$15,000 cash funds from the Safe2Tell

Cash Fund, from payments by school districts and other entities requesting educational materials from the Safe2Tell program.

STATUTORY AUTHORITY: Section 24-31-601 and 24-31-103 (3), C.R.S.

REQUEST: The Department requests a continuation appropriation of \$793,058 total funds (including \$778,058 General Fund and \$15,000 cash funds from the Safe2Tell Cash Fund) and 7.0 FTE for FY 2017-18, with no change from the FY 2016-17 appropriation.

RECOMMENDATION: Staff recommends approving an appropriation of \$788,355 total funds, including \$773,355 General Fund and \$15,000 cash funds. The recommendation is \$4,703 General Fund below the request based on the annualization of S.B. 16-193 (Safe2Tell Provide Materials and Training) anticipated in the Legislative Council Staff Final Fiscal Note for that bill.

ADMINISTRATION, OFFICE OF COMMUNITY ENGAGEMENT				
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	FTE
FY 2016-17 APPROPRIATION				
HB 16-1405 (Long Bill)	\$657,116	\$642,116	\$15,000	6.0
Other legislation	\$135,942	\$135,942	\$0	1.0
TOTAL	\$793,058	\$778,058	\$15,000	7.0
FY 2017-18 RECOMMENDED APPROPRIATION				
FY 2016-17 Appropriation	\$793,058	\$778,058	\$15,000	7.0
Annualize prior year legislation	(4,703)	(4,703)	0	0.0
TOTAL	\$788,355	\$773,355	\$15,000	7.0
INCREASE/(DECREASE)				
	(\$4,703)	(\$4,703)	\$0	0.0
Percentage Change	(0.6%)	(0.6%)	0.0%	0.0%
FY 2017-18 EXECUTIVE REQUEST				
Request Above/(Below)				
Recommendation	\$4,703	\$4,703	\$0	0.0

HEALTH, LIFE, AND DENTAL

This line item provides funding for the employer’s share of the cost of group benefit plans providing health, life, and dental insurance for state employees.

STATUTORY AUTHORITY: Pursuant to Section 24-50-611, C.R.S., and defined in Section 24-50-603 (9), C.R.S.

REQUEST: The Department requests \$4,100,333 total funds for FY 2017-18, an increase of \$310,430 above the FY 2016-17 appropriation.

RECOMMENDATION: Staff recommends approving the request for FY 2017-18, consistent with Committee policy with respect to employer contribution rates.

SHORT-TERM DISABILITY

This line item provides funding for the employer's share of the cost of group benefit plans providing short-term disability insurance for state employees.

STATUTORY AUTHORITY: Pursuant to Section 24-50-611, C.R.S., and defined in Section 24-50-603 (13), C.R.S.

REQUEST: The Department requests \$79,252 total funds for FY 2017-18, an increase of \$4,088 above the FY 2016-17 appropriation.

RECOMMENDATION: Staff recommends approving the request for FY 2016-17, which is consistent with the Committee's common policy to apply a rate of 0.19 percent of employee salaries. As approved by the Committee, staff will adjust the dollar amount as necessary based on the Committee's final common policy decisions.

S.B. 04-257 AMORTIZATION EQUALIZATION DISBURSEMENT (AED)

Pursuant to S.B. 04-257, this line item provides additional funding to increase the state contribution for the Public Employees' Retirement Association (PERA).

STATUTORY AUTHORITY: Section 24-51-411, C.R.S.

REQUEST: The Department requests \$2,085,616 total funds for FY 2017-18, an increase of \$186,747 above the FY 2016-17 appropriation.

RECOMMENDATION: Staff recommends approving the request for FY 2017-18, which is consistent with the Committee's common policy to apply a contribution rate of 5.0 percent of base salaries. As approved by the Committee, staff will adjust the dollar amount as necessary based on the Committee's final common policy decisions.

S.B. 06-235 SUPPLEMENTAL AMORTIZATION EQUALIZATION DISBURSEMENT

Pursuant to S.B. 06-235, this line item provides additional funding to increase the state contribution for PERA.

STATUTORY AUTHORITY: Section 24-51-411, C.R.S.

REQUEST: The Department requests \$2,085,616 total funds for FY 2017-18, an increase of \$206,526 above the FY 2016-17 appropriation.

RECOMMENDATION: Staff recommends approving the request for FY 2017-18, which is consistent with the Committee's common policy to apply a contribution rate of 5.0 percent of base salaries. As approved by the Committee, staff will adjust the dollar amount as necessary based on the Committee's final common policy decisions.

Background Information – Salaries for Classified and Exempt Employees: The Department of Law employs both classified and non-classified or "exempt" employees. Classified employees are governed by state personnel rules and procedures; exempt employees are not. The Department

employs about 283 attorney FTE, who collectively make up about 60 percent of the Department's staff. These attorneys are all exempt employees, and the remaining 40 percent of the Department's staff are classified employees.

Salary survey and merit pay for classified employees, when provided, are set by common policy. Thus, staff will calculate any appropriations for salary survey and merit pay increases for classified employees in the same manner as all other classified employees.

The Department of Personnel's "Annual Compensation Survey Report" does not include compensation data related to attorneys. In order to evaluate the compensation for its attorneys, the Department annually contracts with an independent compensation research and consulting firm to assess market compensation practices for attorneys in comparable positions in Colorado public sector attorney organizations.

The latest survey, prepared by the Fox Lawson Group (FLG), was published in August 2016. This study utilized data reported as of July 1, 2016 for a "primary market" that includes:

- Front Range City Attorney Offices (participants included the cities of: Arvada, Aurora, Denver, Fort Collins, Greeley, Lakewood, Littleton, Thornton, and Westminster);
- Front Range County Attorney Offices (participants included the counties of: Boulder, Jefferson, and Weld); and
- The United States Office of the Attorney General.

This study also utilized data for a "supplementary market" that includes:

- Judicial Districts (participants included the following districts: 1st (Jefferson and Gilpin counties); 2nd (Denver); 5th (Clear Creek, Eagle, and Summit); 10th (Pueblo); 17th (Adams and Broomfield); and 20th (Boulder);
- Public Defender's Offices for the City of Denver; and
- The Office of the State Public Defender.

The study compares the Department's actual attorney salaries and salary ranges as of July 2016 to the primary market data (which reflects survey participants' salary data as of July 1, 2016). Thus, to the extent that the study's primary market data is used to determine Department salaries as of July 2017, such salaries will lag the market by 12 months.

After four years without funding attorney salary survey and merit pay during the recent economic downturn (FY 2009-10 through FY 2012-13), the 2012 FLG survey indicated that the Department's salaries were well below the market. For FY 2013-14, the General Assembly appropriated \$4.1 million for salary survey increases for the Department's attorneys in an effort to improve parity with the market. As a result, the 2013 survey found that the Department's *average attorney* salaries were competitive with the market for the first time since 2009. In FY 2014-15 and FY 2015-16, the General Assembly appropriated smaller amounts to maintain parity with the market based on each year's survey results. Consistent with the lack of salary survey and merit pay for classified employees in FY 2016-17, the Department did not request (and the General Assembly did not provide) any salary survey or merit pay funding for the Department's attorneys in FY 2016-17.

Based on the 2016 report, the Department is requesting a 3.0 percent salary increase for attorneys to maintain parity with the primary market, 0.5 percent higher than the common policy request of 2.5 percent for classified employees. For comparison purposes, the Office of the State Public Defender is requesting a 2.5 percent increase for attorneys, equivalent to the common policy request for classified employees and below the Department of Law's request for attorneys. Consistent with the Governor's common policy request for classified employees, the Department is not requesting funding for merit pay for attorneys or classified employees for FY 2017-18.

SALARY SURVEY FOR CLASSIFIED EMPLOYEES

The Department uses this line item to pay for salary survey increases for *classified* employees.

STATUTORY AUTHORITY: Section 24-50-104 (4) I, C.R.S.

REQUEST: The Department requests \$376,391 total funds for FY 2017-18, consistent with the Governor's common policy request for a 2.5 percent across-the-board salary survey increase.

RECOMMENDATION: The staff recommendation for this line item is pending the Committee's decisions regarding salary survey common policies for FY 2017-18.

SALARY SURVEY FOR EXEMPT EMPLOYEES

The Department uses this line item to pay for salary increases for employees who are *exempt from the state personnel system (attorneys)*.

STATUTORY AUTHORITY: Section 24-50-104 (4) I, C.R.S.

REQUEST: The Department requests \$1,008,795 total funds for FY 2017-18. As discussed above, based on the recommendations of the Department's 2016 attorney salary survey report, the Department is requesting a 3.0 percent increase for attorney salaries for FY 2017-18.

RECOMMENDATION: The staff recommendation for this line item is pending the Committee's decisions regarding salary survey common policies for classified staff for FY 2017-18. Following the Committee's decisions regarding salary survey for classified employees, staff intends to return to the Committee with a recommendation regarding salary survey appropriations for the Department's attorneys. Staff notes that the Department's request for attorney salary survey is 0.5 percent higher than the Governor's request for classified employees (3.0 percent vs. 2.5 percent for classified staff).

While staff is not recommending a specific amount at this time, staff does recommend that the Committee approve the same percentage increase for attorneys at the Department of Law and the Office of the State Public Defender to maintain parity between the two agencies.

MERIT PAY FOR CLASSIFIED EMPLOYEES

This line item funds pay increases relating to employee performance evaluations for *classified* employees.

STATUTORY AUTHORITY: Section 24-50-104 (1) I, C.R.S.

REQUEST: The Department is not requesting any merit pay funds for FY 2017-18, consistent with the Governor's common policies for FY 2017-18.

RECOMMENDATION: The staff recommendation for this line item is pending Committee decisions regarding common policies for merit pay.

MERIT PAY FOR EXEMPT EMPLOYEES

This line item funds pay increases relating to employee performance evaluations for employees who are *exempt from the state personnel system (attorneys)*.

STATUTORY AUTHORITY: Section 24-50-104 (1) I, C.R.S.

REQUEST: Consistent with the Governor's common policies for classified employees, the Department is not requesting any merit pay funds for FY 2017-18.

RECOMMENDATION: The staff recommendation for this line item is pending the Committee's decisions regarding merit pay common policies for FY 2017-18. If the Committee approves merit pay increases for classified employees, staff intends to return with a recommendation regarding merit pay appropriations for the Department's attorneys.

WORKERS' COMPENSATION

This line item supports the Department's estimated share for inclusion in the state's workers' compensation program for state employees. This program is administered by the Department of Personnel.

STATUTORY AUTHORITY: Section 24-30-1510.7, C.R.S.

REQUEST: The Department requests \$131,625 total funds for FY 2017-18.

RECOMMENDATION: The staff recommendation is pending the development of the Committee's common policies for FY 2017-18.

ATTORNEY REGISTRATION AND CONTINUING LEGAL EDUCATION

This line item provides funding for the Department to cover the annual registration fee for each attorney (\$325 per attorney) and to provide some funding for required continuing legal education expenses (\$150 per attorney). This line item was established in FY 2008-09 in response to a request from the Department, and it is designed to make the salary and benefit package offered by the Department more competitive with other public sector law firms.

STATUTORY AUTHORITY: Section 24-31-101 (6), C.R.S.

REQUEST: The Department requests \$136,705 total funds for FY 2017-18, an increase of \$1,425 total funds relative to the FY 2016-17 appropriation to align with anticipated expenditures in FY 2017-18.

RECOMMENDATION: Staff recommends approving the request based on the assumption that the Committee intends to continue to provide \$325 per attorney to cover the annual registration fee and an average of \$150 per attorney for continuing legal education expenses.

OPERATING EXPENSES

This line item provides funding for operating expenses of the Administration section. The reappropriated funds are from indirect cost recoveries.

STATUTORY AUTHORITY: Section 24-31-101 (6), C.R.S.

REQUEST: The Department requests \$210,054 reappropriated funds for FY 20187-18. The request includes the following changes from the FY 2016-17 appropriation:

- An increase of \$11,907 reappropriated funds associated with FY 2017-18 request R2 IT Security Asset Maintenance and FTE, discussed above); and
- A decrease of \$4,703 reappropriated funds to annualize FY 2016-17 request R4 (Accounting Technician III).

RECOMMENDATION: Staff recommends an appropriation of \$204,760 reappropriated funds from indirect cost recoveries, including an increase of \$6,613 associated with request R2 (IT Security Asset Maintenance and FTE, discussed above). The recommendation is \$5,294 below the Department’s request based on modifications to align the appropriation associated with request R2 with the Committee’s common policies for the addition of new FTE. The following table details the recommended changes from the FY 2016-17 appropriation.

ADMINISTRATION, OPERATING EXPENSES				
	TOTAL FUNDS	GENERAL FUND	REAPPROPRIATED FUNDS	FTE
FY 2016-17 APPROPRIATION				
HB 16-1405 (Long Bill)	\$202,850	\$0	\$202,850	0.0
TOTAL	\$202,850	\$0	\$202,850	0.0
FY 2017-18 RECOMMENDED APPROPRIATION				
FY 2016-17 Appropriation	\$202,850	\$0	\$202,850	0.0
R2 Security asset maintenance and FTE	6,613	0	6,613	0.0
Annualize prior year budget actions	(4,703)	0	(4,703)	0.0
TOTAL	\$204,760		\$204,760	0.0
INCREASE/(DECREASE)	\$1,910	\$0	\$1,910	0.0
Percentage Change	0.9%	n/a	0.9%	0.0%
FY 2017-18 EXECUTIVE REQUEST				
Request Above/(Below)	\$210,054	\$0	\$210,054	0.0
Recommendation	\$5,294	\$0	\$5,294	0.0

LEGAL SERVICES

This line item, first created in the Department's FY 2014-15 supplemental bill, provides appropriations for anticipated legal services expenses for both Safe2Tell and the Peace Officers Standards and Training (P.O.S.T.) Board, the two Department of Law programs expected to utilize legal services in FY 2016-17.

STATUTORY AUTHORITY: Section 24-31-101, C.R.S.

REQUEST: The Department requests \$40,796 for FY 2017-18, based on an estimated need for 200 hours of legal services for the Safe2Tell Program within the Office of Community Engagement (\$19,852 General Fund) and 211 hours of legal services for the P.O.S.T. Board (\$20,944 cash funds).

RECOMMENDATION: Staff recommends approving funding sufficient to purchase 411 hours of legal services based on the anticipated need for legal services for Safe2Tell (200 hours supported by General Fund) and P.O.S.T. (211 hours supported by cash funds) in FY 2017-18. Please note that this recommendation would change if the Committee approves staff's recommendation regarding request R1 (Legal Services Allocations and Billing, discussed below in the Legal Services to State Agencies section). The recommendation for the dollar amount is pending the Committee's setting of a legal services rate for FY 2017-18. The associated appropriation will be calculated after the Committee sets the common policy for the legal services rate.

ADMINISTRATIVE LAW JUDGE SERVICES

This line item provides funding for the Department to purchase Administrative Law Judge services from the Department of Personnel and Administration.

STATUTORY AUTHORITY: Sections 24-30-1001 (3) and 24-30-1002, C.R.S.

REQUEST: The Department requests \$7,929 cash funds for FY 2017-18, an increase of \$6,327 above the FY 2016-17 appropriation. The request includes increases of \$6,253 cash funds for the annual administrative law judge services adjustment and \$74 for a non-prioritized item submitted by the Department of Personnel.

RECOMMENDATION: The staff recommendation is pending the development of the Committee's common policy for this line item for FY 2017-18.

PAYMENT TO RISK MANAGEMENT AND PROPERTY FUNDS

This line item provides funding for the Department's share of the statewide costs for two programs operated by the Department of Personnel: (1) the liability program, and (2) the property program. The state's liability program is used to pay liability claims and expenses brought against the State. The property program provides insurance coverage for state buildings and their contents.

STATUTORY AUTHORITY: Sections 24-30-1510 and 24-30-1510.5, C.R.S.

REQUEST: The Department requests \$274,102 total funds for FY 2017-18. The request represents an increase of \$20,282 total funds above the FY 2016-17 appropriation.

RECOMMENDATION: The staff recommendation is pending the development of the Committee's common policies for this line item for FY 2017-18.

VEHICLE LEASE PAYMENTS

This line item provides funding for annual payments to the Department of Personnel for the cost of administration, loan repayment, and lease-purchase payments for new and replacement motor vehicles [see Section 24-30-1117, C.R.S.]. The current appropriation covers costs associated with a total of 32 vehicles, including 16 that are used by the Criminal Justice and Appellate Division, nine that are used by the Legal Services for State Agencies Division, five that are used by the Consumer Protection Division, one that is used by the Office of Community Engagement, and one that is used by the Attorney General.

STATUTORY AUTHORITY: Section 24-30-1104 (2), C.R.S.

REQUEST: The Department requests \$48,168 total funds for FY 2017-18, an increase of \$2,824 relative to the FY 2016-17 appropriation. The request includes the following changes from the FY 2016-17 appropriation:

- An increase of \$3,360 General Fund associated with request R4 (Consumer Protection FTE and Charities Unit, discussed below with the Consumer protection Division);
- An increase of \$3,360 cash funds associated with request R5 (Financial Fraud Investigators, discussed below with the Criminal Justice and Appellate Division); and
- A decrease of \$3,896 total funds associated with the statewide vehicle lease payments common policy adjustment.

RECOMMENDATION: The staff recommendation is pending the development of the Committee's common policies for vehicle lease payments for FY 2017-18. Staff will align the appropriation for vehicle lease payments with the Committee's common policy decisions. However, with respect to the increases associated with requests R4 (Consumer Protection FTE and Charities Unit, discussed below with the Consumer Protection section) and R5 (Financial Fraud Investigators, discussed below with the Criminal Justice and Appellate section), staff recommends that the Committee:

- Deny the increase of \$3,360 General Fund associated with R4 because of staff's recommendation to deny the requested increases to support the proposed Charities Oversight Unit; and
- Approve the increase of \$3,360 cash funds associated with request R5 based on staff's recommendation to approve the additional 2.0 criminal investigator FTE requested through R5.

IT ASSET MAINTENANCE

This appropriation funds the maintenance and replacement of computer equipment as well as software maintenance and licensing agreements. The requested amount provides for the replacement of the Department's information technology according to a regular schedule in accord with guidelines established by the Governor's Office of Information Technology.

STATUTORY AUTHORITY: Sections 24-37.5-108 and 112, C.R.S.

REQUEST: The Department requests \$833,595 total funds in FY 2017-18. The request includes an increase of \$188,389 total funds (including \$64,062 General Fund) associated with request R2 (IT Security Asset Maintenance and FTE, discussed above). Please note that the request represents an increase of \$43,613 total funds above the FY 2016-17 appropriation as adjusted by S.B. 17-165 (the Department’s FY 2016-17 supplemental bill).

RECOMMENDATION: Staff recommends approving the request, including the increase associated with request R2 (discussed above). The following table shows the recommended changes from the FY 2016-17 appropriation.

ADMINISTRATION, INFORMATION TECHNOLOGY ASSET MAINTENANCE						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
FY 2016-17 APPROPRIATION						
HB 16-1405 (Long Bill)	\$645,206	\$174,663	\$75,291	\$377,036	\$18,216	0.0
SB 17-165 (Supplemental Bill)	\$144,776	\$51,572	\$17,292	\$73,309	\$2,603	0.0
TOTAL	\$789,982	\$226,235	\$92,583	\$450,345	\$20,819	0.0
FY 2017-18 RECOMMENDED APPROPRIATION						
FY 2016-17 Appropriation	\$789,982	\$226,235	\$92,583	\$450,345	\$20,819	0.0
R2 Security asset maintenance and FTE	188,389	64,062	22,403	98,172	3,752	0.0
Annualize SB 17-165 (Supplemental Bill)	(144,776)	(51,572)	(17,292)	(73,309)	(2,603)	0.0
TOTAL	\$833,595	\$238,725	\$97,694	\$475,208	\$21,968	0.0
INCREASE/(DECREASE)	\$43,613	\$12,490	\$5,111	\$24,863	\$1,149	0.0
Percentage Change	5.5%	5.5%	5.5%	5.5%	5.5%	0.0%
FY 2017-18 EXECUTIVE REQUEST	\$833,595	\$238,725	\$97,694	\$475,208	\$21,968	0.0
Request Above/(Below) Recommendation	\$0	\$0	\$0	\$0	\$0	0.0

RALPH L. CARR COLORADO JUDICIAL CENTER LEASED SPACE

Created in FY 2013-14 to reflect the Department’s relocation to the Ralph L. Carr Colorado Judicial Center (Carr Center), this line item supports the Department’s lease payments for space in the building. The Department now occupies 211,844 square feet in the Carr Center. This line item also supports the Department’s share of State Patrol security services at the Carr Center.

STATUTORY AUTHORITY: Section 13-32-101 (7), C.R.S.

REQUEST: The Department requests \$3,261,575 total funds for this line item, reflecting the anticipated lease payment in FY 2017-18. The request includes an increase of \$59,058 total funds (including \$33,886 General Fund) based on revised estimates of lease rates from the Judicial Branch.

RECOMMENDATION: Staff’s recommendation for the dollar amount of this appropriation is pending. Staff will ultimately reflect the amounts approved by the Committee when it considers the Judicial

Branch budget request related to the Carr Center and the Department of Public Safety's budget request for State Patrol Services.

PAYMENTS TO OIT

This line item, created in FY 2014-15, supports various payments to the Governor's Office of Information Technology (OIT) for services provided to the Department. The line item includes funds previously appropriated to a variety of line items associated with OIT.

STATUTORY AUTHORITY: Section 24-37.5-104, C.R.S.

REQUEST: The Department requests \$653,628 funds for payments to OIT in FY 2017-18, an increase of \$414,155 total funds above the FY 2016-17 appropriation. The request includes the following changes from the FY 2016-17 appropriation:

- An increase of \$283,574 total funds (including \$81,686 General Fund) associated with the annual statewide Payments to OIT adjustment;
- An increase of \$130,581 total funds (including \$37,009 General Fund) for three non-prioritized items requested by OIT.

RECOMMENDATION: The staff recommendation for this line item is pending the development of the Committee's common policy for Payments to OIT. Staff will reflect the Committee's decisions with respect to the OIT common policies in the Long Bill.

CORE OPERATIONS

This line item provides the Department's share of funding for replacement of the statewide accounting system (COFRS) used by the Office of the State Controller to record all state revenues and expenditures.

STATUTORY AUTHORITY: Section 24-30-209, C.R.S.

REQUEST: The Department requests \$56,186 total funds for this purpose for FY 2017-18, a decrease of \$6,267 below the FY 2016-17 appropriation.

RECOMMENDATION: The staff recommendation for this line item is pending the development of the Committee's common policy for CORE operations.

ATTORNEY GENERAL DISCRETIONARY FUND

Section 24-9-105 (1) I, C.R.S., authorizes the General Assembly to appropriate \$5,000 of discretionary funds to the Attorney General to use for official business purposes.

STATUTORY AUTHORITY: Section 24-9-105 (1) I, C.R.S.

REQUEST: The Department requests continuation of the \$5,000 General Fund appropriation.

RECOMMENDATION: Staff recommends approving the request.

(2) LEGAL SERVICES TO STATE AGENCIES

The Legal Services to State Agencies (LSSA) section of the Long Bill provides appropriations to the Department to allow it to spend moneys received from other state agencies for the provision of legal services as required by Section 24-31-101, C.R.S. Since 1973, the General Assembly has appropriated moneys for legal services to the various state agencies, which in turn purchase services from the Department of Law at hourly rates. The Department of Law collects payments from these agencies when it provides legal services. In order to spend the money it receives to pay salaries and related expenses, the Department of Law also requires an appropriation. Thus, whenever the General Assembly makes an appropriation to a state agency for legal services, an equal appropriation must be made to the Department of Law so it can spend the money it receives. For example, for FY 2016-17, the General Assembly has authorized the Department of Law to spend up to \$40.7 million providing legal services to state agencies (including associated central appropriations).

In most cases, the appropriation to the Department of Law is classified as reappropriated funds because a duplicate appropriation for the purchase of legal services appears in the client agency's budget. In some instances, however, the Department receives payments from state agencies that are not duplicated in appropriations elsewhere in the budget (*e.g.*, payments from PERA). When received, these payments are classified as cash funds.

Please note that FTE that are funded through this section of the Long Bill have been organized into seven sections based on subject matter expertise and the need to separate staff where ethical conflicts of interest exist. Seven Deputy Attorneys General oversee each of these sections. Five of the seven Deputy Attorneys General are funded through this Long Bill section; the remaining two are funded through the Criminal Justice and Appellate, and Consumer Protection sections of the Long Bill.

The Department evaluates its performance as legal counsel and advisor to the other state agencies through an annual customer satisfaction survey. The Department has exceeded its goal of 95 percent of client agencies satisfied or very satisfied with the Department's performance in each of the past three years (including 96.0 percent in FY 2015-16).

LEGAL SERVICES TO STATE AGENCIES					
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FTE
FY 2016-17 Appropriation					
HB 16-1405 (Long Bill)	\$32,211,407	\$0	\$1,054,580	\$31,156,827	260.8
Other legislation	556,769	0	0	556,769	2.1
SB 17-165 (Supplemental Bill)	171,090	0	0	171,090	1.0
TOTAL	\$32,939,266	\$0	\$1,054,580	\$31,884,686	263.9
FY 2017-18 RECOMMENDED APPROPRIATION					
FY 2016-17 Appropriation	\$32,939,266	\$0	\$1,054,580	\$31,884,686	263.9
R1 Legal allocations and billings	(760,273)	0	0	(760,273)	0.0
Annualize SB 17-165 (Supplemental Bill)	(171,090)	0	0	(171,090)	(1.0)
NP Department of Education legal services	167,042	0	0	167,042	0.9
Annualize prior year legislation	43,704	0	0	43,704	0.2

LEGAL SERVICES TO STATE AGENCIES					
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FTE
Annualize prior year budget actions	5,009	0	0	5,009	0.0
Indirect cost assessment adjustments	(192,367)	0	200,945	(393,312)	0.0
TOTAL	\$32,031,291		\$1,255,525	\$30,775,766	264.0
INCREASE/(DECREASE)	(\$907,975)	\$0	\$200,945	(\$1,108,920)	0.1
Percentage Change	(2.8%)	0.0%	19.1%	(3.5%)	0.0%
FY 2017-18 EXECUTIVE REQUEST	\$32,031,291	\$0	\$1,255,525	\$30,775,766	264.0
Request Above/(Below) Recommendation	\$0		\$0	\$0	0.0

DECISION ITEMS – LEGAL SERVICES TO STATE AGENCIES

→ R1 LEGAL ALLOCATIONS AND BILLINGS

REQUEST: The Department is requesting a change in the administration of monthly legal allocations and billings to client agencies, resulting in an estimated reduction of \$760,273 reappropriated funds needed for legal services provided to state agencies (and correlated reductions in the legal services appropriations for client agencies). Currently, the Department bills client agencies each month for the hours of legal services actually provided to the client during that month. Similar to other common policies, the Department is proposing to base each client agency’s annual appropriation on prior year usage of legal services and then bill agencies in twelve equal monthly installments rather than bill monthly based on actual usage.

RECOMMENDATION: Staff recommends approving a modified version of the Department’s request to change legal services billings. Since the briefing, staff has worked with the Department to address potential concerns with the Department’s original proposal. Based on those discussions, staff recommends that the Committee approve a change on a temporary (pilot) basis to the calculation and billing methodology that would:

- Use a 3-year average of actual hours of legal services consumed by each agency (as requested by the Department). The shift to a standard process to appropriate based actual usage rather than the prior year appropriation should reduce the amount of unnecessary (“fictional”) spending authority currently in the Long Bill. Similar to other common policies, the JBC Staff analyst assigned to the Department of Law would work with the Department to calculate the three-year average usage for each agency and then communicate the necessary number of hours and the resulting appropriation to the analysts assigned to each client agency.
- At least for the first year (FY 2017-18), estimate the amount of litigation expenses to be included for each agency based on the agency’s *hours of legal services* rather than actual litigation expenses. The Department has calculated an average total (statewide) amount of litigation expenses over the past two years; the staff recommendation would apportion that total based on hours used by each agency for the first year. In the second year, the Committee may wish to shift to an inclusion of litigation expenses by each agency.
- Allow the Department to bill agencies in 12 monthly installments based on the total appropriation developed through the methodology described above. Please note that while the shift to billing based on the appropriation rather than actuals provides a more stable revenue

source for the Department of Law, this transition is a significant concern to some client agencies.

- Require the Department to report back to the Committee in two years (after one full year of implementation) with feedback regarding the first year of implementation. Staff recommends that the feedback include a survey of client agencies regarding their experiences with the first year of implementation and any concerns that may need to be addressed going forward. Based on this feedback, the Committee may wish to change course and/or revert to the previous methodology.

ANALYSIS: With request R1, the Department is proposing to change the appropriations and monthly billings supporting legal services provided to other state agencies. The following sections describe the current system and the Department’s proposed changes to each part of the process, from the calculation of the original appropriation to the administration of monthly billings to client agencies. The Committee discussed this request in detail at the FY 2017-18 JBC Staff Briefing and at the Department’s hearing. For a detailed discussion of the request, see the issue brief beginning on page 18 of the FY 2017-18 JBC Staff Briefing document for the Department of Law. The following write-up provides a brief summary and discusses information that was not available at the time of the briefing.

Background – Current Legal Services Calculations and Billing: Colorado operates under the “Oregon Plan,” whereby the General Assembly appropriates money for legal services to the various state agencies, who in turn purchase services from the Department of Law at hourly rates (one rate for attorneys and one rate for legal assistants). The General Assembly approves the legal services rates through a footnote in the annual Long Bill, and the blended rate is multiplied by the budgeted hours for each agency to produce each client agency’s legal services appropriation. The General Assembly then provides spending authority (primarily reappropriated funds) to the Department of Law to spend the money received from other state agencies.

With request R1, the Department is proposing modifications to three components of the legal services budget process: (1) the calculation of each agency’s annual “budgeted hours” of legal services; (2) the monthly billing system for client agencies; and (3) the treatment of “other litigation costs” not included in the hourly rate.

Budgeted Hours and Appropriations: Client agency appropriations (and the resulting appropriations in the Department of Law) are currently set by each department and JBC staff analyst and are often based on the prior year appropriation rather than actual usage of legal services. As a result, unless an increase in hours is needed the appropriations often remain unchanged from year to year. This system has resulted in appropriations for many agencies that overstate the usage of legal services and overstate the need for funding in the Department of Law. The request and recommendation would use a three-year average of actual hours consumed to set the hours of legal services for each agency. Staff is recommending changes to the system in large part to reduce the amount of unnecessary spending authority in the Long Bill. The following table compares the estimated number of hours for each agency under the current system and under the staff recommendation.

ESTIMATED FY 2017-18 LEGAL SERVICES HOURS: CURRENT SYSTEM VS. STAFF RECOMMENDATION			
DEPARTMENT	CURRENT SYSTEM	STAFF REC.	CHANGE
Agriculture	8,516	5,294	(3,222)
Corrections	19,653	17,546	(2,107)
Education	6,071	6,087	16
Governor	6,701	5,981	(720)
Health Care Policy and Financing	14,406	10,458	(3,948)
Higher Education ^{/1}	11,514	11,988	474
Human Services	17,669	20,838	3,169
Judicial	4,060	3,552	(508)
Labor and Employment	8,615	8,017	(598)
Law	411	205	(206)
Legislature	188	41	(147)
Local Affairs	1,780	1,447	(333)
Military and Veterans' Affairs	110	70	(40)
Natural Resources	50,972	50,987	15
Personnel	48,216	43,758	(4,458)
PERA ^{/2}	29	7	(22)
Public Health and Environment	30,702	30,654	(48)
Public Safety	4,005	3,859	(146)
Regulatory Agencies	111,656	94,809	(16,847)
Revenue	47,478	38,697	(8,781)
State	4,300	3,134	(1,166)
Transportation	16,432	14,797	(1,635)
Treasury	575	1,016	441
Total	414,059	373,241	(40,818)

^{1/} Includes hours that are estimated for the institutions but *not* specifically appropriated in the Long Bill.

^{2/} This is an estimate and is not appropriated in the Long Bill.

Monthly Billing: The Department of Law currently bills client agencies on a monthly basis for the actual hours of legal services provided that month and is requesting a shift to billing based on the *appropriation* (using monthly installments to collect the full appropriation amount). The Department is the only “internal service” agency that bills based on actual services per month, and the Department is requesting the change in order to provide a more stable and predictable revenue source. The Committee included a common hearing question seeking agencies’ opinions regarding R1 in the FY 2017-18 hearing agenda, and the proposed billing changes were a major topic in responses.

- Staff notes that client agencies have significant differences of opinion over this aspect of the request. Some agencies, particularly those supporting legal services with relatively small cash funds support the predictable costs. Others have expressed significant concern about the potential loss of control of costs and decreased ability to hold the Department of Law accountable.
- Staff also has concerns about the shift away from billing based on actuals. However, staff agrees with the Department that a predictable revenue source will improve the Department’s ability to operate, particularly because the elimination of unused spending authority will reduce the Department’s flexibility.
- Staff notes that several departments expressed concern about their ability to continue to use up to 10.0 percent of legal services appropriations for other uses (operating expenses, contractual

services, and tuition for employee training).¹ Clearly, fully utilizing the appropriation through monthly billing would reduce or eliminate the client agencies' flexibility regarding the use of funds. However, staff does not see that as a reason to maintain inflated legal services appropriations in the Long Bill. Staff would prefer that legal services appropriations align with the actual need for legal services; if agencies have additional needs for other purposes then those uses would be more appropriately funded through other line items. Staff is also concerned that the current system is providing an incentive to maintain inflated legal services appropriations in order to make funds available for other priorities.

Litigation Expenses: Some cases require the Department of Law to incur additional costs outside of the costs included in the hourly legal services rate. For example, such costs might include expert witness costs, court reporting, and travel for depositions, among others. Under the current system, which only includes anticipated hours and the hourly legal rate, client agencies' legal services appropriations do not include any funds for these additional costs. Instead, the Department of Law "fronts" the additional costs for client agencies and then bills the clients. Clients generally have to absorb the costs from other (personal services or operating) line items. In some cases, this system may create challenges for agencies forced to absorb significant unexpected costs within other line items.

- With request R1, the Department proposed to include an estimate for additional litigation costs within each client agency's legal services appropriation based on the average actual costs incurred over the previous two years (FY 2014-15 and FY 2015-16 would determine the FY 2017-18 appropriation). Including the changes to the budgeted hours above, each client agency's legal services appropriation would be calculated as:

$$(\text{budgeted hours} \times \text{blended legal rate}) + (\text{estimated additional litigation costs}) = \text{appropriation}$$

- Staff agrees that including estimated litigation costs in the legal services appropriation would increase the transparency of total legal services costs because these expenses are often paid out of other (unrelated) line items. In addition, for agencies that have absorbed such costs within other appropriations, the proposal would reduce pressure on other personal services and operating line items that currently absorb the expenses. However, given that litigation costs may "spike" in specific years, staff is concerned about the impact on subsequent client agency budgets and billing (see discussion of monthly billing below). For example, if litigation costs spiked in FY 2015-16 and the client agency absorbed those costs and fully reimbursed the DOL, then the spike in costs would continue to increase the client agency's bills in subsequent years (when the costs were no longer necessary and the client had already reimbursed the DOL).
- Based on discussions with the Department since the briefing, staff recommends a hybrid approach that would estimate the total (statewide) litigation costs based on a two-year average and then apportion that total as part of the client agencies' appropriations *based on each agency's consumption of legal services rather than litigation expenses*. Staff recommends transitioning to this method for at least the first year of implementation.

Anticipated Efficiencies: Based on preliminary projections, the Department believes that the proposed changes to standardized calculations and monthly billing (including the modifications recommended by staff) would allow for a reduction in total legal services appropriations to the Department (and to

¹ See Section 24-75-112 (1) (i), C.R.S., which provides this flexibility.

the original appropriations to client agencies). The Department anticipates that the shift would allow for a total of \$760,273 in total reductions, including \$660,273 in LSSA personal services and \$100,000 in operating expenses.

Client Agency Reactions: As noted above, the Committee included a common question seeking reactions to the proposed change in methodology in the hearing agenda for every department during the FY 2017-18 budget hearing process. As shown in the following table, nine departments supported the proposal, generally based on increased predictability of costs. However, four departments opposed the changes, often based on concerns about the ability to constrain costs and hold the Department of Law accountable. Five departments were neutral, and the position of the Governor’s Office was uncertain.

CLIENT AGENCIES’ RESPONSES TO R1				
AGENCY	SUPPORT	OPPOSE	NEUTRAL	UNCERTAIN
Agriculture	X			
Corrections	X			
Education	X			
Governor				X
Governor’s Office of Information Tech.	X			
Health Care Policy and Financing			X	
Human Services		X		
Labor and Employment			X	
Local Affairs			X	
Military and Veterans’ Affairs			X	
Natural Resources		X		
Personnel	X			
Public Health and Environment		X		
Public Safety			X	
Regulatory Agencies		X		
Revenue	X			
State	X			
Transportation	X			
Treasury	X			

The story is somewhat different among institutions of higher education (see the following table). Two institutions (Adams State and Western State) supported the proposed change, while five opposed the proposal and four were neutral.

INSTITUTIONS OF HIGHER EDUCATION RESPONSES TO R1			
INSTITUTION	SUPPORT	OPPOSE	NEUTRAL
Auraria			X
Adams State	X		
Community College System		X	
Colorado Mesa		X	
Colorado Mountain College			X
Mines		X	
Colorado State			X
Metropolitan State		X	
University of Colorado			X
University of Northern Colorado		X	
Western State	X		

Impact on the Legal Services Rate and Appropriations: As in prior years, staff will return to the Committee at the conclusion of the figure setting process with a recommendation for the legal services rate for FY 2017-18. However, the Committee should be aware that the proposed modifications would increase the legal services rate required in FY 2017-18. Reducing the number of appropriated hours (even if the hours are fictional) requires an increase in the rate to support a given level of staffing. However, while the hourly rate increases from an estimated \$98.81 under the current system to \$107.53 under the staff recommendation, the total appropriation required decreases by \$936,726.

IMPACT ON FY 2017-18 BLENDED LEGAL RATE AND TOTAL APPROPRIATIONS					
FY 2017-18 BLENDED RATE			FY 2017-18 TOTAL APPROPRIATION		
CURRENT SYSTEM	STAFF REC.	CHANGE	CURRENT SYSTEM	STAFF REC.	CHANGE
\$98.81	\$107.53	\$8.72	\$39,816,873	\$38,880,147	(\$936,726)

➔ NPR DEPARTMENT OF EDUCATION LEGAL SERVICES

REQUEST: The request includes an increase of \$167,042 reappropriated funds and 0.9 FTE to support additional legal services provided to the Department of Education. The request represents a decrease of \$4,048 below the FY 2016-17 supplemental appropriation approved by the Committee.

RECOMMENDATION: The staff recommendation for this request is pending the Committee’s decision regarding the associated decision item during figure setting for the Department of Education.

ANALYSIS: This request is non-prioritized for the Department of Law and is not analyzed in this packet.

LINE ITEM DETAIL – LEGAL SERVICES TO STATE AGENCIES

PERSONAL SERVICES

The appropriation in the Long Bill for personal services in the LSSA section is a reflection of the State’s need for legal services. The LSSA section has two types of employees who bill client agencies: attorneys and legal assistants. Each “billing” attorney and legal assistant provides 1,800 hours of legal services annually². All attorneys bill at a uniform hourly attorney rate, and all legal assistants bill at a uniform hourly legal assistant rate. The “blended” legal rate is a weighted average of these two rates, which is used to compute the appropriations to other state agencies for the purchase of legal services.

Once the Committee has acted on all state agencies’ requests for legal services hours for FY 2017-18 (and the changes requested through R1, discussed above), staff will present a memorandum that describes the calculation of the hourly rates applicable for FY 2017-18 and the appropriations

² When annual leave and state holidays are taken into account, an individual needs to bill 7.5 hours/day to bill a total of 1,800 hours per year. The Department's personnel evaluations are based, in part, on the number of hours billed. The Department indicates that most attorneys work more than eight hours per day or periodically work on weekends or holidays to achieve this billing objective.

required by the Department to provide the legal services. Staff will ask the Committee at that time to approve a blended hourly rate that will then be used to calculate Long Bill appropriations for the purchase of legal services for FY 2017-18.

STATUTORY AUTHORITY: Section 24-31-101 (1) (a), C.R.S.

REQUEST: The Department requests \$26,849,380 and 264.0 FTE for FY 2017-18. The request is largely impacted by annualization of funding provided for FY 2016-17, estimated reductions associated with request R1 (Legal Allocations and Billings, discussed above), and the Department's November 1, 2016, estimates of the legal rate for FY 2017-18.

RECOMMENDATION: The staff recommendation for this line item is pending the Committee's decisions regarding legal services appropriations to the various client agencies. Staff will return to the Committee with a memorandum at the end of the figure setting process to finalize the legal services rate and the necessary appropriations to the Department of Law (with the methodology determined by the Committee's decisions regarding request R1).

OPERATING AND LITIGATION

This line item supports operating and litigation expenses related to the provision of legal services to state agencies.

STATUTORY AUTHORITY: Section 24-31-101 (1) (a), C.R.S.

REQUEST: The Department requests \$1,919,267 for FY 2017-18. The request is largely impacted by annualization of funding provided for FY 2016-17.

RECOMMENDATION: The staff recommendation for this line item is pending the Committee's decisions regarding legal services appropriations to the various client agencies. Staff will return to the Committee with a memorandum at the end of the figure setting process to finalize the legal services rate and the necessary appropriations to the Department of Law.

INDIRECT COST ASSESSMENT

Indirect cost assessments are charged to cash and federally-funded programs for departmental and statewide overhead costs. The indirect assessments for this department are based upon the number of cash and federally funded FTE who work in each division. The source of funds for this line item is revenue collected from other State agencies for legal services provided by the Department of Law.

STATUTORY AUTHORITY: Section 24-31-101 (1) (a), C.R.S.

REQUEST: The Department requests an appropriation of \$3,262,644 total funds for FY 2017-18.

RECOMMENDATION: Staff recommends approving the request. However, staff requests permission to adjust these amounts as necessary once the Committee has finalized all common policies and determined the demand for legal services for FY 2017-18.

(3) CRIMINAL JUSTICE AND APPELLATE

This section provides funding for department staff who:

- Investigate and prosecute certain complex and multi-jurisdictional cases, environmental crimes, election fraud, tax fraud, and foreign fugitives.
- Investigate and prosecute Medicaid provider fraud and patient abuse.
- Investigate and prosecute securities, insurance, and workers' compensation fraud;
- Provide investigative and prosecutorial support to local district attorneys in complex homicides, cold cases, human trafficking cases, and large-scale drug conspiracies.
- Represent the State in criminal appeal cases in state and federal courts.
- Assure that the constitutional and statutory rights of victims are preserved in criminal cases being prosecuted or defended by the Department.

This section also provides funding to support the Peace Officers Standards and Training (P.O.S.T.) Board.

Cash fund sources include moneys paid by insurance companies for the investigation and prosecution of insurance fraud, fees paid by peace officers for P.O.S.T. Board certification, and a statewide vehicle registration fee to support training for peace officers. Reappropriated fund sources include departmental indirect cost recoveries, moneys transferred from the Department of Public Safety from the Colorado Auto Theft Prevention Cash Fund and from the Victims Assistance and Law Enforcement (VALE) Fund, and moneys transferred from the Department of Regulatory Agencies from fees paid by regulated entities for the investigation and prosecution of securities fraud. Federal moneys help support the Medicaid Fraud Control Unit.

Please note that organizationally, the Deputy Attorney General who oversees the Criminal Justice section oversees the activities of the staff who are funded through this Long Bill section, as well as those who are funded through the Legal Services to State Agencies (LSSA) Long Bill section and provide legal services to the Department of Public Safety. The funding that supports this Deputy is appropriated in the Special Prosecutions Unit line item in this section of the Long Bill.

CRIMINAL JUSTICE AND APPELLATE						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
FY 2016-17 Appropriation						
HB 16-1405 (Long Bill)	\$16,271,577	\$5,781,992	\$7,353,037	\$1,665,269	\$1,471,279	104.7
TOTAL	\$16,271,577	\$5,781,992	\$7,353,037	\$1,665,269	\$1,471,279	104.7
FY 2017-18 RECOMMENDED APPROPRIATION						
FY 2016-17 Appropriation	\$16,271,577	\$5,781,992	\$7,353,037	\$1,665,269	\$1,471,279	104.7
R3 Appellate FTE retention	256,468	256,468	0	0	0	3.0
R5 Financial fraud investigators	220,217	0	182,767	37,450	0	2.0
R6 POST online training	500,010	0	500,010	0	0	0.0
R7 POST audit FTE	0	0	0	0	0	3.0
Fund source adjustments	0	287,478	0	(287,478)	0	0.0
Annualize prior year budget actions	(258,225)	(259,310)	536	549	0	(2.9)
Indirect cost assessment adjustments	2,816	0	18,823	(5,251)	(10,756)	0.0

CRIMINAL JUSTICE AND APPELLATE						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
Adjust anticipated grant funding	(10,365)	0	0	(10,365)	0	0.0
TOTAL	\$16,982,498	\$6,066,628	\$8,055,173	\$1,400,174	\$1,460,523	109.8
INCREASE/(DECREASE)	\$710,921	\$284,636	\$702,136	(\$265,095)	(\$10,756)	5.1
Percentage Change	4.4%	4.9%	9.5%	(15.9%)	(0.7%)	4.9%
FY 2017-18 EXECUTIVE REQUEST	\$17,044,045	\$6,066,628	\$8,108,371	\$1,408,523	\$1,460,523	109.8
Request Above/(Below) Recommendation	\$61,547	\$0	\$53,198	\$8,349	\$0	0.0

DECISION ITEMS – CRIMINAL JUSTICE AND APPELLATE

→ R3 APPELLATE FTE RETENTION

REQUEST: The request includes \$256,468 General Fund and 3.0 FTE to allow the Department to retain 3.0 attorney FTE in the Appellate Unit originally provided through a FY 2013-14 decision item to reduce the backlog of appellate cases. While the original decision item anticipated that the 3.0 FTE would no longer be necessary after FY 2016-17, the Department argues that the ongoing workload warrants retaining the FTE on an ongoing basis. The *base* request eliminates the positions as anticipated in the original decision item; request R3 adds the funding and FTE back to retain the existing FTE.

RECOMMENDATION: Staff recommends approving the request. Staff agrees that the Appellate Unit’s workload is higher than anticipated in the original FY 2013-14 decision item and that retaining the attorney FTE is warranted based on the current workload.

ANALYSIS:

Background – Appellate Unit: The Appellate Unit handles all *criminal* appeals for the department, representing the prosecution when a defendant challenges his/her felony conviction before the state appellate courts or the federal courts.³ Most of the cases handled by this unit are in the Colorado Court of Appeals, with the remainder in the Colorado Supreme Court and the federal courts. The unit also prepares a weekly digest summarizing published cases to ensure that Appellate Unit attorneys and prosecutors throughout the state are informed about developments in criminal law and procedure. In addition, pursuant to Section 24-31-106, C.R.S., the unit also employs a victims’ services coordinator. For FY 2016-17, the unit includes a total of 38.0 appropriated FTE (see table below).

APPELLATE UNIT APPROPRIATED FTE						
	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18 REQUEST
Deputy Attorney General	1.0	1.0	1.0	1.0	1.0	1.0
First AAG	3.0	3.0	3.0	3.0	3.0	3.0
Staff Attorneys	<u>24.0</u>	<u>29.5</u>	<u>30.0</u>	<u>30.0</u>	<u>29.0</u>	<u>29.0</u>
Subtotal Attorney FTE	28.0	33.5	34.0	34.0	33.0	33.0

³ See Sections 16-12-101 and 24-31-101 (1) (a), C.R.S.

APPELLATE UNIT <i>APPROPRIATED</i> FTE						
	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18 REQUEST
Victims' Services Coordinator	1.0	1.0	1.0	1.0	1.0	1.0
Administrative Staff	3.0	3.0	3.9	4.0	4.0	4.0
Total FTE	32.0	37.5	38.9	39.0	38.0	38.0

Appellate Backlog and the FY 2013-14 Decision Item: Since at least FY 2012-13, the Committee's and the General Assembly's discussions of the unit have focused on the "appellate backlog," the queue of cases awaiting response briefs from the appellate unit. For FY 2013-14, in response to growth in the backlog, the General Assembly approved an increase of \$551,436 General Fund to add 6.0 attorney FTE to the unit. As requested by the Department, the General Assembly approved 4.0 of the 6.0 new FTE on a time-limited basis, eliminating 1.0 FTE at the end of FY 2015-16 (this position was eliminated in the FY 2016-17 budget) and 3.0 additional FTE at the end of FY 2016-17 (for the FY 2017-18 budget). Thus, as approved by the General Assembly, the original decision item only included 2.0 of the additional FTE in FY 2017-18 and beyond.

Since the staffing increase in FY 2013-14, the Department has provided annual updates regarding the appellate backlog. As shown in the table on the following page, the unit's case backlog decreased each year through FY 2014-15. However, the backlog increased again in FY 2015-16. The Department points to two significant factors with respect to the increasing backlog:

- First, the unit's workload has increased. The number of cases and required briefs has increased overall, driven in part by the expansion of the Appellate Section within the Office of the State Public Defender (OSPD) in FY 2014-15 (for the past two years, approximately 45 percent of new appellate cases have been filed by the OSPD.) In addition, the complexity of briefs has also increased, increasing the time required for each brief.
- Second, the backlog figures for FY 2013-14 and FY 2014-15 do not align with the data previously submitted by the Department. When compiling the data for FY 2015-16, the Department realized that a calculation error had understated the backlog in the Department's responses for FY 2013-14 (272 vs. 320 in this year's report) and FY 2014-15 (168 vs. 264 in this year's report).

APPELLATE UNIT WORKLOAD AND CASE BACKLOG						
	FY 2012-13 ACTUAL	FY 2013-14 ACTUAL	FY 2014-15 ACTUAL	FY 2015-16 ACTUAL	FY 2016-17 EST./APPR.	FY 2017-18 EST./REQ.
Incoming Cases	1,018	911	952	1,056	1,050	1,050
Briefs Filed	885	1,149	1,017	911	1,080	1,080
Attorney FTE	26.3	32.0	32.0	31.3	33.0	33.0
Briefs per Attorney	33.7	35.9	31.8	29.1	32.7	32.7
Case Backlog	398	320	264	428	398	368
Change in Backlog	n/a	(78)	(56)	164	(30)	(30)

The Department's goal is to achieve and maintain a case backlog of approximately 150 cases, requiring a reduction of 278 cases from the backlog existing at the end of FY 2015-16. Based on current projections, and assuming retention of the existing FTE (requested in R3), the Department anticipates reducing the backlog to 158 by the end of FY 2024-25. Without the 3.0 FTE in question, the Department would expect the backlog to increase by approximately 70 cases per year. However,

staff notes that these estimates are based on specific assumptions regarding the unit's workload (incoming cases, briefs filed per attorney, etc.) and are uncertain.

FY 2017-18 R3: In response to the increasing workload and backlog, the Department is requesting \$256,458 General Fund and 3.0 FTE to retain the three attorney FTE currently slated for elimination in the FY 2017-18 budget.⁴ The following table shows the components of funding that would be eliminated if the General Assembly rejects R3 and requires the reduction of 3.0 FTE.

R3 – APPELLATE FTE RETENTION				
	FY 2017-18 REQUEST AND STAFF REC.		FY 2018-19 IMPACT	
	GF	FTE	GF	FTE
Appellate Unit Personal Services Costs				
Salary/Personal Services	\$227,256	3.0	\$227,256	3.0
PERA (10.15%)	23,066		23,066	
Medicare (1.45%)	<u>3,295</u>		<u>3,295</u>	
Subtotal, Personal Services	\$253,618	3.0	\$253,618	3.0
Appellate Unit Operating Expenses				
Supplies (\$500/FTE)	\$1,500		\$1,500	
Telephone (\$450/FTE)	<u>1,350</u>		<u>1,350</u>	
Subtotal, Operating Expenses	\$2,850		\$2,850	
Total, Request R3	\$256,468	3.0	\$256,468	3.0

Conclusions: The Department's data indicate that the appellate backlog has grown again and that retaining the attorney FTE in question will be necessary if the General Assembly intends to reduce and/or maintain the backlog. Given the uncertainty in workload projections going forward, staff will continue to monitor the situation (and also recommends that the Committee continue the annual request for information related to the Appellate Unit backlog).

→ R5 FINANCIAL FRAUD INVESTIGATORS

REQUEST: The request includes an increase of \$281,764 total funds (a mix of cash funds from the Insurance Fraud Cash Fund and reappropriated funds transferred from the Department of Regulatory Agencies) and 2.0 FTE to add two additional financial fraud investigators to the Special Prosecutions Unit. The Department is requesting funds for an additional criminal investigator II position to support additional insurance fraud investigations and an additional criminal investigator III (chief investigator) position to both conduct investigations and oversee the insurance fraud unit.

RECOMMENDATION: Staff recommends approval of the request, with modifications primarily to align with the Committee's common policies. Staff recommends that the Committee approve an increase of \$223,577 total funds (consisting of \$186,127 cash funds from the Insurance Fraud Cash Fund and \$37,450 reappropriated funds transferred from DORA). The recommendation includes increases for two line items: (1) \$220,217 total funds for the Special Prosecutions Unit line item within Criminal Justice and Appellate; and (2) \$3,360 cash funds for the Vehicle Lease Payments line item within the Administration section. While staff is recommending the increase based on the changes in workload for the Insurance Fraud unit, staff notes that the approximately \$225,000 in additional fee revenue

⁴ Please note that R3 shows up as an increase because the Department's request first annualizes the FY 2013-14 decision item to eliminate the funding and FTE and then request R3 adds the funding and FTE back to continue the existing funding and FTE.

necessary to support the positions is TABOR revenue and would increase the General Fund refunds required in FY 2017-18 and subsequent years.

ANALYSIS: The Attorney General is the primary prosecutor of insurance fraud in Colorado. The Insurance Fraud Unit, supported through the Special Prosecutions Unit line item, currently consists of 12.7 appropriated FTE, including 4.0 attorney FTE, 6.0 criminal investigator FTE, and portions of several other positions. In response to referrals and reports from a wide variety of sources, the team conducts original investigations of insurance fraud cases and then prosecutes such cases statewide when appropriate. According to the Department, investigations range from simple false claims cases to complex organized crime cases that may take months (or in rare cases years) to investigate and prosecute.

Fund Sources: The Insurance Fraud Unit is supported with cash funds appropriations from the Insurance Fraud Cash Fund, originating from annual fees charged to every insurance company registered to do business in Colorado. Statute (Section 24-31-104.5 (1) (a), C.R.S.) directs the Commissioner of Insurance (within DORA) to set the annual fee to cover direct and indirect costs of investigation and prosecution of insurance fraud cases based on the annual budget of the Department of Law and recommendations from the Attorney General. Statute also requires the fee to be tiered based on the book value of the company; firms with less than \$1.0 million in book value pay one fee while firms with more than \$1.0 million in book value pay another (higher) fee.

Because the Insurance Fraud Cash Fund had accumulated an excess balance and was out of compliance with fund balance requirements, the Commissioner of insurance has decreased annual fees for the past two years (FY 2015-16 and FY 2016-17) to get the fund back into compliance (see the following table for a history of the annual fees since FY 2011-12).

INSURANCE FRAUD CASH FUND – ANNUAL FEE HISTORY					
COMPANY BOOK VALUE	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
Less than \$1.0 million	\$500	\$535	\$581	\$500	\$305
More than \$1.0 million	1,894	2,165	2,352	1,500	1,305

Workload: The Department reports that the Insurance Fraud Unit’s workload has increased substantially in recent years, with the number of investigations and case filings more than doubling since FY 2012-13. The following table compares the number of referrals, cases opened, cases filed, jury trials, and trial days for each year since FY 2012-13.

INSURANCE FRAUD UNIT – WORKLOAD					
CASE CATEGORY	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Referrals to Unit	755	1,749	1,581	1,730	1,895
Cases Opened	74	116	126	198	252
Cases Filed	20	28	36	58	69
Jury Trials	0	0	2	4	3
Trial Days	0	0	14	18	16

According to the Department, the enactment of S.B. 14-092 (Insurance Fraud Crime) is a significant driver of the increase in workload. That bill created the crime of insurance fraud in state statute (previously cases were generally prosecuted as other crimes such as forgery, theft, etc.) and identified

fraudulent actions to be prosecuted under the law. According to the Department, the bill has increased the investigative and prosecutorial workload of the Insurance Fraud Unit, primarily showing up in the number of cases actually opened and filed. As a result, while the number of referrals has not dramatically increased since FY 2012-13, the number of cases actually opened and prosecuted has increased significantly. Staff notes that the Final Legislative Council Staff Fiscal Note for S.B. 14-092 did not anticipate a significant workload increase for the Department of Law, and the bill did not include any additional funding or staff for the Insurance Fraud Unit.

The Department currently assigns no more than 10 active cases to each investigator at any given time. In order to keep pace with the increasing workload, the Department has established a “queue” of open cases awaiting assignment to investigators. In FY 2015-16, including the cases in the queue would have required more than 20 open cases per investigator. At the time of the budget submission, apportioning all assigned and unassigned cases would have required 33 cases per investigator, some of which are “major” cases requiring more than 100 hours of investigative time. This queue (or backlog) results in delays in the investigation and potential prosecution of cases. While the Unit prioritizes the most important and time sensitive cases, the Department notes that delayed investigations run the risk of conflict with the statute of limitations, as well as the loss of evidence and witness recollections.

FY 2017-18 R5: In response to the increased workload, the Department is requesting \$285,124 total funds and 2.0 FTE in FY 2017-18 to support two new positions:

- 1.0 FTE Criminal Investigator II supported entirely by cash funds from the Insurance Fraud Cash Fund to provide direct investigation assistance.
- 1.0 FTE Criminal Investigator III to conduct investigations *and* supervise investigators in both the Insurance Fraud Unit and the Securities Fraud Unit. Both investigative teams are currently supervised by, and the Department believes that the size of the investigative teams warrants supervision by a trained criminal investigator rather than an attorney. Because the proposed position would supervise both fraud investigation units, the Department is requesting that 70.0 percent of the funding for the position be from the Insurance Fraud Cash Fund and the remaining 30.0 percent be reappropriated funds transferred from the Department of Regulatory Agencies related to securities fraud.

Staff agrees that the workload appears to justify the creation of the new positions. Therefore, staff recommends approving \$223,577 total funds and 2.0 FTE to support the proposed positions, split between the Special Prosecutions Unit line item (\$220,217 total funds) and the Vehicle Lease Payments line item (\$3,360 cash funds). The recommendation is \$61,547 total funds below the Department’s request based on three factors:

- First, the recommendation does not include funding for centrally appropriated items that the Committee typically does not fund in the first year for new FTE (supplemental PERA contributions, short-term disability insurance, and health, life, and dental insurance). This results in a reduction of \$40,543 total funds from the request.
- Second, staff’s recommendation aligns with the common policy for the purchase of office equipment for new FTE (\$3,473 per FTE rather than \$8,767 per FTE as requested by the Department). This results in a reduction of \$10,588 total funds below the request.

- Finally, the Department requested the positions at the *average* salary for each position type based on the Department’s current staffing (\$6,683 per month for the criminal investigator II and \$8,294 for the criminal investigator III). The Department argues that the range minimum (\$5,892 and \$6,825 per month, respectively) is not sufficient to recruit and fill these positions because of the job requirements at the Department of Law (a bachelor’s degree and at least two years of detective-level experience in a public agency). Staff agrees that the minimum salaries may not be sufficient. However, staff does not see justification to fund the positions at the “average” salary, which would inherently above the salaries of some *existing employees in similar positions*. Thus, staff recommends funding the positions at the same level as the most junior similar position (\$6,000 per month for the criminal investigator II and \$8,199 per month for the criminal investigator III). This results in a reduction of \$10,415 total funds from the request.

The following table compares the request and the staff recommendation for request R5.

R5 – FINANCIAL FRAUD INVESTIGATORS						
	FY 2017-18 REQUEST		FY 2017-18 STAFF REC.		FY 2018-19 IMPACT	
	RF	FTE	RF	FTE	RF	FTE
Special Prosecutions Unit – Personal Services						
Salaries/Personal Services	\$179,720	2.0	\$170,388	2.0	\$170,388	2.0
PERA (10.15%)	18,242		17,294		17,294	
Medicare (1.45%)	2,606		2,471		2,471	
AED (5.0%) /1	8,986		0		8,519	
SAED (5.0%) /1	8,986		0		8,519	
STD (0.022%) /1	395		0		375	
Estimated HLD /1	22,176		0		22,176	
Subtotal, Personal Services	\$241,111	2.0	\$190,153	2.0	\$229,742	2.0
CF – Insurance Fraud Cash Fund	201,411	1.7	157,213	1.7	190,459	1.7
RF – Transfer from DORA	39,700	0.3	32,940	0.3	39,283	0.3
Special Prosecutions Unit – Operating Expenses						
Supplies (\$500)	\$1,000		\$1,000		\$1,000	
Computer (\$900)	1,800		1,800		0	
Office Suite Software (\$330)	660		660		0	
Office Equipment (\$8,767)	17,534		6,946		0	
Telephone (\$450/FTE)	900		900		900	
Mileage Use on State Vehicle (12,000 miles)	2,544		2,544		2,544	
4 Overnight Stays Per Month (\$75 night)	3,600		3,600		3,600	
Per diem (\$66 per day for 4 nights per month)	3,168		3,168		3,168	
Est. litigation expenses	5,000		5,000		5,000	
Cell phone (\$80 per month per FTE)	1,920		1,920		1,920	
Badge and Badge Case (\$102.25 per FTE)	205		205		0	
Vest (protective)	1,680		1,680		0	
Body Armor Vest Carrier Cover	300		300		0	
Stinger Rechargeable Flashlight	206		206		0	
Response Coat	135		135		0	
Subtotal, Operating Expenses	\$40,652		\$30,064		\$18,132	
CF – Insurance Fraud Cash Fund	\$34,554		25,554		15,412	
RF – Transfer from DORA	\$6,098		4,510		2,720	
Vehicle Lease Payments – CF	\$3,360		\$3,360		\$3,360	
Total Request R5	\$285,123	2.0	\$223,577	2.0	\$251,234	2.0
CF – Insurance Fraud Cash Fund	239,325	1.7	186,127	1.7	209,231	1.7
RF – Transfer from DORA	45,798	0.3	37,450	0.3	42,003	0.3

R5 – FINANCIAL FRAUD INVESTIGATORS							
		FY 2017-18 REQUEST		FY 2017-18 STAFF REC.		FY 2018-19 IMPACT	
		RF	FTE	RF	FTE	RF	FTE

1/ These amounts would be addressed through centrally appropriated line items rather than within the Special Prosecutions Unit line item and are not typically funded in the first year for new FTE.

TABOR Concerns: While staff is recommending approval of the increased funds based largely on the Department’s workload data, staff notes that the request and recommendation do raise potential TABOR concerns. Supporting the additional staff with Insurance Fraud Cash Fund resources will require an increase in the annual fee paid by insurance companies. It is staff’s understanding that the insurance companies strongly support the work of the Insurance Fraud Unit and would not oppose the fee increase. The increased revenues, however, are not exempt from TABOR and, during a time of TABOR refunds would increase TABOR refunds from the General Fund. As a result, although this is a cash (and reappropriated) funds request, the request and recommendation would reduce General Fund revenues available for appropriation as early as FY 2017-18 (by approximately \$186,000 in FY 2017-18 under the staff recommendation).

➔ R6 POST ON-LINE TRAINING

REQUEST: The request includes an increase of \$500,010 cash funds from the P.O.S.T. Board Cash Fund to provide on-line peace officer training to 11,905 peace officers statewide. According to the Department, the request would focus particularly on rural peace officers but would provide training to 88 percent of the 13,500 certified peace officers in Colorado. The request, which anticipates operating the program for two years (costing \$500,010 per year), would utilize the existing fund balance within the P.O.S.T. Board Cash Fund.

RECOMMENDATION: Staff recommends that the Committee approve the request.

ANALYSIS: The P.O.S.T. Board was established as a result of the enactment of federal legislation requiring equal protection by jurisdictions that receive federal funding [Title VII of the Rehabilitation Act of 1973]. The P.O.S.T. Board consists of 24 appointed members, including the Attorney General, the Executive Director of the Colorado Department of Public Safety, the Special Agent in charge of the Denver Division of the Federal Bureau of Investigation, as well as representatives of local government, sheriffs, chiefs of police, peace officers, and the general public.

The P.O.S.T. Board is responsible for ensuring statewide consistency in the qualifications and training for peace officers. The Board thus certifies peace officers appointed by state and local law enforcement agencies, regulates peace officer training academies, and facilitates on-going training for all state peace officers by disbursing grants and providing training sessions specifically developed by the P.O.S.T. Board and staff [see Section 24-31-301 *et seq.*, C.R.S.].

Request R6 includes an increase of \$500,010 cash funds from the P.O.S.T. Board Cash Fund in FY 2017-18 to provide online peace officer training to peace officers statewide. The Department has submitted the request as a two-year request requiring \$500,010 per year. According to the Department, at an estimated \$42 per subscription, the request would sponsor 11,905 officers, representing approximately 88 percent of 13,500 certified peace officers statewide. While the training is intended to serve officers throughout the state, the Department’s emphasis is on rural jurisdictions

that find it difficult to train officers as a result of a lack of depth and inability to pay overtime to cover for officers that are away for training.

The P.O.S.T. Board Cash Fund has accumulated a balance as a result of the vehicle registration fee increase included in S.B. 14-123 (with a projected ending balance of \$1.5 million at the end of FY 2016-17). The Department is proposing to use the excess balance in the cash fund to support the proposed training program.

Staff recommends that the Committee approve the request. The P.O.S.T. Board Cash Fund has enough of a balance to cover the training, and the on-line delivery appears to be a promising method to facilitate participation by officers in rural jurisdictions that struggle to send officers to in-person training sessions.

→ R7 POST AUDIT FTE

REQUEST: The request seeks to add 3.0 FTE to the Peace Officers Standards and Training (P.O.S.T.) Board Support line item in response to an external audit of the P.O.S.T. Board. The audit recommended restructuring the P.O.S.T. Board staff and adding additional FTE for oversight purposes. The Department has already hired the additional staff within existing resources *in FY 2016-17* but is asking the General Assembly to reflect the FTE in the FY 2017-18 Long Bill to align with anticipated staffing levels.

RECOMMENDATION: Staff recommends that the Committee approve the request. The external audit identified weaknesses in the P.O.S.T. Board's processes and staffing, and the Department has already filled the 3.0 FTE positions within the existing appropriations. The recommendation is simply to reflect the actions the P.O.S.T. Board has already taken within existing resources.

ANALYSIS: Request R7 seeks an increase of 3.0 FTE (but no additional funding) in response to an external audit of the P.O.S.T. Board conducted in 2016. In 2015, the P.O.S.T. Director requested an external review of the P.O.S.T. Board efforts. The Department chose the International Association of Directors of Law Enforcement Standards and Training (IADLEST) to conduct the audit, and the audit was presented to the Board in June 2016.

While the audit was favorable overall it did identify areas of improvement and need within P.O.S.T. Board operations. The audit recommended a reorganization of the P.O.S.T. staff to reflect specific business functions, increased cross-training of staff within business functions to allow for improved operations during staff vacancies and absences, and increased standardization of operating procedures, including the development of a standard operating procedures manual. Directly relevant to this request to reflect additional FTE, the audit found:

- Inadequate auditing and oversight of grant recipients.
- Inadequate auditing and oversight of peace officer training programs.
- Insufficient staff to meet the increased needs of the agency, including the increased audit and oversight requirements discussed above.
- A need to create lead positions within each of three functional units to improve coordination and oversight within each unit.

With minor revisions to the recommended structure, the Department agreed with the audit findings and has moved forward with implementation. The Department notified JBC Staff of the outcome of the audit in July 2016. Given the degree of potential liability identified in the audit, the Department informed JBC Staff of its intent to use the flexibility afforded by the P.O.S.T. Board “program line item” appropriation (which supports the P.O.S.T. Board’s personal services, operating expenses, and grant funds in a single line item) to hire the new staff in the fall of 2016. The Department has now filled all of the positions and is requesting that the General Assembly reflect the FTE in the Long Bill to align with the anticipated staffing levels. The new positions will reduce the amount available for grants to local law enforcement agencies by an estimated \$139,205 in FY 2016-17 and \$238,638 in FY 2017-18.

LINE ITEM DETAIL – CRIMINAL JUSTICE AND APPELLATE

SPECIAL PROSECUTIONS UNIT

This unit investigates and prosecutes crimes in a number of areas, under the general authorization of Section 24-31-105, C.R.S., and other specific provisions of statute. This unit prosecutes cases through direct filings as well as the use of the statewide grand jury. This line item is supported by General Fund, cash funds, and reappropriated funds.

General Fund supports the investigation and prosecution of a wide range of crimes and activities, described below.

- *Complex Crimes and Multi-jurisdictional Cases* – These cases would be difficult or impossible for local law enforcement personnel to pursue because local units lack the authority to investigate and prosecute crimes that occur outside of their jurisdiction. This includes a wide variety of criminal activity including: racketeering; domestic terrorism; identity theft; large check and credit card fraud schemes; methamphetamine rings; auto theft rings; mortgage and bank fraud; tax fraud; and human trafficking cases.
- *Criminal Activity by Gangs* – These are cases brought under the Colorado Organized Crime Control Act (which is similar to federal racketeering laws).
- *Environmental Crimes* – These cases involve environmental crimes related to hazardous waste, hazardous substances, water, and air.
- *Foreign Prosecutions* – A foreign national who commits murder or other crimes in Colorado and subsequently flees to Mexico may be prosecuted, convicted, and sentenced to prison in Mexico. These prosecutions require specialized knowledge and resources that are usually lacking in the offices of local district attorneys. This unit also assists in returning victims and witnesses from Mexico to Colorado to testify in court.

General Fund also supports the *Violent Crimes Assistance Team (VCAT)*, which provides investigative and prosecutorial support to local District Attorneys for active, cold-case, and death penalty-eligible homicides. The assistance must be requested by a local District Attorney and approved by the Attorney General. Cases are prioritized based on complexity and the unique expertise that the Department may provide. The team also handles appeals of death penalty convictions in both state and federal appellate courts, and provides training concerning complex homicide prosecutions and cold cases for prosecutors and investigators.

Cash funds provide exclusive support for the investigation and prosecution of *insurance and workers' compensation fraud*. Funding for the program comes from the Insurance Fraud Cash Fund. Reappropriated funds transferred from the Department of Regulatory Agencies' Division of Securities support the investigation and prosecution of *securities fraud*.

Finally, the Special Prosecutions Unit also receives appropriations from the Marijuana Tax Cash Fund to support training activities related to marijuana.

STATUTORY AUTHORITY: Sections 24-31-105, C.R.S.

REQUEST: The Department requests \$4,588,290 total funds and 40.8 FTE for this line item for FY 2017-18. The request includes the following changes from the FY 2016-17 appropriation:

- An increase of \$281,764 total funds (no General Fund) 2.0 FTE associated with request R5 (Financial Fraud Investigators, discussed above);
- An increase of \$2,946 total funds (including \$1,861 General Fund) to annualize FY 2016-17 salary survey; and
- A decrease of \$4,703 General Fund to annualize FY 2016-17 R3 (Senior AAG Special Prosecution).

RECOMMENDATION: Staff recommends an appropriation of \$4,526,743 total funds, including \$2,064,032 General Fund. The recommendation is \$61,547 total funds below the request based on a reduction from the amount requested for R5 (Financial Fraud Investigators, discussed above). The following table details the recommended changes from the FY 2016-17 appropriation. The Department's primary measures of success for the Special Prosecutions Unit (in the SMART Act strategic plans) focus on restitution ordered for victims of securities fraud and insurance fraud cases. While the measures do not cover other crimes prosecuted by the Special Prosecutions Unit, the Department has generally met its strategic plan's expectations for restitution provided to victims.

CRIMINAL JUSTICE AND APPELLATE, SPECIAL PROSECUTIONS UNIT					
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FTE
FY 2016-17 APPROPRIATION					
HB 16-1405 (Long Bill)	\$4,308,283	\$2,066,874	\$1,528,836	\$712,573	38.7
TOTAL	\$4,308,283	\$2,066,874	\$1,528,836	\$712,573	38.7
FY 2017-18 RECOMMENDED APPROPRIATION					
FY 2016-17 Appropriation	\$4,308,283	\$2,066,874	\$1,528,836	\$712,573	38.7
R5 Financial fraud investigators	220,217	0	182,767	37,450	2.0
Annualize prior year budget actions	(1,757)	(2,842)	536	549	0.1
TOTAL	\$4,526,743	\$2,064,032	\$1,712,139	\$750,572	40.8
INCREASE/(DECREASE)	\$218,460	(\$2,842)	\$183,303	\$37,999	2.1
Percentage Change	5.1%	(0.1%)	12.0%	5.3%	5.4%
FY 2017-18 EXECUTIVE REQUEST	\$4,588,290	\$2,064,032	\$1,765,337	\$758,921	40.8
Request Above/(Below)					
Recommendation	\$61,547	\$0	\$53,198	\$8,349	(0.0)

AUTO THEFT PREVENTION GRANT

This informational appropriation reflects the Department's anticipated expenditures from a multi-year auto theft prevention grant that was awarded by the Colorado Automobile Theft Prevention Authority. Current law (Section 24-31-108 (1) (b) (I), C.R.S.) continuously appropriates the grant funds to the Department of Law. Thus, the appropriation is included in the Long Bill for informational purposes only. The Authority's grants are supported by a \$1 annual fee on Colorado auto insurance policies. The Authority awards grants to a number of entities, including police and sheriff's offices for the creation of auto-theft task forces. Moneys available to the Authority are appropriated to the Department of Public Safety (*e.g.*, \$6,213,420 and 3.0 FTE for FY 2016-17). Therefore, the Department of Law's budget reflects this grant as reappropriated funds.

This grant supports a full time prosecutor and an investigator who are involved in several theft-prevention endeavors, including a multi-jurisdictional investigation and prosecution effort that combats auto theft. The Department's auto theft unit also helps increase public awareness of auto theft and provides auto theft training and assistance to local law enforcement investigators and deputy district attorneys.

STATUTORY AUTHORITY: Section 24-31-108 (1), C.R.S.

REQUEST: The Department requests an informational appropriation of \$282,921 reappropriated funds and 2.0 FTE for FY 2017-18, a decrease of \$13,627 from the FY 2016-17 appropriation to reflect decreased grant funding anticipated from the Department of Public Safety.

RECOMMENDATION: Staff recommends approving the request. This is an informational appropriation to reflect the Department's anticipated use of the grant from the Department of Public Safety.

APPELLATE UNIT

This unit handles *criminal appeals* for the Department, representing the prosecution when a defendant challenges his/her felony conviction before the state appellate court or the federal courts⁵. Most of the cases handled by this unit are in the Colorado Court of Appeals, with the remainder in the Colorado Supreme Court and the federal courts. This unit also prepares a weekly digest summarizing published cases to ensure that Appellate Unit attorneys and prosecutors throughout the state are informed about developments in criminal law and procedure. This portion of the Appellate Unit is funded by General Fund and indirect cost recoveries. In FY 2015-16, the 33 attorneys in this unit filed 911 briefs, and argued 133 cases before the appellate court.

Pursuant to Section 24-31-106, C.R.S., the Appellate Unit also employs a *Victims' Services Coordinator*, who assures compliance with Article II, Section 16a of the State Constitution, which states that crime victims have the "right to be heard when relevant, informed, and present at all critical stages of the criminal justice process." When the Department of Law is involved in a trial court prosecution or a criminal appeal, the Coordinator keeps victims informed about their cases, helps them understand the legal process, and sometimes accompanies them to court. The Coordinator

⁵ See Sections 16-12-101 and 24-31-101 (1) (a), C.R.S.

position is supported by General Fund and the Victims Assistance and Law Enforcement (VALE) Fund⁶, which is administered by the Department of Public Safety's Division of Criminal Justice⁷. Currently, this position is supported by \$83,124 in VALE funds and \$13,427 General Fund.

STATUTORY AUTHORITY: Sections 16-12-101, 24-31-101 (1) (a), 24-31-106, and 24-33.5-506 (1), C.R.S.

REQUEST: The Department requests an appropriation of \$3,858,054 and 38.0 FTE for FY 2016-17. The request includes the following components:

- Maintaining \$256,468 General Fund and 3.0 attorney FTE associated with request R3 (Appellate FTE Retention, discussed above); and
- A fund source adjustment (increasing the use of General Fund and decreasing the use of indirect cost recoveries based on anticipated indirect cost collections).

RECOMMENDATION: Staff recommends approving the request, including the continuation of funding and FTE requested through R3 (discussed above). The following table details the recommended changes from the FY 2016-17 appropriation. Please note that the recommendation also includes the requested indirect cost assessment adjustment based on the Department's estimate of the amount of indirect cost recoveries that will be available to offset General Fund expenditures. Staff requests permission to modify this indirect cost assessment adjustment as necessary once indirect cost assessments and Administration appropriations are finalized.

CRIMINAL JUSTICE AND APPELLATE, APPELLATE UNIT				
	TOTAL FUNDS	GENERAL FUND	REAPPROPRIATED FUNDS	FTE
FY 2016-17 APPROPRIATION				
HB 16-1405 (Long Bill)	\$3,854,792	\$3,280,780	\$574,012	38.0
TOTAL	\$3,854,792	\$3,280,780	\$574,012	38.0
FY 2017-18 RECOMMENDED APPROPRIATION				
FY 2016-17 Appropriation	\$3,854,792	\$3,280,780	\$574,012	38.0
R3 Appellate FTE retention	256,468	256,468	0	3.0
Adjust anticipated grant funding	3,262	0	3,262	0.0
Fund source adjustments	0	287,478	(287,478)	0.0
Annualize prior year budget actions	(256,468)	(256,468)	0	(3.0)
TOTAL	\$3,858,054	\$3,568,258	\$289,796	38.0
INCREASE/(DECREASE)	\$3,262	\$287,478	(\$284,216)	0.0
Percentage Change	0.1%	8.8%	(49.5%)	0.0%

⁶ See Section 24-33.5-506 (1), C.R.S.

⁷ In addition to this state-level fund, each judicial district also has its own local VALE fund, which receives revenues from surcharges on fines imposed for felonies, misdemeanors, juvenile offenses, class 1 and 2 traffic offenses, and certain traffic infractions within the district. Pursuant to Section 24-4.2-105 (1), C.R.S., 13 percent of each district's surcharge revenue is transferred to the state-level VALE Fund. Section 24-33.5-506 (1) (c), C.R.S., mandates that a portion of the moneys in the state-level VALE fund be allocated to the Department of Law to pay for its Victims' Services Coordinator. The remainder of the fine-surcharge revenue collected by each judicial district is used by the district's local VALE Board to make grants to the local district attorney, local law enforcement, and local agencies for victim-service work within the district. The remainder of the revenue collected by the State VALE fund is used for administrative costs of the Division of Criminal Justice and to make statewide VALE grants.

CRIMINAL JUSTICE AND APPELLATE, APPELLATE UNIT				
	TOTAL FUNDS	GENERAL FUND	REAPPROPRIATED FUNDS	FTE
FY 2017-18 EXECUTIVE REQUEST	\$3,858,054	\$3,568,258	\$289,796	38.0
Request Above/(Below) Recommendation	\$0	\$0	\$0	0.0

The Department measures the performance of the Appellate Unit based on the percentage of cases with a successful outcome upon appeal. The Department's goal is a 90 percent success rate each year and the Unit has maintained a success rate very close to that level for at least the past several years (including 89.5 percent in FY 2015-16). As discussed above with request R3 (Appellate FTE Retention), the appellate backlog has increased again in the past two years, in part because of an error in the Department's previous calculations of the backlog. Staff will continue to monitor the backlog and necessary levels of staffing for the Appellate Unit.

MEDICAID FRAUD CONTROL UNIT

The Medicaid Fraud Control Unit, operational in Colorado since 1978, is mandated by federal law to assist in maintaining the financial integrity of the State's Medicaid program and the safety of patients in Medicaid-funded facilities. By federal law and Executive Order D1787, the Unit has statewide authority to *criminally* investigate and prosecute Medicaid provider fraud, as well as physical and financial abuse of residents in federally-funded long-term care facilities⁸. The Colorado False Claims Act, adopted in May 2010, expanded the Unit's authority by allowing it to pursue *civil* recoveries and damages against providers for incidents of fraud and over billing.

Federal and state laws require that a state's fraud program be independent of the Department of Health Care Policy and Financing (HCPF), the "single state agency" that administers Colorado's Medicaid program. Federal rules also mandate that this program be kept separate from all other units at the Department of Law. The Unit cooperates and coordinates with several entities, including District Attorneys, HCPF, the Department of Public Health and Environment, the Department of Regulatory Agencies, and numerous federal agencies. In addition to recovering improperly received Medicaid funds, remedies include suspension, sometimes permanently, from the Medicaid program.

This program qualifies for an enhanced Medicaid matching rate; the federal government pays 75 percent of the Unit's operating costs and the State provides the remaining 25 percent. In FY 2015-16, the Unit's operating costs totaled \$1,861,740; the State paid 25 percent (\$469,206) of this amount.

Although the federal government pays 75 percent of the Unit's operating costs, the State retains at least 50 percent of the recovered funds⁹. Recovered funds reduce the General Fund appropriation supporting the Medicaid program in HCPF's Medical Services Premiums Division. During FY 2015-

⁸ Fraud committed by Medicaid clients is investigated by county departments of human services.

⁹ Under federal law, if a state's False Claims Act is approved by the federal Department of Health and Human Services' Office of the Inspector General as being compliant with the federal Deficit Reduction Act, that state is entitled to retain more than 50 percent of its civil Medicaid recoveries. The Department of Law indicates that Colorado's Act was not approved, so Colorado is entitled to 50 percent of its civil Medicaid recoveries.

16, the Unit returned \$13,206,068 in restitution and recoveries, including \$12,324,863 in civil damages and penalties and \$881,202 in criminal recoveries.

STATUTORY AUTHORITY: Sections 24-31-101 (1) (a) and 26-4-101, C.R.S.

REQUEST: The Department requests a continuation appropriation of \$1,737,371 and 17.0 FTE for FY 2017-18, with no change from the FY 2016-17 appropriation.

RECOMMENDATION: Staff recommends approving the request, which is consistent with the Committee's common policy. With a relatively low (25.0 percent) state investment, the Medicaid Fraud Control Unit is prosecuting complex civil and criminal Medicaid fraud cases, with recoveries far exceeding the state investment. In FY 2015-16, total recoveries of \$13.2 million significantly exceeded the Department's strategic plan goal of \$4.0 million in recoveries.

PEACE OFFICERS STANDARDS AND TRAINING (P.O.S.T.) BOARD

The P.O.S.T. Board was established as a result of the enactment of federal legislation requiring equal protection by jurisdictions that receive federal funding [Title VII of the Rehabilitation Act of 1973]. The P.O.S.T. Board consists of 24 appointed members, including the Attorney General, the Executive Director of the Colorado Department of Public Safety, the Special Agent in charge of the Denver Division of the Federal Bureau of Investigation, as well as representatives of local government, sheriffs, chiefs of police, peace officers, and the general public.

The P.O.S.T. Board is responsible for ensuring statewide consistency in the qualifications and training for peace officers. The Board thus certifies peace officers appointed by state and local law enforcement agencies, regulates peace officer training academies, and facilitates on-going training for all state peace officers by disbursing grants and providing training sessions specifically developed by the P.O.S.T. Board and staff [see Section 24-31-301 *et seq.*, C.R.S.]. For FY 2014-15 and beyond, the P.O.S.T. Board is receiving funding from two major sources:

- The P.O.S.T. Board Cash Fund, which consists of fees paid by applicants seeking certification as well as a \$1.00 vehicle registration fee (S.B. 14-123 raised the vehicle registration fee from \$0.60 to \$1.00 for FY 2014-15 and subsequent years), supports the P.O.S.T. Board and provides the majority of funding for the line item (\$4.8 million in FY 2015-16); and
- Pursuant to S.B. 14-215, the Marijuana Tax Cash Fund, supported by taxes on marijuana, funds law enforcement training programs related to marijuana, including advanced roadside impaired driving enforcement training and drug recognition expert training. Senate Bill 14-215 appropriated \$1,168,000 and 1.0 FTE to the P.O.S.T. Board for such expanded training efforts in FY 2014-15, and that level was continued in the FY 2015-16 Long Bill. As discussed above, H.B. 15-1367 provided additional funding (\$200,000 General Fund from the Proposition AA Refund Account) to support the P.O.S.T. Board's marijuana-related activities in FY 2015-16.

STATUTORY AUTHORITY: Section 24-31-303, C.R.S.

REQUEST: The Department requests a total of \$6,036,735 cash funds and 9.0 FTE for FY 2017-18. The request includes the following changes from the FY 2016-17 appropriation:

- An increase of \$500,010 associated with request R6 (POST On-line Training, discussed above); and
- An increase of 3.0 FTE (but no additional funding) associated with request R7 (POST Audit FTE, also discussed above).

RECOMMENDATION: Staff recommends approving the request, including the changes requested through R6 and R7 (discussed above). The following table summarizes the recommended changes from the FY 2016-17 appropriation.

CRIMINAL JUSTICE AND APPELLATE, PEACE OFFICERS STANDARDS AND TRAINING BOARD SUPPORT				
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	FTE
FY 2016-17 APPROPRIATION				
HB 16-1405 (Long Bill)	\$5,536,725	\$0	\$5,536,725	9.0
TOTAL	\$5,536,725	\$0	\$5,536,725	9.0
FY 2017-18 RECOMMENDED APPROPRIATION				
FY 2016-17 Appropriation	\$5,536,725	\$0	\$5,536,725	9.0
R6 POST online training	500,010	0	500,010	0.0
R7 POST audit FTE	0	0	0	3.0
TOTAL	\$6,036,735	\$0	\$6,036,735	12.0
INCREASE/(DECREASE)	\$500,010	\$0	\$500,010	3.0
Percentage Change	9.0%	0.0%	9.0%	33.3%
FY 2017-18 EXECUTIVE REQUEST	\$6,036,735	\$0	\$6,036,735	12.0
Request Above/(Below)				
Recommendation	\$0	\$0	\$0	0.0

INDIRECT COST ASSESSMENT

Indirect cost assessments are charged to cash and federally-funded programs for departmental and statewide overhead costs. The indirect cost assessments for this department are based upon the number of cash and federally funded FTE who work in each division. The sources of funds for this line item include: fees paid by insurance companies for insurance fraud investigation and prosecution activities; the P.O.S.T. Board Cash fund; fees collected by the Division of Securities within the Department of Regulatory Agencies; and the federal Medicaid Fraud Control Program.

STATUTORY AUTHORITY: Sections 24-31-101 and 102, C.R.S.

REQUEST: The Department requests an appropriation of \$540,674 for FY 2017-18.

RECOMMENDATION: Staff recommends approving the request. However, staff requests permission to adjust these amounts as necessary once the Committee has finalized all common policies and appropriations for FY 2016-17.

LINE ITEMS SHOWN IN THE NUMBERS PAGES BECAUSE OF PRIOR YEAR FUNDING

The Department is not requesting, and staff is not recommending, funding for the following line item for FY 2016-17. However, the line item remains in the numbers pages at the end of this document because of funding provided in prior years.

SAFE2TELL

Prior to FY 2015-16, this line item supported the Safe2Tell Program, which provides students and the community with a means to anonymously report information concerning unsafe, potentially harmful, dangerous, violent, or criminal activities – or the threat of these activities – to appropriate law enforcement and public safety agencies and school officials. The FY 2015-16 Long Bill consolidated the Safe2Tell Program within the newly created Office of Community Engagement line item in the Administration section of the Long Bill. As a result, the Department’s request and the staff recommendation for FY 2017-18 include funding for the Safe2Tell Program within the Office of Community Engagement line item.

(4) WATER AND NATURAL RESOURCES

This section provides funding for department staff who protect and defend the interests of the State and its citizens in all areas of natural resources law and environmental law, including:

- the use of surface and ground water;
- oil and gas development;
- mining and minerals;
- wildlife;
- the clean-up of contaminated sites (pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act or “CERCLA”);
- the proper storage or disposal of hazardous waste; and
- protection of the state’s air and water.

This section also advocates on behalf of the Colorado Natural Resource Trustees¹⁰ to recover damages for injuries to natural resources and to restore, replace, and acquire the equivalent of the natural resources injured.

Cash fund sources include the Colorado Water Conservation Board’s Litigation Fund and moneys received by the Attorney General as an award of attorney fees or costs. Reappropriated funds are transferred from the Department of Public Health and Environment from the Hazardous Substance Response Fund.

¹⁰ The State Natural Resource Trustees were initially designated by Governor Roy Romer in 1990 pursuant to CERCLA. The Trustees include: the Attorney General, the Executive Director of the Department of Natural Resources, and the Executive Director of the Department of Public Health and Environment.

Please note that organizationally, the Deputy Attorney General for Natural Resources and Environment oversees the activities of the staff who are funded through this Long Bill section, as well as those who are funded through the Legal Services to State Agencies (LSSA) Long Bill section and provide legal services to most program areas within the Department of Natural Resources, the environment-related programs within Department of Public Health and Environment, and any other state agency or official with a natural resource, water right, or environmental issue. The funding that supports this Deputy is appropriated in the LSSA section of the Long Bill.

WATER AND NATURAL RESOURCES					
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FTE
FY 2016-17 Appropriation					
HB 16-1405 (Long Bill)	\$2,176,932	\$596,349	\$938,639	\$641,944	12.5
TOTAL	\$2,176,932	\$596,349	\$938,639	\$641,944	12.5
FY 2017-18 RECOMMENDED APPROPRIATION					
FY 2016-17 Appropriation	\$2,176,932	\$596,349	\$938,639	\$641,944	12.5
Indirect cost assessment adjustments	(2,964)	0	0	(2,964)	0.0
TOTAL	\$2,173,968	\$596,349	\$938,639	\$638,980	12.5
INCREASE/(DECREASE)	(\$2,964)	\$0	\$0	(\$2,964)	0.0
Percentage Change	(0.1%)	0.0%	0.0%	(0.5%)	0.0%
FY 2017-18 EXECUTIVE REQUEST	\$2,173,968	\$596,349	\$938,639	\$638,980	12.5
Request Above/(Below) Recommendation	\$0	\$0	\$0	\$0	0.0

LINE ITEM DETAIL – WATER AND NATURAL RESOURCES

FEDERAL AND INTERSTATE WATER UNIT

This unit protects the state's interests in the waters of interstate rivers, with respect to both interstate water allocation and federal environmental requirements, including, among others, the National Environmental Policy Act, the Endangered Species Act, and the Wild and Scenic Rivers Act. The major litigation currently within the unit involves the Rio Grande Compact, the Arkansas Compact, and the Republican River Compact. This unit also works with state water users to protect the state's interests in the timely and reasonable resolution of federal claims for water rights, including reserved water rights and claims for in-stream flows.

This line item supports 4.5 attorney FTE and 1.0 legal assistant FTE.

STATUTORY AUTHORITY: Sections 37-60-113, 114, 120, and 121.1, C.R.S.; Sections 37-80-116 and 37-81-102, C.R.S.

REQUEST: The Department requests a continuation appropriation of \$596,349 General Fund and 5.5 FTE for FY 2017-18, with no change from the FY 2016-17 appropriation.

RECOMMENDATION: Staff recommends approving the request, which is consistent with the Committee's common policies. The program's efforts are important to the State's interests with respect to water, and the program utilizes the appropriation on an annual basis.

DEFENSE OF THE COLORADO RIVER BASIN COMPACT

The Department uses this appropriation to defend Colorado's interests in the 1922 Colorado River Compact [see Section 37-61-101, C.R.S.], which apportioned Colorado River water between Upper and Lower Basin states, and the 1948 Upper Colorado River Compact [see Section 37-62-101, C.R.S.], which apportioned upper basin water among Colorado, Utah, Wyoming, and New Mexico. The staff who are supported by this line item provide legal counsel and representation to the Department of Natural Resources, the Colorado Water Conservation Board, the State Engineer, and the Colorado Commissioner to the Upper Colorado River Commission on issues pertaining to the Colorado River and the related Compacts. The cash funds supporting this line item are from the Colorado Water Conservation Board's Litigation Fund.

The unit's major tasks include the following:

- Providing real-time counsel during interstate negotiations concerning reservoir operations including Glen Canyon and Hoover Dams, application of the 1944 Water Treaty with Mexico, and compliance with federal environmental laws;
- Researching issues relevant to potential litigation;
- Preparing a litigation database of the voluminous documents relevant to the Colorado River; and
- Assisting the State Engineer in preparing rules for any in-state curtailment of water rights resulting from a Colorado River Compact call.

This line item currently supports 2.5 FTE attorneys and 1.0 FTE Legal Assistant.

STATUTORY AUTHORITY: Sections 37-60-113, 114, 120, and 121.1, C.R.S.; Sections 37-80-116 and 37-81-102, C.R.S.

REQUEST: The Department requests a continuation appropriation of \$428,639 cash funds and 3.5 FTE for FY 2017-18, with no change from the FY 2016-17 appropriation.

RECOMMENDATION: Staff recommends approving the request, which is consistent with the Committee's common policies. The fund source is the Colorado Water Conservation Board's Litigation Fund, or payments received from New Mexico, Wyoming, and Utah.

DEFENSE OF THE REPUBLICAN RIVER COMPACT

The Republican River Compact between Colorado, Kansas, and Nebraska governs the use of water in the Republican River Basin, which lies in northeastern Colorado, southwestern Nebraska and northwestern Kansas [see Section 37-67-101, C.R.S.]. In 1998, Kansas sued Nebraska and Colorado, alleging overuse of river water. In 2003, the three states entered into a settlement decree to resolve the dispute, but in 2007 Kansas began legal action against Nebraska, claiming that state was not doing enough to comply. This line item is supported by the Colorado Water Conservation Board's Litigation Fund.

STATUTORY AUTHORITY : Sections 37-60-113, 114, 120, and 121.1, C.R.S.; Sections 37-80-116 and 37-81-102, C.R.S.

REQUEST: The Department requests a continuation level of funding (\$110,000 cash funds) for FY 2017-18, with no change from the FY 2016-17 appropriation.

RECOMMENDATION: Staff recommends approving the request. The Department's expenditures under this line item fluctuate significantly from year to year based on need, and staff recommends maintaining the continuation appropriation to allow the Department to respond as necessary.

CONSULTANT EXPENSES

This line item provides funding for private counsel that represents Colorado in litigation with Kansas concerning the Arkansas River Compact.

In 1985 Kansas filed a complaint with the U.S. Supreme Court, which had original jurisdiction, asserting that Colorado was violating the 1948 Arkansas River Compact by consuming too much river water. In 1994, a Supreme Court-appointed Special Master concluded that Colorado had violated the Compact by pumping too much water from wells near the River. The Supreme Court agreed with the Special Master's findings, and in 2005 Colorado paid Kansas \$34 million in damages for violations dating back to the 1950's. In 2006 Colorado paid another \$1.1 million for Kansas' legal costs, an amount that the Supreme Court upheld in 2009 following a Kansas challenge. In the wake of the Supreme Court's 1994 ruling, Kansas and Colorado worked jointly with the Special Master to develop a decree, finalized in 2009, that implemented the Supreme Court's decision. The decree includes a complex Hydrologic-Institute Model which is used to determine compact compliance.

Since the beginning of the dispute, Colorado has relied on outside counsel for legal work associated with the dispute. The most difficult parts of the case have now been resolved and the Department has been shifting the work in-house. However, outside counsel is still required when complex issues arise.

STATUTORY AUTHORITY: Sections 37-60-113, 114, 120, and 121.1, C.R.S.; Sections 37-80-116 and 37-81-102, C.R.S.

REQUEST: The Department requests a continuation level of funding (\$400,000 cash funds) for FY 2017-18, with no change from the FY 2016-17 appropriation.

RECOMMENDATION: Staff recommends approving the request. This line item is supported by \$350,000 from the Colorado Water Conservation Board's Litigation Fund and \$50,000 from the Attorney Fees and Costs Account. The Department has not required the full appropriation in recent years (actual expenditures of \$80,375 in FY 2013-14, \$118,578 in FY 2014-15, and \$243,163 in FY 2015-16) but staff recommends continuing the existing appropriation to allow the Department to respond to additional needs if necessary.

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA)

This line item provides funding for the Department’s CERCLA Litigation Unit, which handles the legal work for sites that have been seriously contaminated by hazardous substances (known as “Superfund” sites), most of which are being cleaned up under consent decrees by those who contaminated them. Most CERCLA cases can be divided into two phases that are handled in separate legal proceedings. The first phase focuses on remediation – the disposal and treatment of hazardous substances at a pollution site. The second phase focuses on compensation for the environmental degradation that remains after remediation.

During the first phase of a CERCLA case, this unit works closely with the Colorado Department of Public Health and Environment (CDPHE), providing legal advice helping CDPHE to induce the responsible party, via negotiation or litigation, to undertake appropriate cleanup measures. In some cases this unit is also able to recover costs that the State incurred while dealing with the polluted site and the polluter.

During the second phase of a CERCLA case, the Department tries to win compensation from the polluter for natural resource damages (“NRDs”) – the environmental degradation that remains after remediation – on behalf of the State’s Natural Resource Trustees. Under CERCLA rules, any recovery that the State receives must be spent on the restoration, replacement, or acquisition of equivalent natural resources. This unit serves the Trustees by negotiating or litigating to recover NRDs, and assisting the Trustees in determining how to allocate the NRDs to restore or replace the injured natural resources such as ground water, wildlife habitat, and fish populations.

STATUTORY AUTHORITY: Section 24-31-101 (1) (a), C.R.S.; Sections 25-15-301 to 313, C.R.S.; and Sections 25-16-101 to 200, C.R.S.

REQUEST: The Department requests a continuation appropriation of \$495,577 reappropriated funds and 3.5 FTE for FY 2017-18, with no change from the FY 2016-17 appropriation.

RECOMMENDATION: Staff recommends approving the request, which is consistent with the Committee’s common policies. This appropriation is supported by a transfer from CDPHE from the Hazardous Substance Response Fund.

CERCLA CONTRACTS

This line item provides funding for contractors who support the work of the CERCLA Litigation Unit. These contractors include expert witnesses, scientists knowledgeable about hazardous waste, hydrologists knowledgeable about the movement of polluted ground water, and economists knowledgeable about the value to be placed on natural resource damages.

STATUTORY AUTHORITY: Section 24-31-101 (1) (a), C.R.S.; Sections 25-15-301 to 313, C.R.S.; and Sections 25-16-101 to 200, C.R.S.

REQUEST: The Department requests a continuation appropriation of \$100,000 reappropriated funds for FY 2017-18, with no change from the FY 2016-17 appropriation.

RECOMMENDATION: Staff recommends approving the request. As with the previous line item, a transfer from CDPHE from the Hazardous Substance Response Fund supports this appropriation.

INDIRECT COST ASSESSMENT

Indirect cost assessments are charged to cash and federally-funded programs for departmental and statewide overhead costs. The indirect assessments for this department are based upon the number of cash and federally funded FTE who work in each division. The source of funds for this line item is moneys in the Hazardous Substance Response Fund that are transferred from the Department of Public Health and Environment.

Please note that the Department has not historically charged an indirect cost assessment to the Colorado Water Conservation Board's Litigation Fund. This fund supports the appropriations for the Defense of the Republican River Compact and the Defense of the Colorado River Compact. Staff recommends that this practice continue for two reasons: (1) the Water Conservation Board allocated these moneys believing that they would not be charged overhead; and (2) the Department of Law has never charged overhead to special litigation line items.

STATUTORY AUTHORITY: Sections 24-31-101 and 102, C.R.S.

REQUEST: The Department requests \$43,403 reappropriated funds for FY 2017-18.

RECOMMENDATION: Staff recommends approving the request. However, staff requests permission to work with the Department to adjust these amounts as necessary once the Committee has finalized all common policies for FY 2016-17.

LINE ITEMS SHOWN IN THE NUMBERS PAGES BECAUSE OF PRIOR YEAR FUNDING

The Department is not requesting, and staff is not recommending, funding for the following line item for FY 2016-17. However, the line item remains in the numbers pages at the end of this document because of funding provided in prior years.

NATURAL RESOURCE DAMAGE CLAIMS AT ROCKY MOUNTAIN ARSENAL

In 2008 the Department of Law and the State Natural Resource Trustees settled their natural resource damage case against Shell Oil Company and the U.S. Army over pollution at the Rocky Mountain Arsenal. The Trustees have spent settlement funds on projects to restore, rehabilitate or replace natural resources damaged by the release of hazardous substances from the Arsenal. Prior to FY 2016-17, this appropriation supported payments to an outside contractor who helped the Trustee staff evaluate proposed projects, ensure compliance with statutory requirements, and maximize the natural resource benefits from the settlement moneys. The Committee eliminated the line item in FY 2016-17 because the appropriation was no longer necessary.

(5) CONSUMER PROTECTION

This Long Bill section provides funding for Department staff that protect Colorado consumers against fraud and maintain a competitive business environment by enforcing state and federal laws regarding consumer protection, antitrust, consumer lending, mortgage fraud, predatory lending, debt

collection, rent-to-own, and credit repair. This section also provides funding to support one attorney who is responsible for enforcing the tobacco Master Settlement Agreement.

Please note that organizationally, the Deputy Attorney General for Consumer Protection oversees the activities of the staff who are funded through this Long Bill section, as well as those who are funded through the Legal Services to State Agencies (LSSA) Long Bill section and provide legal services to the Office of the Consumer Counsel. The funding that supports this Deputy is appropriated in the Consumer Protection and Antitrust line item in this section of the Long Bill.

CONSUMER PROTECTION					
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FTE
FY 2016-17 Appropriation					
HB 16-1405 (Long Bill)	\$5,079,533	\$1,368,420	\$3,374,098	\$337,015	49.2
TOTAL	\$5,079,533	\$1,368,420	\$3,374,098	\$337,015	49.2
FY 2017-18 RECOMMENDED APPROPRIATION					
FY 2016-17 Appropriation	\$5,079,533	\$1,368,420	\$3,374,098	\$337,015	49.2
R4 Additional personnel and charities unit	178,483	66,550	275,760	(163,827)	3.0
Custodial funds adjustment	56,990	0	56,990	0	1.0
Annualize prior year budget actions	(4,382)	0	(4,382)	0	0.0
Indirect cost assessment adjustments	(17,243)	0	(14,702)	(2,541)	0.0
TOTAL	\$5,293,381	\$1,434,970	\$3,687,764	\$170,647	53.2
INCREASE/(DECREASE)	\$213,848	\$66,550	\$313,666	(\$166,368)	4.0
Percentage Change	4.2%	4.9%	9.3%	(49.4%)	8.1%
FY 2017-18 EXECUTIVE REQUEST					
Request Above/(Below) Recommendation	\$393,004	\$227,640	\$165,364	\$0	2.8

DECISION ITEMS – CONSUMER PROTECTION

→ R4 CONSUMER PROTECTION FTE AND CHARITIES UNIT

REQUEST: The request includes a net increase of \$574,847 total funds (including \$297,550 General Fund) and 5.8 FTE to augment staffing of the Consumer Protection Section. The request includes three distinct components. Specifically, the Department proposes to:

- Realign and refinance half of the staff (1.5 of 3.0 FTE) currently focused on mortgage and foreclosure fraud to repurpose the existing staff to focus on other priorities. This component requires increases of \$66,550 General Fund and \$97,277 custodial cash funds to offset a reduction of \$163,827 reappropriated funds.
- Add three positions (2.8 FTE in FY 2017-18, annualizing to 3.0 FTE in subsequent years) to create a Charities Fraud Unit. This component requires the following increases in FY 2017-18: (1) \$227,641 General Fund to support two additional assistant attorneys general; and (2) \$117,635 custodial cash funds to support a criminal investigator II focused on charity fraud.
- Add 3.0 FTE supported by a total of \$226,212 custodial cash funds to augment the Department's general consumer protection staffing, including 1.0 FTE office manager, 1.0 FTE

grants administrator to oversee and manage the Department’s custodial funds, and 1.0 FTE to support the consumer protection program’s public information officer.

RECOMMENDATION: Staff recommends that the Committee partially approve the request. Staff recommends approving a net increase of \$178,483 total funds (including increases of \$66,550 General Fund) 3.0 FTE, including the following components.

- *Refinance 1.5 FTE:* First, staff recommends approval of the request to refinance half of the existing staff focused on mortgage fraud to align with changes in the workload, requiring increases of \$66,550 General Fund and \$97,277 custodial cash funds to offset a reduction of \$163,827 reappropriated funds.
- *Charities Unit:* Second, staff recommends that the Committee deny the \$348,635 total funds and 2.8 FTE (\$231,000 General Fund and 1.8 attorney FTE; and \$117,635 custodial cash funds and 1.0 criminal investigator FTE) requested to support the proposed Charities Fraud Unit. While staff recognizes the *potential* need for the additional resources, staff does not believe that the known workload justifies the additional FTE. Instead, staff recommends that the Department absorb some additional workload within the existing staff (such as the 0.5 attorney FTE and the 1.0 investigator FTE refinanced in the first component of the request) to better assess the *actual* need for additional resources and return with a new request if necessary based on new workload information.
- *Administrative and Outreach FTE:* Third, staff recommends reflecting the requested resources (with modifications to eliminate centrally appropriated items that are not typically funded in the first year for new FTE) for the administrative and outreach staff (\$178,483 custodial cash funds and 3.0 FTE) in the Long Bill. Staff specifically recommends approval of \$58,152 custodial cash funds and 1.0 FTE to support the requested grants administrator to improve oversight and management of the Department’s custodial funds. Staff is less convinced of the need for the other two positions (1.0 FTE office manager and 1.0 FTE communications specialist). However, staff notes that the use of custodial funds is entirely at the Department’s discretion (as long as the use aligns with the purposes for which the moneys have been provided)¹¹ and therefore recommends reflecting the requested FTE in the Long Bill.

The following table summarizes the Department’s request and the staff recommendation for request R4.

R4 – CONSUMER PROTECTION FTE AND CHARITIES UNIT SUMMARY							
COMPONENT	FY 2016-17 APPROP.		FY 2017-18 REQUEST R4		FY 2017-18 STAFF REC. R4		
	\$	FTE	\$	FTE	\$	FTE	
Refinance 1.5 Mortgage Fraud FTE							
General Fund	\$0	0.0	\$66,550	0.5	\$66,550	0.5	
Custodial Cash Funds	0	0.0	97,277	1.0	97,277	1.0	
Mortgage Fraud RF	297,272	3.0	(163,827)	(1.5)	(163,827)	(1.5)	
Subtotal – Refinance	\$297,272	3.0	\$0	0.0	\$0	0.0	
Charities Oversight Unit							
General Fund	\$0	0.0	\$231,000	2.0	\$0	0.0	
Custodial Cash Funds	0	0.0	117,635	1.0	0	0.0	
Subtotal – Charities Oversight Unit	\$0	0.0	\$348,635	3.0	\$0	0.0	

¹¹ See Section 24-31-108 (3) and (4), C.R.S.

R4 – CONSUMER PROTECTION FTE AND CHARITIES UNIT SUMMARY						
COMPONENT	FY 2016-17 APPROP.		FY 2017-18 REQUEST R4		FY 2017-18 STAFF REC. R4	
	\$	FTE	\$	FTE	\$	FTE
Administrative and Outreach FTE						
Custodial Cash Funds	\$0	0.0	\$226,211	3.0	\$178,483	3.0
Subtotal – Administrative and Outreach FTE	\$0	0.0	\$226,211	3.0	\$178,483	3.0
Total						
	\$297,272	\$3	\$574,847	\$6	\$178,483	3.0
General Fund	0	0.0	297,550	2.5	66,550	0.5
Custodial Cash Funds	0	0.0	441,123	5.0	275,760	4.0
Mortgage Fraud RF	297,272	3.0	(163,827)	(1.5)	(163,827)	(1.5)

ANALYSIS:

Background – Consumer Protection and Antitrust: The Consumer Protection and Antitrust line item supports two units:

- The Consumer Fraud Unit investigates and prosecutes traditional consumer protection matters such as fraudulent trade and false advertising. The Consumer Fraud Unit also brings cases under the Motor Vehicle Repair Act and, directly relevant to request R4, enforces the Charitable Solicitations Act. For FY 2016-17, the Consumer Fraud Unit includes a total of 18.0 appropriated FTE, including 7.0 attorney FTE.
- The Antitrust, Tobacco, and Consumer Protection Unit handles several specialized consumer protection provisions, including enforcement of the No-Call List Act [Section 6-1-901, et seq., C.R.S.] and the Attorney General’s exclusive jurisdiction to enforce civil and criminal provisions of the Colorado Antitrust Act [Article 4 of Title 6, C.R.S.]. This unit is also responsible for enforcing the tobacco Master Settlement Agreement. Directly relevant to request R4, this unit is responsible for all of the consumer protection laws designed to address mortgage and foreclosure rescue fraud. For FY 2016-17, this unit includes a total of 10.2 FTE, including 6.0 attorney FTE.

Request R4 – Consumer Protection FTE and Charities Unit: With request R4, the Department is seeking a net increase of \$574,847 total funds (including \$297,550 General Fund) and 5.8 FTE for FY 2017-18 to support additional consumer protection efforts. With three components, the request proposes to: (1) realign and refinance a portion of the staff currently focused on mortgage and foreclosure fraud based on a decrease in mortgage-related workload; (2) add new FTE to establish a Charities Oversight Unit; and (3) add centralized administrative and outreach staff to support the consumer protection division.

While the request includes an increase of \$297,550 General Fund, the remainder of the increase is from custodial cash funds that are not subject to legislative appropriation and are entirely under the control of the Department (to be used in accordance with the requirements stipulated for the funds through legal action). For this request, the Department is requesting General Fund for all costs directly associated with attorney FTE and custodial funds for the requested non-attorney FTE. As a result, the custodial cash funds would be reflected in the Long Bill for informational purposes only.

Although request R4 was submitted as a single decision item focused on consumer protection activities, it actually consists of three distinct and independent components: (1) refinancing and

repurposing mortgage fraud staff; (2) creating a charities fraud unit; and (3) adding general consumer protection support staff. The following sections analyze each component of the request.

Component 1 – Refinance and Realign Mortgage Fraud FTE: The Department is proposing to realign and refinance a portion of the existing FTE currently dedicated to mortgage fraud cases. Given the number of foreclosures, and amount of foreclosure fraud during the recent downturn, the Department prioritized a focus on mortgage fraud, with 3.0 FTE (1.0 FTE assistant attorney general and 2.0 FTE criminal investigators) supported by reappropriated funds transferred from the Department of Regulatory Agencies.

However, the Department has experienced a decrease in the mortgage fraud workload since the peak in 2012 (see table below) while the workload for non-mortgage cases continues to increase. The Department is asking to repurpose (and refinance) half of the staff currently focused on mortgage fraud (0.5 attorney FTE and the equivalent of 1.0 criminal investigator FTE) to investigate and respond to the increasing workload related other consumer protection complaints.

R4 MORTGAGE AND FORECLOSURE FRAUD WORKLOAD HISTORY (BY CALENDAR YEAR)										
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Mortgage-related complaints		100	397	903	728	1,185	904	676	531	277
Mortgage/foreclosure matters opened	8	18	21	13	6	5	5	3	3	4

This component of request R4 would reduce the unit’s reappropriated funds appropriation by \$163,827 and 1.5 FTE and offset that reduction with: (1) \$66,550 General Fund and 0.5 FTE to cover half of the costs associated with the 1.0 attorney FTE; and (2) \$97,277 custodial cash funds and 1.0 FTE to cover half of the costs associated with the 2.0 criminal investigator FTE. The following table shows the Department’s proposed change in funding for this component of the request.

R4 REFINANCE OF MORTGAGE FRAUD FTE				
	FY 2016-17 APPROP.		FY 2017-18 REQUEST AND STAFF REC.	
	FUNDS	FTE	FUNDS	FTE
General Fund	\$0	0.0	\$66,550	0.5
Custodial Cash Funds	0	0.0	97,277	1.0
Mortgage Fraud RF	297,272	3.0	133,445	1.5
Total	\$297,272	3.0	\$297,272	3.0

Staff recommends approval of the proposal to refinance 1.5 of the FTE currently working on mortgage fraud, as requested by the Department. Staff agrees that the mortgage fraud workload no longer requires the current 3.0 FTE and that the other consumer protection workload (including potentially charities oversight work, see below) warrants refinancing and retaining the existing positions.

Component 2 – Charities Oversight Unit: The Department is requesting an increase of \$348,635 total funds (including \$231,000 General Fund) and 2.8 FTE in FY 2017-18 (annualizing to \$348,574 total funds and 3.0 FTE in subsequent years) to establish a permanent unit to oversee charitable organizations and charitable assets. The Attorney General, acting through the Consumer Fraud Unit, has enforcement authority under the Charitable Solicitations Act and is vested with authority over all

charitable assets under common law. However, the Department currently has no staff dedicated to full-time oversight of charitable organizations and assets. The Department has historically absorbed the work within existing resources but is now asking for dedicated staff to establish a Charities Oversight Unit. According to the Department, there are several drivers increasing the need for oversight and enforcement of this sector:

- The number of organizations and the assets in question has increased significantly. According to the Department, there are three times more charities registered with the Colorado Secretary of State than there were in 2006.
- The Department has seen increasing need for oversight particularly with respect nonprofit to for-profit conversions in the healthcare sector.
- Colorado is one of 14 pilot states involved in the Single Portal Multistate Registration Project, which will allow charities that solicit in multiple states to register in a single location. The Department has indicated that this project will provide more data and allow for better analysis and earlier detection of charitable fraud, but the Department argues that dedicated staff are necessary to utilize the data.

In order to provide dedicated staff, the Department is requesting resources to support 2.0 attorney FTE (supported entirely with General Fund) and 1.0 criminal investigator FTE (supported with consumer protection custodial funds) to create the Charities Oversight Unit. As part of the justification for the request, the Department has provided reports describing the range of charity oversight structures in different states, ranging from states with no dedicated staff (like Colorado) to states with 10 or more FTE dedicated specifically to charity oversight.

Staff notes that members of the Committee have expressed concerns about the Department taking a more active role in searching for issues rather than responding to reports of potential fraud. In its hearing responses and in discussions at the actual hearing, the Department has raised potentially conflicting points:

- First, in discussions at the hearing, the Department appeared to indicate that it would not dramatically increase active searches for fraudulent activity but rather planned to utilize reports of potential fraud and available tools such as the Secretary of State's list of suspended charitable organizations. In its hearing responses, the Department reported that the Consumer Protection Section receives an average of three or four reports of potential non-profit fraud per month and that the unit does not have the resources to investigate all of these complaints.
- Second, the Department's hearing responses stated that "it has become increasingly clear that the office is only scratching the surface of potential fraud and abuse in the charitable sector." Staff assumes that moving beyond "scratching the surface" would require more proactive investigations on the part of the Department.

Staff raises two points in response. First, staff does not understand the need for two dedicated attorneys and a criminal investigator (over and above the existing staff) to respond to three or four reports per month. Assuming that charity-related reports are similar to other consumer protection complaints received by the Department, staff assumes that some of the reports are straightforward and would not be time consuming for the Department's staff. Thus, staff does not believe the existing workload (in terms of reports submitted) justifies adding 3.0 new FTE. Staff is also not certain the Department has justified the need for significantly increasing "proactive" investigation of

the charitable sector (investigations seeking problems rather than responding to reports of potential issues) to a degree that would justify 3.0 additional FTE.

Given the degree of uncertainty about actual workload that may be involved with the proposed unit and the budgetary challenges facing the Committee for FY 2017-18, staff recommends that the Committee deny the request for additional resources and FTE at this time. Instead, staff believes that it would be advisable for the Department to prioritize charity enforcement activities within existing resources (such as for the 0.5 attorney FTE and 1.0 investigator FTE refinanced and “freed up” through the first component of R4) and return to the General Assembly with a new request if the actual charity enforcement workload requires the creation of a separate unit.

The following table shows the components of the request for the Charities Oversight Unit.

R4 – Consumer Protection Charities Unit				
	FY 2017-18 Request		FY 2017-18 Staff Rec.	
	\$	FTE	GF	FTE
Consumer Protection and Antitrust				
Attorney salary (GF)	\$154,484	1.8	\$0	0.0
Investigator salary (CF)	80,196	1.0	0	
PERA (10.15%)	23,820		0	
Medicare (1.45%)	3,403		0	
AED (5.0%) /1	11,734		0	
SAED (5.0%) /1	11,734		0	
STD (0.022%) /1	516		0	
Estimated HLD /1	<u>21,252</u>		<u>0</u>	
Subtotal, Personal Services	\$307,139	2.8	\$0	0.0
Operating Expenses				
Supplies (\$500)	\$1,500		\$0	
Computer (\$900)	2,700		0	
Office suite software (\$330)	990		0	
Office equipment (\$4,346)	13,038		0	
Telephone (\$450)	1,350		0	
Mileage on state vehicle (12,000 miles at \$0.212/mile)	2,544		0	
Assume 4 overnight stays per month (\$75/night)	3,600		0	
Per diem at \$66 per day for 4 nights per month	3,168		0	
Est. litigation expenses	5,000		0	
Badge and badge case	102		0	
Vest	840		0	
Body armor vest carrier	150		0	
Stinger rechargeable flashlight	206		0	
Response coat	68		0	
Cell phone (\$80 per month)	2,880		0	
Vehicle Lease Payments /1	<u>3,360</u>		0	
Subtotal, Operating Expenses	\$41,496		\$0	
Total, Request R4 Charities Oversight Unit	\$348,635	2.8	\$0	0.0
General Fund	231,000	1.8	\$0	0.0
Cash Funds (Custodial)	117,635	1.0	\$0	0.0

/1 These amounts would be addressed through centrally appropriated line items rather than within the Consumer Protection and Antitrust line item and, with the exception of vehicle lease payments, are not typically funded in the first year for new FTE.

While staff recommends denying this component of the request, staff notes that, contrary to the Committee’s common policy, the Department is proposing to hire the attorneys and the criminal investigator at salaries above the range minimum for each position (hiring the attorneys at the

second quartile of the assistant attorney general pay range and the criminal investigator at the average salary of the Department’s existing criminal investigator II positions). The Department argues that the specialized skills required of the positions will require the elevated salary to attract qualified applicants. While specialized background may be necessary, staff is not convinced of the need to exceed the common policy (range minimum) amount. If the Committee elects to fund the requested positions, staff would recommend funding them at the range minimum for each position and aligning the other appropriations with the Committee’s common policies (such as not including funding for centrally appropriated items and funding office equipment at the common policy amount rather than the Department’s requested amount).

Component 3 – Administrative and Outreach FTE: Finally, the request includes an increase of \$226,211 custodial cash funds and 3.0 FTE in FY 2017-18 for administration and communication positions supporting consumer protection efforts. Please note that this component of the request is entirely funded with custodial funds and is therefore at the discretion of the Department. Any appropriations associated with this group of positions would be reflected in the Long Bill for informational purposes only. The proposed increases include:

- \$77,457 and 1.0 FTE for a communications and outreach specialist (requested as a marketing and communications specialist III) to improve proactive public outreach on consumer protection issues, particularly through the utilization of social media.
- \$74,787 and 1.0 FTE to hire an office manager to handle administrative oversight. The Department argues that growth in consumer protection administrative staffing has not kept pace with growth in the programmatic staffing and responsibilities and that the office manager position is necessary.
- \$73,968 and 1.0 FTE for custodial funds administration (requested as a program assistant I). The Department currently holds approximately \$35 million custodial funds from consumer protection related activities, including approximately \$21 million from a single settlement with Standard and Poors in 2014. The funds must be used for initiatives that are consistent with specified purposes. The Department does not currently have in-house grant making and supervision staff for the custodial funds and is requesting the additional position to both oversee the funds and more actively seek opportunities to effectively use the funds.

Staff notes that this entire component of the request is supported by custodial cash funds *entirely under the control of the Department and shown in the Long Bill for informational purposes* (similar to federal funds in most departments). Given the Department’s intention to use the funds to support the proposed positions, staff recommends reflecting a total of \$178,483 custodial cash funds and 3.0 FTE in the Long Bill for informational purposes.

Request R4 - Consumer Protection Administrative and Outreach FTE							
	FY 2017-18 Request		FY 2017-18 Staff Rec.		FY 2018-19 Impact		
	Custodial CF	FTE	Custodial CF	FTE	Custodial CF	FTE	
Consumer Protection and Antitrust personal services costs							
Communications and outreach salary	\$48,336	1.0	\$48,336	1.0	\$48,336	1.0	
Office manager salary	46,932	1.0	46,932	1.0	46,932	1.0	
Program assistant salary	46,260	1.0	46,260	1.0	46,260	1.0	
PERA (10.15%)	14,365		14,365		14,365		
Medicare (1.45%)	2,052		2,052		2,052		
AED (5.0%) /1	7,077		0		7,077		

Request R4 - Consumer Protection Administrative and Outreach FTE						
	FY 2017-18 Request		FY 2017-18 Staff Rec.		FY 2018-19 Impact	
	Custodial CF	FTE	Custodial CF	FTE	Custodial CF	FTE
SAED (5.0%) /1	7,077		0		7,077	
STD (0.022%) /1	311		0		311	
Estimated HLD /1	<u>33,264</u>		<u>0</u>		<u>33,264</u>	
Subtotal, Personal Services	\$205,673	3.0	\$157,945	3.0	\$205,673	3.0
Consumer Protection and Antitrust operating expenses						
Supplies (\$500)	\$1,500		\$1,500		\$1,500	
Computer (\$900)	2,700		2,700		0	
Office suite software (\$330)	990		990		0	
Office equipment (\$4,346)	13,038		13,038		0	
Telephone (\$450)	1,350		1,350		1,350	
Cell phone (\$80 per month)	<u>960</u>		960		<u>960</u>	
Subtotal, Operating Expenses	\$20,538		\$20,538		\$3,810	
Total, R4 Other FTE (Custodial CF)	\$226,211	3.0	\$178,483	3.0	\$209,483	3.0

/1 These amounts would be addressed through centrally appropriated line items rather than within the Consumer Protection and Antitrust line item. Under the Committee's common policies, the Committee generally does not provide such funding in the first year for new FTE.

The Department is assuming that all three of the FTE requested through this component of the request would be hired at the range minimum salaries.

LINE ITEM DETAIL — CONSUMER PROTECTION

CONSUMER PROTECTION AND ANTITRUST

This line item supports two units that enforce provisions of the Colorado Consumer Protection Act [Section 6-1-101, *et seq.*, C.R.S.]. The Consumer Fraud Unit investigates and prosecutes traditional consumer protection matters such as fraudulent trade, and false advertising practices in a variety of areas, such as automobile repossession, health clubs, and manufactured homes. This unit also brings cases under the Charitable Solicitations Act and the Motor Vehicle Repair Act. With respect to Colorado cases, the Attorney General shares enforcement responsibilities with locally elected District Attorneys. In addition, the staff in this unit also participate in national or multi-state enforcement activities with their counterparts in Attorney General offices in other states and with the Federal Trade Commission.

The Antitrust, Tobacco, and Consumer Protection Unit handles several specialized consumer protection provisions, including enforcement violations of the No-Call List Act [Section 6-1-901, *et seq.*, C.R.S.] and all of the consumer protection laws designed to address mortgage and foreclosure rescue fraud¹². This unit is also responsible for exercising the Attorney General's exclusive jurisdiction to enforce civil and criminal provisions of the Colorado Antitrust Act [Article 4 of Title 6, C.R.S.]. This unit thus investigates and prosecutes price fixing, bid rigging, and mergers that would unreasonably restrain fair competition. This unit also participates in merger reviews in conjunction with the Federal Trade Commission where the industry at issue implicates statewide interests of concern to Colorado. Finally, pursuant to Section 24-31-402, C.R.S., this unit is responsible for enforcing the tobacco Master Settlement Agreement (MSA) and related tobacco laws

¹² The Department of Regulatory Agencies is responsible for handling licensing and disciplinary issues, while this Department handles false advertising and litigation issues.

[Section 39-28-201, *et seq.*, C.R.S.]. This unit thus monitors compliance with the numerous MSA injunctive terms and ensures that Colorado's interests are protected under the payment calculation provisions. This unit works with the Department of Revenue to enforce escrow payment obligations of non-participating tobacco manufacturers.

Finally, this line item currently supports the Deputy Attorney General for the Consumer Protection section.

The cash funds for this line item derive from:

- Various court-ordered awards that the Department has received as the result of its enforcement work (these are custodial funds used at the discretion of the Department);
- The Defense Account of the Tobacco Litigation Settlement Cash Fund for non-participating-tobacco manufacturer enforcement work; and
- The Public Utilities Commission for work supporting Colorado's no call list.

The reappropriated funds for this line item are transferred from the Department of Regulatory Agencies' Division of Real Estate from the Mortgage Brokers Cash Fund; these funds support consumer protection activities related to mortgage brokers. Request R4 (Consumer Protection FTE and Charities Unit, discussed above) proposes a reduction in the mortgage fraud workload and proposes to refinance a portion of the existing mortgage fraud staff to focus on other consumer protection activities.

STATUTORY AUTHORITY: Sections 6-4-101 through 122, C.R.S.

REQUEST: The Department requests \$3,525,141 total funds (including \$1,662,610 General Fund) and 36.0 FTE for FY 2017-18, an increase of \$624,095 total funds and 6.8 FTE above the FY 2016-17 appropriation. The request includes the following changes from the FY 2016-17 appropriation:

- A net increase of \$571,487 total funds (including \$294,190 General Fund) and 5.8 FTE associated with request R4 (Consumer Protection FTE and Charities Unit, discussed above);
- An increase of \$56,990 custodial cash funds and 1.0 FTE to support a senior counsel position at the discretion of the Department;
- An increase of \$321 custodial cash funds to annualize FY 2016-17 salary survey; and
- A decrease of \$4,703 custodial cash funds to annualize FY 2016-17 R4 (Consumer Protection Compliance Investigator).

RECOMMENDATION: Staff recommends approving an appropriation of \$3,132,137 total funds and 33.2 FTE for FY 2017-18. The recommendation is \$393,004 total funds (including \$227,640 General Fund) and 2.8 FTE below the Department's request based on staff's recommendations related to request R4 (Consumer Protection FTE and Charities Oversight, discussed above). The primary driver of the difference is staff's recommended rejection of the request to create a dedicated Charities Oversight Unit.

CONSUMER PROTECTION, CONSUMER PROTECTION AND ANTTITRUST					
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FTE
FY 2016-17 APPROPRIATION					
HB 16-1405 (Long Bill)	\$2,901,046	\$1,368,420	\$1,235,354	\$297,272	29.2
TOTAL	\$2,901,046	\$1,368,420	\$1,235,354	\$297,272	29.2
FY 2017-18 RECOMMENDED APPROPRIATION					
FY 2016-17 Appropriation	\$2,901,046	\$1,368,420	\$1,235,354	\$297,272	29.2
R4 Additional personnel and charities unit	178,483	66,550	275,760	(163,827)	3.0
Custodial funds adjustment	56,990	0	56,990	0	1.0
Annualize prior year budget actions	(4,382)	0	(4,382)	0	0.0
TOTAL	\$3,132,137	\$1,434,970	\$1,563,722	\$133,445	33.2
INCREASE/(DECREASE)	\$231,091	\$66,550	\$328,368	(\$163,827)	4.0
Percentage Change	8.0%	4.9%	26.6%	(55.1%)	13.7%
FY 2017-18 EXECUTIVE REQUEST	\$3,525,141	\$1,662,610	\$1,729,086	\$133,445	36.0
Request Above/(Below) Recommendation	\$393,004	\$227,640	\$165,364	\$0	2.8

CONSUMER CREDIT UNIT

This appropriation supports the enforcement of eight state laws relating to consumer credit and debt collections. Pursuant to Section 5-6-103, C.R.S., the Attorney General designates an attorney to act as the Uniform Consumer Credit Code (UCCC) Administrator. Any legal action filed in court is brought in the Administrator's name, and she is the final adjudicator in any administrative disciplinary action initially assigned to the Office of Administrative Courts. Staff supported by this line item are organized into two functional groups.

With respect to *consumer credit*, this unit enforces the UCCC [Title 5, C.R.S.]. Important components of the UCCC include the following:

- the Deferred Deposit Loan Act [Article 3.1], which applies to payday lenders;
- the Consumer Equity Protection Act [Article 3.5], which restricts certain terms in high-cost loans; and
- the Rental Purchase Agreement Act [Article 10], which governs rent-to-own agreements.

This unit protects borrowers from abusive lender practices, such as interest rates that exceed legal limits, prepayment penalties, inadequate disclosure of the cost of credit, fraudulent rent-to-own schemes, abusive repossessions, and unreasonable collection costs.

Lenders who are subject to the UCCC are licensed by the Department and are known as "supervised lenders". In FY 2014-15, the Department supervised 690 licensed lenders consisting of: mortgage companies (50 percent); payday lenders (31 percent); finance companies (16 percent); and small installment/other lenders (3 percent). License fees, which are established by the Administrator pursuant to Sections 5-6-203 (5), 5-10-805 (3), and 12-14.5-205 (b) (1), C.R.S., and are deposited in the *Uniform Consumer Credit Code Cash Fund* established in Section 5-6-204 (1), C.R.S., cover the cost

of operating the program. The Administrator adjusts these fees annually to cover the cost of operating the unit.

This unit also enforces the Credit Services Organization Act, which limits "credit repair" services, and the Uniform Debt Management Services Act, which regulates debt management services [see Article 14.5 of Title 12, C.R.S.].

With respect to *debt collection*, this unit enforces the Colorado Fair Debt Collection Practices Act [Article 14 of Title 12, C.R.S.] and the related Colorado Child Support Collection Consumer Protection Act [Article 14.1 of Title 12, C.R.S.]. These laws protect: (1) creditor firms that engage collection agencies to collect debts on their behalf; and (2) the debtor consumers who are the subject of the collection efforts of those agencies. The laws forbid a number of abusive debt collection practices and require collection agencies to obtain bonds that are designed to increase the likelihood that creditor firms will receive funds recovered on their behalf.

This unit regulates and supervises collection agencies and credit counseling/ debt settlement companies, including investigating complaints of unlawful activity, taking disciplinary action against agencies that violate the law, and providing consumers with self-help information about the law. In FY 2014-15, the Department supervised 726 licensed collection agencies and 47 credit counseling/ debt settlement companies. Collection agency license fees, which are deposited in the *Collection Agency Cash Fund* established in Section 12-14-136 (1) (a), C.R.S., cover the costs of operating the unit. These fees are set by the Administrator and are adjusted annually to cover costs, pursuant to Section 12-14-119 (3) and (4), C.R.S. Penalties assessed against licensees are typically split between the General Fund and the Collection Agency Board Custodial Fund.

STATUTORY AUTHORITY: Sections 12-24-101 through 12-24-137, C.R.S.; Sections 5-1-101 through 5-9-102.5, C.R.S.; Sections 5-10-101 through 5-10-1001, C.R.S.; and Sections 12-14.5-101 through 12-14.5-113, C.R.S.

REQUEST: The Department requests a continuation appropriation of \$1,714,816 cash funds and 20.0 FTE for FY 2017-18, with no change from the FY 2016-17 appropriation.

RECOMMENDATION: Staff recommends approving the request, which is consistent with the Committee's policies. The Consumer Credit Unit utilizes nearly the entire appropriation annually and targets timely resolution of consumer complaints, meeting its goals (for a performance measure initiated in FY 2014-15) of investigating and resolving 80 to 90 percent of complaints within 60 days or less.

(6) SPECIAL PURPOSE

The section includes funding to cover 80 percent of the statutory minimum salary for Colorado's twenty-two district attorneys, for training provided to local district attorneys' staff, for unanticipated legal and technology expenses, for litigation expenses associated with significant lawsuits, and for an attorney to lead the Department's efforts related to the Colorado Open Records Act and Open Meetings Law. Cash fund sources include tobacco settlement moneys, moneys received from the State Board of Land Commissioners from its Investment and Development Fund, and moneys received by the Attorney General as an award of attorney fees or costs.

SPECIAL PURPOSE				
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	FTE
FY 2016-17 Appropriation				
HB 16-1405 (Long Bill)	\$4,684,138	\$3,234,138	\$1,450,000	1.0
TOTAL	\$4,684,138	\$3,234,138	\$1,450,000	1.0
FY 2017-18 RECOMMENDED APPROPRIATION				
FY 2016-17 Appropriation	\$4,684,138	\$3,234,138	\$1,450,000	1.0
Centrally appropriated line item adjustments	10,297	10,297	0	0.0
TOTAL	\$4,694,435	\$3,244,435	\$1,450,000	1.0
INCREASE/(DECREASE)				
	\$10,297	\$10,297	\$0	0.0
Percentage Change	0.2%	0.3%	0.0%	0.0%
FY 2017-18 EXECUTIVE REQUEST				
Request Above/(Below) Recommendation	\$0	\$0	\$0	(0.0)

DECISION ITEMS – SPECIAL PURPOSE

The Department did not submit any decision items for this division.

LINE ITEM DETAIL — SPECIAL PURPOSE

DISTRICT ATTORNEYS' SALARIES

Background Information – State Funding for DAs. Colorado's district attorneys' offices (DAs) are responsible for prosecuting all criminal and traffic cases filed in district and county courts. While DAs' budgets are primarily set and provided by boards of county commissioners within each respective judicial district, the State provides direct funding for DAs in the following five areas:

- 1 The Department of Law's budget includes an appropriation for "District Attorneys' Salaries" (\$2,749,138 for FY 2016-17). This line item is described below.
- 2 The Judicial Branch's budget includes an appropriation for "District Attorney Mandated Costs" (\$2,417,350 total funds for FY 2016-17).
- 3 The Department of Corrections' budget includes an appropriation for "Payments to District Attorneys" for costs associated with prosecuting a crime alleged to have been committed by a person in the custody of the Department (\$681,102 General Fund for FY 2016-17).
- 4 The Judicial Branch's budget includes an appropriation for "District Attorney Adult Pretrial Diversion Programs" for adult pretrial diversion programs that meet the established statutory guidelines [established through H.B. 13-1156] (\$477,000 for FY 2016-17).
- 5 Pursuant to H.B. 14-1144, and beginning in FY 2014-15, the Department of Law's budget includes an appropriation of \$350,000 General Fund to be transferred to the CDAC for the provision of prosecution training, seminars, continuing education programs, and other prosecution-related services. The FY 2016-17 Long Bill includes this appropriation.

- 6 The Department of Public Safety’s budget includes an appropriation for “Witness Protection Fund Expenditures” to pay DAs for qualifying expenses related to security personnel, travel expenses, lodging, and other immediate needs (\$83,000 for FY 2016-17).

In addition, the General Assembly appropriates funds to the State Court Administrator’s Office, the Office of the State Public Defender (OSPD), the Office of the Alternate Defense Counsel (OADC), and the Office of the Child's Representative to cover the costs of obtaining discoverable materials¹³.

District Attorneys' Salaries line item. Pursuant to Section 20-1-306, C.R.S., the State contributes 80 percent of the statutory minimum salary for the state’s 22 District Attorneys (including the associated costs of employer PERA contributions). In 2007 the General Assembly raised the statutory minimum salary for district attorneys from \$67,000 to \$130,000 over a four-year period. A judicial district may choose to pay a salary that exceeds the statutory minimum using local funds. Every four years, the House and Senate Judiciary Committees are required to review the compensation of elected District Attorneys and make recommendations, if appropriate, to the General Assembly regarding such compensation.

The State’s contribution for District Attorneys’ salaries is provided through a General Fund appropriation to the Department of Law. This appropriation currently accounts for 18.0 percent of total General Fund appropriations to the Department.

STATUTORY AUTHORITY: Section 20-1-306, C.R.S.

REQUEST: The Department requests \$2,749,138 General Fund for FY 2017-18. The request reflects a full 12 months of funding \$104,000 of the minimum \$130,000 salary for each district attorney, plus \$20,961 (20.2 percent) for each district attorney for the associated employer contributions for PERA, PERA amortization equalization disbursement (AED), and PERA supplemental amortization equalization disbursement (SAED). The request reflects an increase of \$10,297, based on the scheduled increase in AED and SAED rates.

RECOMMENDATION: Staff recommends approving the request, which is consistent with current law.

DEPUTY DISTRICT ATTORNEY TRAINING

The General Assembly created this line item in FY 2015-16 to continue appropriations originally provided through H.B. 14-1144 (District Attorney Training). House Bill 14-1144 provided \$350,000 General Fund to the Department of Law in FY 2014-15 to support additional training for local district attorneys’ staff; the Department passes the money through to the Colorado District Attorneys’ Council (CDAC) to support additional training activities. The General Assembly created this line item to support that funding on an ongoing basis.

STATUTORY AUTHORITY: Section 20-111-4 (b), C.R.S.

¹³ Under Colorado Supreme Court Rule 16, the prosecuting attorney is required to make available to the defense certain material and information that is within his or her control and to provide duplicates upon request. The State pays the costs of duplicating discoverable material when legal representation is provided for an indigent defendant.

REQUEST: The Department requests a continuation appropriation of \$350,000 General Fund, with no change from the FY 2016-17 appropriation.

RECOMMENDATION: Staff recommends approving the request. Staff assumes that the General Assembly intended to support the additional training on an ongoing basis.

LITIGATION MANAGEMENT

This line item was added to the Long Bill in FY 1994-95 to pay for: (1) unanticipated legal costs that arise over the course of the fiscal year, especially when the General Assembly is out of session; and (2) technology costs that would otherwise require General Fund appropriations. This appropriation has reduced the need for supplemental requests related to the Legal Services to State Agencies (LSSA) program and other unanticipated litigation, and it historically provided the Department with a source of funds to maintain information technology equipment (over and above the funding appropriated for the Information Technology Asset Maintenance line item).

In FY 2014-15, at the Department's request, the General Assembly reduced the appropriation to this line item by \$125,000 cash funds to consolidate information technology expenditures within the Information Technology Asset Maintenance line item. As a result, the line item now only supports litigation expenses.

Moneys for this appropriation come from two sources:

- Excess revenues earned by the LSSA program during the previous fiscal year. This line item appropriation allows the Department to retain and roll forward a portion of any excess revenues to the next fiscal year. Moneys that have been rolled forward that are not spent in the following fiscal year revert to the General Fund. Please note that excess earnings fluctuate substantially from year to year and the amount is not known with certainty until after the close of the fiscal year. The excess earnings for FY 2015-16, for example, will not be known with certainty until July 2016, the first month of the fiscal year in which such earnings can be expended. The following table provides a history of excess LSSA revenues, and the portion that reverted to the General Fund in prior years.

Excess Legal Services to State Agencies (LSSA) Revenues					
Fiscal Year	Excess LSSA Revenues Earned	Excess Revenues as Percent of Total LSSA Revenues	Fiscal Year	Expenditures of Excess LSSA Revenues	Excess LSSA Revenues Credited to the General Fund
2005-06	532,673	2.8%	2006-07	(180,221)	352,452
2006-07	362,515	1.8%	2007-08	(216,577)	145,938
2007-08	267,456	1.2%	2008-09	(267,456)	0
2008-09	496,834	2.0%	2009-10	(145,258)	351,576
2009-10	367,965	1.5%	2010-11	(262,256)	105,709
2010-11	491,912	1.9%	2011-12	(250,894)	241,018
2011-12	93,489	0.3%	2012-13	93,489	0
2012-13	16	0.0%	2013-14	n/a	n/a
2013-14	681,382	2.1%	2014-15	n/a	n/a
2014-15	3,355,613	8.8%	2015-16	n/a	n/a
2015-16	(277,979)	-0.8%	2016-17	n/a	n/a

- Various court awards that are deposited into the Attorneys Fees and Costs Account, which is established in Section 24-31-108 (2), C.R.S. This account consists of any moneys received by the Attorney General as an award of attorney fees or costs that are not considered custodial moneys. Moneys in the Account are subject to annual appropriation by the General Assembly for legal services provided by the Department. For purposes of this appropriation, this source of funding serves as a backup, filling in the remainder of the appropriation to the Litigation Management and Technology Fund appropriation when excess LSSA earnings come up short. The following table details revenues and expenditures for this account.

ATTORNEY FEES AND COSTS ACCOUNT				
FISCAL YEAR	BEGINNING FUND BALANCE	REVENUES	EXPENDITURES	ENDING FUND BALANCE
2005-06	208,794	23,276	(100,477)	131,593
2006-07	131,593	244,420	(71,333)	304,680
2007-08	304,680	267,118	(142,251)	429,547
2008-09	429,547	105,671	(94,595)	440,623
2009-10	440,623	202,185	(54,021)	588,787
2010-11	588,787	123,861	(22,417)	690,231
2011-12	690,231	442,207	(7,426)	1,125,012
2012-13	1,125,012	438,169	(385,881)	1,177,299
2013-14	1,177,299	191,126	(263,135)	1,105,290
2014-15	1,105,290	805,397	(119,583)	1,791,104
2015-16	1,791,104	302,211	(7,336)	2,085,979

STATUTORY AUTHORITY: Sections 24-31-101 and 102, C.R.S.

REQUEST: The Department requests a continuation appropriation of \$200,000 cash funds, with no change from the FY 2016-17 appropriation.

RECOMMENDATION: Staff recommends approving the request. Please note that H.B. 12-1248 (which was sponsored by the Joint Budget Committee) requires the Department to credit all moneys received from state agencies as payment for legal services to the newly created Legal Services Cash Fund, beginning in FY 2012-13. Moneys in the Fund are subject to annual appropriation to the Department for the direct and indirect costs associated with providing legal services to state agencies and for any of the Department's litigation expenses. Thus, for FY 2017-18, this line item will consist of two fund sources: the Legal Services Cash Fund and various court awards that are deposited into the Attorneys Fees and Costs Account.

TOBACCO LITIGATION

This line item supports the costs of outside counsel (Hale, Westfall, LLP) and other arbitration-related expenses. Department attorneys helped develop and continue to assist the non-participating manufacturer (NPM) enforcement program that is operated by the Department of Revenue. The Department of Law's efforts are essentially "on trial" before the arbitrators; attorneys from the Department of Law are likely to be called to testify during the arbitration proceeding. Thus, the Department is required to utilize outside counsel.

Background Information. When the tobacco Master Settlement Agreement (MSA) was signed in 1998, participants recognized that the extra costs that the settlement imposed on participating manufacturers would place them at a competitive disadvantage when compared with manufacturers who have not joined the agreement. In an effort to level the playing field, the agreement required states to enact "qualifying statutes" that force NPMs to make payments into escrow accounts that are comparable to what they would have paid had they participated in the agreement. House Bill 99-1208 added the qualifying statute to Colorado law. The MSA requires states to "diligently enforce" their qualifying statutes. If certain preconditions are met, settlement payments to states that do not diligently enforce are reduced.

Since 2006, Colorado and the other states have been involved in a legal dispute with the participating manufacturers, who allege that the states are not diligently enforcing their NPM laws. Due to this dispute, some tobacco companies have withheld a portion of their settlement payments, placing them in escrow. When a diligent enforcement question arises, it is settled by a panel of arbitrators who must decide the issue in a unified national proceeding in which a separate decision will be made on the diligent enforcement efforts of each participating state. Thus the arbitrators might decide that one state should receive a reduced payment because it failed to diligently enforce, while another state diligently enforced and is entitled to its full payment.

STATUTORY AUTHORITY: Section 24-31-402, C.R.S.

REQUEST: The Department requests a continuation appropriation of \$1,250,000 cash funds from the Tobacco Settlement Defense Account, with no change from the FY 2016-17 appropriation.

RECOMMENDATION: Staff recommends approving the request. The Defense Account of the Tobacco Litigation Settlement Cash Fund was established out of MSA moneys received in compensation for attorney fees, and other costs that Colorado incurred in its legal action against tobacco manufacturers.

CORA AND OML ATTORNEY

The General Assembly created this line item in FY 2015-16 to support an attorney dedicated to enhancing the Department's expertise with respect to the Colorado Open Records Act (CORA) and Open Meetings Law (OML). The position is specifically focused on CORA and OML legal issues and compliance to provide centralized expertise within the Department and to facilitate other agencies' CORA and OML compliance.

STATUTORY AUTHORITY: Section 24-31-101 (1) (a), C.R.S.

REQUEST: The Department requests a continuation appropriation of \$90,297 General Fund and 1.0 FTE for FY 2017-18, with no change from the FY 2016-17 appropriation

RECOMMENDATION: Staff recommends approving the request, which is consistent with the Committee's common policies.

LONG BILL FOOTNOTES AND REQUESTS FOR INFORMATION

LONG BILL FOOTNOTES

Staff recommends **CONTINUING** the following footnotes, with modifications in struck type and small caps:

- 66 Department of Law, Legal Services to State Agencies – In making this appropriation, it is the intent of the General Assembly that hourly billing rates charged by the Department for legal services to state agencies not exceed ~~\$98.26~~ _____ per hour for attorneys and not exceed ~~\$77.06~~ _____ per hour for legal assistants, which equates to a blended legal rate of ~~\$95.05~~ _____ per hour.

COMMENT: The blended legal rate is used to compute the Long Bill appropriations for legal services for the various agencies of state government. The blended rate is also used to compute legal-service appropriations in other legislation. This footnote contains a clear statement of legislative intent regarding the blended legal rate and the rates to be charged for the services provided by attorneys and legal assistants. Staff will ultimately fill in the hourly rates that correspond to appropriations that are included in the FY 2016-17 Long Bill.

- 67 Department of Law, Special Purpose, Litigation Management – It is the intent of the General Assembly to grant the Department of Law additional flexibility by allowing the Department to use money appropriated to this line item to address unanticipated state legal needs that arise during FY 2016-17. It is also the intent of the General Assembly that money spent from this line item shall not require the appropriation of additional FTE and will not be used for any type of salary increase, promotion, reclassification, or bonus related to any present or future FTE employed by the Department of Law. It is furthermore the intent of the General Assembly that money spent from this line item will not be used to offset present or future personal services deficits in any division in the Department.

COMMENT: Since FY 1994-95 the Department's appropriations have included this line item, which allows the Department to pay for unanticipated legal costs that arise over the course of the fiscal year (especially when the General Assembly is not in session). The Department has also historically used this line item for technology costs that would otherwise require a General Fund appropriation. This appropriation has reduced the need for legal services supplemental requests related to the Legal Services to State Agencies program (LSSA) and other unanticipated litigation.

Historically, moneys for this appropriation came from two sources:

1. Excess revenues earned by the LSSA program during the previous fiscal year; and
2. Various court awards that are deposited into the Attorneys Fees and Costs Account.

The Department did not collect any excess LSSA revenues in FY 2015-16, and current year (FY 2016-17 expenditures for this line item will rely on the Attorneys Fees and Costs

Account). Any excess legal services revenues that are earned in FY 2016-17 will be retained in the Legal Services Cash Fund. In order to provide the Department flexibility to spend those revenues, the FY 2017-18 Long Bill appropriation for this line item will consist of two fund sources: excess revenues credited to the Legal Services Cash Fund in FY 2016-17 and various court awards that are deposited into the Attorneys Fees and Costs Account.

REQUESTS FOR INFORMATION

Staff recommends continuing and **CONTINUING AND MODIFYING** the following requests for information:

- 1 Department of Law, Criminal Justice and Appellate, Appellate Unit – The Department is requested to provide by November 1, ~~2016~~, 2017 a report concerning the Appellate Unit’s progress in reducing its case backlog, including the following data for ~~FY 2015-16~~: FY 2016-17: the number of opening briefs received; the number of answer briefs filed; and the case backlog as of June 30, ~~2016~~-2017. In addition, the Department is requested to summarize the tasks completed by the inter-agency working group that was established to review the procedures, rules, and practices for handling post-conviction appeals, along with any recommended procedural, regulatory, or statutory changes.

COMMENT: This report provides detail on the backlog of cases/briefs in the Appellate Unit.

- 2 Department of Law, Criminal Justice and Appellate, Medicaid Fraud Control Unit – Pursuant to Section 25.5-4-310, C.R.S., the Department of Law’s Medicaid Fraud Control Unit is required to submit an annual report by January 15 concerning: actions filed under the “Colorado Medicaid False Claims Act”, the amount recovered as a result of such actions, and the amount of related expenditures. The General Assembly requests that the Department also include in this annual report information about expenditures and recoveries related to the Unit’s criminal investigations.

COMMENT: Section 25.5-4-310, C.R.S., requires the Attorney General to submit an annual report to the Health and Human Services Committees and to the Joint Budget committee each January 15 concerning claims brought under the Colorado Medicaid False Claims Act during the previous fiscal year. This request for information is designed to allow the Department to submit a single, comprehensive annual report concerning the expenditures and recoveries associated with the Medicaid Fraud Control Unit’s efforts. The report is required to include:

- The number of actions filed by the Attorney General, the number which were completed, and the amount that was recovered through settlement or through a judgement and (if known) the amount recovered for damages, penalties, and litigation costs.
- The number of actions filed by a person other than the Attorney General, the number which were completed, and the amount that was recovered through settlement or through a judgement and (if known) the amount recovered for damages, penalties, and litigation costs, and the amount recovered by the State and the person.

- The amount expended by the State for investigation, litigation, and all other costs for claims related to the Medicaid False Claims Act.
- 3 Department of Law, Special Purpose, District Attorney Training – Pursuant to Section 20-1-111 (4) (b), C.R.S., the Colorado District Attorneys’ Council (CDAC) allocated these dollars to provide prosecution training, seminar, continuing education programs, and other prosecution related services on behalf of District Attorneys who are members of the CDAC. The CDAC is requested to submit an annual report by November 1 detailing how the District Attorney Training appropriation is spent, including the number and type of training activities provided, the number of district attorney offices served by each type of training activity, the number of deputy district attorneys trained, and detail of the costs categorized by personnel, operating, and travel, for each training effort.

COMMENT: The CDAC provided the requested report to the Department of Law on October 19, 2016. The following table shows the CDAC’s reported use of funds for FY 2015-16.

DISTRICT ATTORNEY TRAINING: FY 2015-16 EXPENDITURES	
USE	EXPENDITURES
Personnel (salary and benefits)	\$136,437
Supplies and Operating	\$8,851
Travel	20,067
Registration fee reductions	83,910
Scholarships for CDAC and non-CDAC trainings	100,735
Equipment	0
TOTAL	\$350,000

Personnel: The CDAC reports that, as contemplated in H.B. 14-1144, it is using this funding to cover the salary and benefits of 1.0 staff attorney FTE provided prosecution related trainings and services to local prosecutors. The funding also covers small portions of two other administrative/training coordinating positions.

Supplies and Operating: The funding is used for a variety of supplies and operating expenses, including copies, postage, class materials, continuing legal education (CLE) accreditation for trainings, subscriptions to create publications or provide trainings, and books and materials. Funds also covered a one-day “Mental Conditions Defenses” course and a two-day “Advanced County Court” course for rural deputy district attorneys.

Travel: Funds covered mileage, transportation, lodging and per diem costs for CDAC staff attending trainings as well as for other district attorney office staff assisting other offices with mentoring and training.

Registration Fees: The funding allowed CDAC to reduce (and in some cases eliminate) registration fees charged for CDAC trainings. The \$83,910 represents the savings to send 634 attendees to a variety of trainings.

Scholarships for CDAC and non-CDAC Trainings: The CDAC provided reimbursements for offices sending employees to various CDAC and non-CDAC trainings. According to the CDAC, more than \$26,000 of the scholarship funds were used for registrations at non-

CDAC trainings that district attorney staff would have been unlikely to be able to attend without the scholarship assistance. Additional funds were used for travel expenses to allow registrants to attend trainings. The CDAC reports that more than 125 attendees from throughout the State (representing all 22 district attorney offices) attended trainings using the scholarship funds.

Equipment: The CDAC did not use any funds for equipment in FY 2015-16.

If the Committee approves staff's recommendation regarding request R1 (Legal Services Allocations and Billings), staff recommends **ADDING** the following request for information soliciting feedback on the implementation of the changes in the appropriations and billing for legal services.

- X Department of Law, Legal Services to State Agencies, Personal Services – The Department is requested to provide by November 1, 2018 a report concerning the implementation of changes to the appropriation and billing methodologies for legal services provided to state agencies. As part of the report, the Department is requested to solicit feedback from all client agencies regarding the benefits and challenges associated with the change in methodologies.

INDIRECT COST ASSESSMENTS

DESCRIPTION OF INDIRECT COST ASSESSMENT METHODOLOGY

INDIRECT COST POOL

The Department of Law's indirect cost assessment methodology is based on an *Indirect Cost Pool*, which is allocated based on the distribution of staff by division and fund source. The Department's Indirect Cost Pool is comprised of the following line item appropriations within the Administration section of the Long Bill:

Personal Services
 Operating Expenses
 Payments to OIT
 Payments to Risk Management and Property Funds
 CORE Operations.

The Department's Indirect Cost Pool also includes portions of various centrally appropriated line item appropriations that correspond to the staff that are supported by the Administration, Personal Services line item. The Department's Indirect Cost Pool is based on appropriated amounts for the same fiscal year (e.g., the Indirect Cost Pool for FY 2016-17 was based on the FY 2016-17 Long Bill appropriations). For FY 2017-18, the Department's Indirect Cost Pool as requested is \$5,279,441. Table 1 details the components of the Department's Indirect Cost Pool for FY 2017-18.

The Department allocates its Indirect Cost Pool based on the fund sources that support full-time equivalent (FTE) permanent staff positions. For example, the Department's request for FY 2017-18 indicates that 79.3 percent of FTE (excluding the administrative positions that are part of the Indirect Cost Pool) will be supported by fund sources other than General Fund which can and should cover departmental indirect costs. This percentage is then applied to the Department's Indirect Cost Pool to determine the total amount of departmental indirect cost assessments (e.g., \$4,188,558 for FY 2017-18). The FTE distribution is also used to allocate the total Indirect Cost Assessment among divisions and fund sources.

The last four lines of Table 1 detail the calculation of the total Indirect Cost Assessment for FY 2017-18. Table 2 details the distribution of FTE among fund sources, which is used to allocate indirect costs among fund sources. Table 3 summarizes the allocation of the total Indirect Cost Assessment for FY 2017-18 among divisions and specific funding sources.

TABLE 1: DEPARTMENT OF LAW INDIRECT COST POOL

LINE ITEM	FY 2017-18 REQUEST
Personal Services	\$3,876,422
Health, Life, and Dental	318,361
Short-term Disability	134
Salary Survey, Classified	52,565
Salary Survey, Exempt	26,097
Merit Pay, Classified	0
Merit Pay, Exempt	0
S.B. 04-257 AED	152,003

TABLE 1: DEPARTMENT OF LAW INDIRECT COST POOL

LINE ITEM	FY 2017-18 REQUEST
S.B. 06-235 SAED	152,003
Workers' Compensation	12,622
Attorney Registration and Continuing Legal Education	2,850
Operating Expenses	210,054
Payment to Risk Management and Property Funds	26,213
Vehicle Lease Payments	2,240
Information Technology Asset Maintenance	79,603
Payments to OIT	50,155
Leased Space (storage)	0
Carr Center Leased Space	312,754
Building Security	0
CORE Operations	5,365
Departmental Indirect Cost Pool	\$5,279,441
Multiplied by: Proportion of Departmental Indirect Cost Pool attributed to non-General Fund sources (see Table 2)	79.34%
Equals: Portion of Departmental Indirect Cost Pool recoverable from non-General Fund sources	\$4,188,558
Plus: Department's share of Statewide Indirect Cost Pool attributed to non-General Fund sources (calculated by Department of Personnel)	134,736
Equals: Total Indirect Cost Pool recoverable from non-General Fund sources	\$4,323,294

TABLE 2: ALLOCATION OF INDIRECT COSTS ASSESSMENTS BY FTE BY DIVISION AND FUND SOURCE

DIVISION	GENERAL FUND	OTHER INELIGIBLE FUND SOURCES	OTHER FUND SOURCES THAT DO COVER INDIRECT COSTS	FTE IN INCLUDED IN CALCULATION	FTE NOT INCLUDED IN CALCULATION	TOTAL FTE	PERCENT ALLOCATION
Administration	7.0	0.0	0.0	7.0	44.2	51.2	0.0%
Legal Services to State Agencies	0.0	0.0	264.0	264.0	0.0	264.0	76.1%
Criminal Justice and Appellate	60.2	1.0	43.6	104.8	0.0	104.8	12.6%
Water and Natural Resources	5.5	3.5	3.5	12.5	0.0	12.5	1.0%
Consumer Protection	12.2	0.0	36.0	48.2	0.0	48.2	10.4%
Special Purpose	1.0	0.0	0.0	1.0	0.0	1.0	0.0%
Total	85.9	4.5	347.1	437.5	44.2	481.7	100.0%

Please note that two non-General Fund sources of funding do not cover their relative share of indirect costs and thus reduce the amount of indirect cost recoveries available to offset General Fund expenditures. First, 3.5 FTE involved in defending the Colorado River Basin Compact are supported by the Water Conservation Board's Litigation Fund. These funds were allocated by the Water conservation Board with the understanding that indirect costs would not be charged to the Fund. Second, 1.0 FTE Victims' Services Coordinator is supported by a grant from the Victims Assistance and Law Enforcement (VALE) Fund. However, this grant is not sufficient to cover the direct costs of this position, so it does not cover any indirect costs.

The Indirect Cost Assessment is allocated among divisions based on each division's relative share of FTE (calculated in the last column of Table 2). Within a division, the Indirect Cost Assessment is

allocated among fund sources based on each fund source's relative share of FTE and the adequacy/availability of each fund source to cover indirect costs.

Finally, please note that the Department occasionally receives grants that allow for the recovery of indirect costs. When this occurs, the Department charges a share of departmental and statewide indirect costs to the grant (as allowed by the grant or at a rate negotiated with the federal government). These funds are then used to cover a portion of the Department's administrative costs that would otherwise require a General Fund expenditure.

The following table shows the estimated indirect cost assessments to be charged to each division in FY 2017-18 based on the methodology outlined above. Please note that these amounts are subject to change based on the Committee's decisions regarding both the Department of Law and common policy items addressed in other departments.

Division	Percentage (from Table 2)	Dollars
Legal Services to State Agencies	76.06%	\$3,288,245
Criminal Justice and Appellate	12.56%	543,058
Water and Natural Resources	1.01%	43,594
Consumer Protection	10.37%	448,397
Total (from Table 1)		\$4,323,294

JBC Staff Staff Figure Setting - FY 2017-18
Staff Working Document - Does Not Represent Committee Decision

Appendix A: Number Pages

	FY 2014-15 Actual	FY 2015-16 Actual	FY 2016-17 Appropriation	FY 2017-18 Request	FY 2017-18 Recommendation
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DEPARTMENT OF LAW
Cynthia Coffman, Attorney General

(1) ADMINISTRATION

This section includes funding for the Attorney General, the Solicitor General, and other management staff, as well as the Department's human resources, accounting/budgeting, information technology, and legal support services units. These units are supported by General Fund and indirect cost recoveries. This section also includes central appropriations for the entire Department, including funding for employee benefits, facilities, vehicles, and information technology. Cash funds appropriations include moneys received by the Attorney General as an award of attorney fees or costs, and various other sources. Reappropriated funds derive from indirect cost recoveries and moneys transferred from a variety of other appropriations. For FY 2014-15 and subsequent years, federal funds are from the Medicaid Fraud Control Program. Prior years included federal funding from the Colorado Justice Review Project.

Personal Services	<u>3,361,926</u>	<u>3,371,481</u>	<u>3,805,907</u>	<u>3,876,422</u>	<u>3,865,006</u> *
FTE	37.0	38.0	46.2	46.2	46.2
General Fund	0	0	0	0	0
Cash Funds	45,985	0	0	0	0
Reappropriated Funds	3,315,941	3,371,481	3,805,907	3,876,422	3,865,006
Office of Community Engagement	<u>0</u>	<u>511,454</u>	<u>793,058</u>	<u>793,058</u>	<u>788,355</u>
FTE	0.0	4.4	7.0	7.0	7.0
General Fund	0	499,726	778,058	778,058	773,355
Cash Funds	0	11,728	15,000	15,000	15,000
Health, Life, and Dental	<u>2,878,006</u>	<u>3,761,551</u>	<u>3,789,903</u>	<u>4,100,333</u>	<u>4,100,333</u> *
General Fund	791,193	987,967	1,014,768	1,138,267	1,138,267
Cash Funds	344,575	462,441	450,192	514,081	514,081
Reappropriated Funds	1,642,380	2,211,116	2,234,782	2,343,126	2,343,126
Federal Funds	99,858	100,027	90,161	104,859	104,859

*Line item contains a decision item.

JBC Staff Staff Figure Setting - FY 2017-18
Staff Working Document - Does Not Represent Committee Decision

	FY 2014-15 Actual	FY 2015-16 Actual	FY 2016-17 Appropriation	FY 2017-18 Request	FY 2017-18 Recommendation
Short-term Disability	<u>79,509</u>	<u>73,366</u>	<u>75,164</u>	<u>79,252</u>	<u>79,252</u>
General Fund	20,973	19,126	20,214	20,754	20,754
Cash Funds	9,067	8,138	8,464	9,281	9,281
Reappropriated Funds	47,051	44,162	44,602	47,492	47,492
Federal Funds	2,418	1,940	1,884	1,725	1,725
S.B. 04-257 Amortization Equalization Disbursement	<u>1,445,612</u>	<u>1,667,280</u>	<u>1,898,869</u>	<u>2,085,616</u>	<u>2,085,616</u>
General Fund	381,335	431,939	510,666	546,163	546,163
Cash Funds	164,849	181,373	213,828	244,244	244,244
Reappropriated Funds	855,466	1,010,156	1,126,779	1,249,802	1,249,802
Federal Funds	43,962	43,812	47,596	45,407	45,407
S.B. 06-235 Supplemental Amortization Equalization					
Disbursement	<u>1,355,263</u>	<u>1,609,964</u>	<u>1,879,090</u>	<u>2,085,616</u>	<u>2,085,616</u>
General Fund	357,502	413,839	505,347	546,163	546,163
Cash Funds	154,546	178,001	211,601	244,244	244,244
Reappropriated Funds	802,000	975,840	1,115,042	1,249,802	1,249,802
Federal Funds	41,215	42,284	47,100	45,407	45,407
Salary Survey for Classified Employees	<u>295,496</u>	<u>119,650</u>	<u>8,276</u>	<u>376,391</u>	<u>376,391</u>
General Fund	91,353	40,723	1,861	125,323	125,323
Cash Funds	74,976	30,754	857	97,945	97,945
Reappropriated Funds	106,793	38,897	5,558	131,995	131,995
Federal Funds	22,374	9,276	0	21,128	21,128

JBC Staff Staff Figure Setting - FY 2017-18
Staff Working Document - Does Not Represent Committee Decision

	FY 2014-15 Actual	FY 2015-16 Actual	FY 2016-17 Appropriation	FY 2017-18 Request	FY 2017-18 Recommendation
Salary Survey for Exempt Employees	<u>358,827</u>	<u>965,318</u>	0	<u>1,008,795</u>	<u>1,008,795</u>
General Fund	83,586	235,874	0	234,674	234,674
Cash Funds	19,197	38,990	0	61,413	61,413
Reappropriated Funds	252,482	680,763	0	704,317	704,317
Federal Funds	3,562	9,691	0	8,391	8,391
Workers' Compensation	<u>104,477</u>	<u>83,973</u>	<u>101,393</u>	<u>131,625</u>	<u>131,625</u>
General Fund	28,278	23,257	28,528	37,304	37,304
Cash Funds	12,196	9,807	11,694	15,491	15,491
Reappropriated Funds	61,053	48,580	58,446	75,347	75,347
Federal Funds	2,950	2,329	2,725	3,483	3,483
Attorney Registration and Continuing Legal Education	<u>78,930</u>	<u>125,219</u>	<u>135,280</u>	<u>136,705</u>	<u>136,705</u>
General Fund	18,248	30,680	32,680	33,630	33,630
Cash Funds	2,475	3,234	4,275	4,275	4,275
Reappropriated Funds	57,604	90,330	96,900	97,375	97,375
Federal Funds	603	975	1,425	1,425	1,425
Operating Expenses	<u>193,457</u>	<u>206,475</u>	<u>202,850</u>	<u>210,054</u>	<u>204,760</u> *
General Fund	0	0	0	0	0
Cash Funds	0	0	0	0	0
Reappropriated Funds	193,457	206,475	202,850	210,054	204,760
Federal Funds	0	0	0	0	0

*Line item contains a decision item.

JBC Staff Staff Figure Setting - FY 2017-18
Staff Working Document - Does Not Represent Committee Decision

	FY 2014-15 Actual	FY 2015-16 Actual	FY 2016-17 Appropriation	FY 2017-18 Request	FY 2017-18 Recommendation
Legal Services	<u>5,931</u>	<u>34,239</u>	<u>39,066</u>	<u>40,796</u>	<u>40,796</u>
General Fund	5,931	17,777	19,010	19,852	19,852
Cash Funds	0	16,462	20,056	20,944	20,944
Reappropriated Funds	0	0	0	0	0
Federal Funds	0	0	0	0	0
Administrative Law Judge Services	<u>30,254</u>	<u>6,749</u>	<u>1,602</u>	<u>7,929</u>	<u>7,929</u> *
General Fund	0	0	0	0	0
Cash Funds	30,254	6,749	1,602	7,929	7,929
Reappropriated Funds	0	0	0	0	0
Federal Funds	0	0	0	0	0
Payment to Risk Management and Property Funds	<u>153,905</u>	<u>169,910</u>	<u>253,820</u>	<u>274,102</u>	<u>274,102</u> *
General Fund	0	47,059	71,416	77,685	77,685
Cash Funds	0	19,845	29,271	32,259	32,259
Reappropriated Funds	153,905	98,295	146,310	156,905	156,905
Federal Funds	0	4,711	6,823	7,253	7,253
Vehicle Lease Payments	<u>52,904</u>	<u>40,964</u>	<u>45,344</u>	<u>48,235</u>	<u>44,875</u> *
General Fund	22,757	20,316	26,369	24,820	21,460
Cash Funds	10,345	3,395	5,313	10,393	10,393
Reappropriated Funds	17,595	15,554	13,353	12,482	12,482
Federal Funds	2,207	1,699	309	540	540
Information Technology Asset Maintenance	<u>608,783</u>	<u>623,770</u>	<u>789,982</u>	<u>833,595</u>	<u>833,595</u> *
General Fund	171,927	173,591	226,235	238,725	238,725
Cash Funds	55,045	61,669	92,583	97,694	97,694
Reappropriated Funds	368,574	373,660	450,345	475,208	475,208
Federal Funds	13,237	14,850	20,819	21,968	21,968

*Line item contains a decision item.

JBC Staff Staff Figure Setting - FY 2017-18
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	FY 2014-15 Actual	FY 2015-16 Actual	FY 2016-17 Appropriation	FY 2017-18 Request	FY 2017-18 Recommendation
Ralph L. Carr Colorado Judicial Center Leased Space	<u>2,981,368</u>	<u>3,126,117</u>	<u>3,202,517</u>	<u>3,261,575</u>	<u>3,261,575</u>
General Fund	804,128	865,834	890,498	924,384	924,384
Cash Funds	348,331	365,099	359,473	383,833	383,833
Reappropriated Funds	1,743,005	1,808,498	1,865,577	1,867,046	1,867,046
Federal Funds	85,904	86,686	86,969	86,312	86,312
Payments to OIT	<u>343,938</u>	<u>444,965</u>	<u>239,473</u>	<u>653,628</u>	<u>653,628</u> *
General Fund	94,169	123,241	66,554	185,249	185,249
Cash Funds	39,958	51,968	26,914	76,920	76,920
Reappropriated Funds	199,951	257,417	139,502	374,163	374,163
Federal Funds	9,860	12,339	6,503	17,296	17,296
CORE Operations	<u>67,404</u>	<u>59,075</u>	<u>62,453</u>	<u>56,186</u>	<u>56,186</u>
General Fund	0	16,362	17,572	16,090	16,090
Cash Funds	0	6,898	7,202	6,585	6,585
Reappropriated Funds	67,404	34,177	36,001	32,031	32,031
Federal Funds	0	1,638	1,678	1,480	1,480
Attorney General Discretionary Fund	<u>2,680</u>	<u>5,000</u>	<u>5,000</u>	<u>5,000</u>	<u>5,000</u>
General Fund	2,680	5,000	5,000	5,000	5,000
Merit Pay for Classified Employees	<u>104,360</u>	<u>114,830</u>	<u>0</u>	<u>0</u>	<u>0</u>
General Fund	36,984	37,379	0	0	0
Cash Funds	22,483	29,845	0	0	0
Reappropriated Funds	36,301	39,991	0	0	0
Federal Funds	8,592	7,615	0	0	0

*Line item contains a decision item.

JBC Staff Staff Figure Setting - FY 2017-18
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	FY 2014-15 Actual	FY 2015-16 Actual	FY 2016-17 Appropriation	FY 2017-18 Request	FY 2017-18 Recommendation
Merit Pay for Exempt Employees	<u>263,836</u>	<u>295,260</u>	<u>0</u>	<u>0</u>	<u>0</u>
General Fund	62,917	71,154	0	0	0
Cash Funds	11,284	11,730	0	0	0
Reappropriated Funds	186,740	209,337	0	0	0
Federal Funds	2,895	3,039	0	0	0
TOTAL - (1) Administration	14,766,866	17,416,610	17,329,047	20,064,913	20,040,140
<i>FTE</i>	<u>37.0</u>	<u>42.4</u>	<u>53.2</u>	<u>53.2</u>	<u>53.2</u>
General Fund	2,973,961	4,060,844	4,214,776	4,952,141	4,944,078
Cash Funds	1,345,566	1,498,126	1,458,325	1,842,531	1,842,531
Reappropriated Funds	10,107,702	11,514,729	11,341,954	12,903,567	12,886,857
Federal Funds	339,637	342,911	313,992	366,674	366,674

JBC Staff Staff Figure Setting - FY 2017-18
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	FY 2014-15 Actual	FY 2015-16 Actual	FY 2016-17 Appropriation	FY 2017-18 Request	FY 2017-18 Recommendation
(2) LEGAL SERVICES TO STATE AGENCIES					
The Department provides legal services on a fee-for-service basis to state agencies and enterprises. This section includes appropriations for the attorneys, legal assistants, and support personnel who provide these services. In most cases, the appropriations in this section are reflected as reappropriated funds because a duplicate appropriation for the purchase of legal services appears in the client agency's budget. Cash funds reflect payments the Department receives from state agencies that are not duplicated in appropriations elsewhere in the budget.					
Personal Services	<u>24,312,388</u>	<u>24,498,604</u>	<u>27,468,954</u>	<u>26,849,380</u>	<u>26,849,380</u> *
FTE	243.4	246.6	263.9	264.0	264.0
Cash Funds	0	0	0	0	0
Reappropriated Funds	24,312,388	24,498,604	27,468,954	26,849,380	26,849,380
Operating and Litigation	<u>1,098,715</u>	<u>1,196,996</u>	<u>2,015,301</u>	<u>1,919,267</u>	<u>1,919,267</u> *
Cash Funds	0	0	0	0	0
Reappropriated Funds	1,098,715	1,196,996	2,015,301	1,919,267	1,919,267
Indirect Cost Assessment	<u>3,211,050</u>	<u>2,913,265</u>	<u>3,455,011</u>	<u>3,262,644</u>	<u>3,262,644</u>
Cash Funds	848,945	982,904	1,054,580	1,255,525	1,255,525
Reappropriated Funds	2,362,105	1,930,361	2,400,431	2,007,119	2,007,119
TOTAL - (2) Legal Services to State Agencies	28,622,153	28,608,865	32,939,266	32,031,291	32,031,291
FTE	<u>243.4</u>	<u>246.6</u>	<u>263.9</u>	<u>264.0</u>	<u>264.0</u>
Cash Funds	848,945	982,904	1,054,580	1,255,525	1,255,525
Reappropriated Funds	27,773,208	27,625,961	31,884,686	30,775,766	30,775,766

*Line item contains a decision item.

JBC Staff Staff Figure Setting - FY 2017-18
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	FY 2014-15 Actual	FY 2015-16 Actual	FY 2016-17 Appropriation	FY 2017-18 Request	FY 2017-18 Recommendation
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(3) CRIMINAL JUSTICE AND APPELLATE

This division investigates and prosecutes fraud involving insurance, securities, Medicaid, and workers' compensation. It also handles foreign prosecutions, certifies peace officers, provides support to district attorneys in certain cases, and represents the state in criminal appeals. When the Department is involved in criminal appeals or in trial court criminal prosecution, this division is responsible for keeping crime victims informed about the case. Cash fund sources include moneys paid by insurance companies for the investigation and prosecution of insurance fraud, fees paid by peace officers for P.O.S.T. Board certification, the Marijuana Tax Cash Fund, and a statewide vehicle registration fee to support training for peace officers. Reappropriated funds are transferred from the Department of Regulatory Agencies and the Department of Public Safety. Federal funds are from the U.S. Department of Health and Human Services' Medicaid Fraud Control Program.

Special Prosecutions Unit	<u>3,744,427</u>	<u>4,331,725</u>	<u>4,308,283</u>	<u>4,588,290</u>	<u>4,526,743</u> *
FTE	34.9	35.8	38.7	40.8	40.8
General Fund	1,826,279	2,085,949	2,066,874	2,064,032	2,064,032
Cash Funds	1,276,824	1,568,043	1,528,836	1,765,337	1,712,139
Reappropriated Funds	641,324	677,733	712,573	758,921	750,572
Auto Theft Prevention Grant	<u>260,252</u>	<u>277,860</u>	<u>296,548</u>	<u>282,921</u>	<u>282,921</u>
FTE	2.0	2.0	2.0	2.0	2.0
Reappropriated Funds	260,252	277,860	296,548	282,921	282,921
Appellate Unit	<u>3,692,658</u>	<u>3,498,574</u>	<u>3,854,792</u>	<u>3,858,054</u>	<u>3,858,054</u> *
FTE	37.7	36.2	38.0	38.0	38.0
General Fund	3,201,247	3,194,349	3,280,780	3,568,258	3,568,258
Cash Funds	0	0	0	0	0
Reappropriated Funds	491,411	304,225	574,012	289,796	289,796
Medicaid Fraud Control Unit	<u>1,575,133</u>	<u>1,540,806</u>	<u>1,737,371</u>	<u>1,737,371</u>	<u>1,737,371</u>
FTE	15.8	15.6	17.0	17.0	17.0
General Fund	393,978	388,973	434,338	434,338	434,338
Federal Funds	1,181,155	1,151,833	1,303,033	1,303,033	1,303,033

*Line item contains a decision item.

JBC Staff Staff Figure Setting - FY 2017-18
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	FY 2014-15 Actual	FY 2015-16 Actual	FY 2016-17 Appropriation	FY 2017-18 Request	FY 2017-18 Recommendation
Peace Officers Standards and Training Board Support	<u>4,214,878</u>	<u>5,157,362</u>	<u>5,536,725</u>	<u>6,036,735</u>	<u>6,036,735</u> *
FTE	7.6	9.0	9.0	12.0	12.0
General Fund	0	0	0	0	0
Cash Funds	4,214,878	5,157,362	5,536,725	6,036,735	6,036,735
Indirect Cost Assessment	<u>484,762</u>	<u>457,717</u>	<u>537,858</u>	<u>540,674</u>	<u>540,674</u>
Cash Funds	257,145	261,634	287,476	306,299	306,299
Reappropriated Funds	80,929	56,064	82,136	76,885	76,885
Federal Funds	146,688	140,019	168,246	157,490	157,490
Safe2Tell	<u>371,727</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
FTE	2.7	0.0	0.0	0.0	0.0
General Fund	367,187	0	0	0	0
Cash Funds	4,540	0	0	0	0
Reappropriated Funds	0	0	0	0	0
TOTAL - (3) Criminal Justice and Appellate	14,343,837	15,264,044	16,271,577	17,044,045	16,982,498
FTE	<u>100.7</u>	<u>98.6</u>	<u>104.7</u>	<u>109.8</u>	<u>109.8</u>
General Fund	5,788,691	5,669,271	5,781,992	6,066,628	6,066,628
Cash Funds	5,753,387	6,987,039	7,353,037	8,108,371	8,055,173
Reappropriated Funds	1,473,916	1,315,882	1,665,269	1,408,523	1,400,174
Federal Funds	1,327,843	1,291,852	1,471,279	1,460,523	1,460,523

*Line item contains a decision item.

JBC Staff Staff Figure Setting - FY 2017-18
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	FY 2014-15 Actual	FY 2015-16 Actual	FY 2016-17 Appropriation	FY 2017-18 Request	FY 2017-18 Recommendation
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(4) WATER AND NATURAL RESOURCES

This section provides funding for department staff who protect and defend the interests of the State and its citizens in all areas of natural resources law and environmental law, including the use of surface and ground water, oil and gas development, mining and minerals, wildlife, the clean-up of contaminated sites, the proper storage or disposal of hazardous waste, and protection of the state's air and water. Cash fund sources include the Colorado Water Conservation Board's Litigation Fund and moneys received by the Attorney General as an award of attorney fees or costs. Reappropriated funds are transferred from the Department of Public Health and Environment from the Hazardous Substance Response Fund.

Federal and Interstate Water Unit	<u>576,723</u>	<u>558,744</u>	<u>596,349</u>	<u>596,349</u>	<u>596,349</u>
FTE	5.5	5.5	5.5	5.5	5.5
General Fund	576,723	558,744	596,349	596,349	596,349
Defense of the Colorado River Basin Compact	<u>334,627</u>	<u>307,288</u>	<u>428,639</u>	<u>428,639</u>	<u>428,639</u>
FTE	3.0	3.0	3.5	3.5	3.5
General Fund	0	0	0	0	0
Cash Funds	334,627	307,288	428,639	428,639	428,639
Defense of the Republican River Compact	<u>54,826</u>	<u>91,764</u>	<u>110,000</u>	<u>110,000</u>	<u>110,000</u>
Cash Funds	54,826	91,764	110,000	110,000	110,000
Consultant Expenses	<u>118,578</u>	<u>243,163</u>	<u>400,000</u>	<u>400,000</u>	<u>400,000</u>
Cash Funds	118,578	243,163	400,000	400,000	400,000
Comprehensive Environmental Response, Compensation and Liability Act	<u>315,861</u>	<u>364,596</u>	<u>495,577</u>	<u>495,577</u>	<u>495,577</u>
FTE	2.9	3.3	3.5	3.5	3.5
Reappropriated Funds	315,861	364,596	495,577	495,577	495,577

JBC Staff Staff Figure Setting - FY 2017-18
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	FY 2014-15 Actual	FY 2015-16 Actual	FY 2016-17 Appropriation	FY 2017-18 Request	FY 2017-18 Recommendation
Comprehensive Environmental Response, Compensation and Liability Act Contracts Reappropriated Funds	<u>0</u> 0	<u>0</u> 0	<u>100,000</u> 100,000	<u>100,000</u> 100,000	<u>100,000</u> 100,000
Indirect Cost Assessment Reappropriated Funds	<u>45,686</u> 45,686	<u>42,199</u> 42,199	<u>46,367</u> 46,367	<u>43,403</u> 43,403	<u>43,403</u> 43,403
TOTAL - (4) Water and Natural Resources	1,446,301	1,607,754	2,176,932	2,173,968	2,173,968
<i>FTE</i>	<u>11.4</u>	<u>11.8</u>	<u>12.5</u>	<u>12.5</u>	<u>12.5</u>
General Fund	576,723	558,744	596,349	596,349	596,349
Cash Funds	508,031	642,215	938,639	938,639	938,639
Reappropriated Funds	361,547	406,795	641,944	638,980	638,980

JBC Staff Figure Setting - FY 2017-18
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	FY 2014-15 Actual	FY 2015-16 Actual	FY 2016-17 Appropriation	FY 2017-18 Request	FY 2017-18 Recommendation
(5) CONSUMER PROTECTION					
This section provides funding for department staff who protect Colorado consumers against fraud and enforce state and federal consumer protection, antitrust, charitable solicitation, consumer lending, and fair debt collection laws. This section also provides funding to support one attorney who is responsible for enforcing the tobacco master settlement agreements and protecting the State's interests under the settlement payment calculation provision. Cash fund sources include fees paid by regulated entities, custodial moneys awarded to the Attorney General in consumer protection lawsuits, and tobacco settlement moneys. Reappropriated funds are transferred from the Department of Regulatory Agencies for consumer protection activities related to mortgage brokers.					
Consumer Protection and Antitrust	<u>2,493,524</u>	<u>2,658,975</u>	<u>2,901,046</u>	<u>3,525,141</u>	<u>3,132,137</u> *
FTE	25.8	27.7	29.2	36.0	33.2
General Fund	1,106,625	1,289,565	1,368,420	1,662,610	1,434,970
Cash Funds	1,141,733	1,106,357	1,235,354	1,729,086	1,563,722
Reappropriated Funds	245,166	263,053	297,272	133,445	133,445
Consumer Credit Unit	<u>1,605,601</u>	<u>1,418,728</u>	<u>1,714,816</u>	<u>1,714,816</u>	<u>1,714,816</u>
FTE	19.4	17.9	20.0	20.0	20.0
Cash Funds	1,605,601	1,418,728	1,714,816	1,714,816	1,714,816
Indirect Cost Assessment	<u>451,364</u>	<u>448,515</u>	<u>463,671</u>	<u>446,428</u>	<u>446,428</u>
Cash Funds	412,205	412,344	423,928	409,226	409,226
Reappropriated Funds	39,159	36,171	39,743	37,202	37,202
TOTAL - (5) Consumer Protection	4,550,489	4,526,218	5,079,533	5,686,385	5,293,381
FTE	<u>45.2</u>	<u>45.6</u>	<u>49.2</u>	<u>56.0</u>	<u>53.2</u>
General Fund	1,106,625	1,289,565	1,368,420	1,662,610	1,434,970
Cash Funds	3,159,539	2,937,429	3,374,098	3,853,128	3,687,764
Reappropriated Funds	284,325	299,224	337,015	170,647	170,647

*Line item contains a decision item.

JBC Staff Staff Figure Setting - FY 2017-18
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	FY 2014-15 Actual	FY 2015-16 Actual	FY 2016-17 Appropriation	FY 2017-18 Request	FY 2017-18 Recommendation
(6) SPECIAL PURPOSE					
The section includes funding to cover 80 percent of the statutory minimum salary for Colorado's twenty-two district attorneys, for unanticipated legal and technology expenses, and for litigation expenses associated with significant lawsuits. Cash fund sources include tobacco settlement moneys, moneys received from State Board of Land Commissioners from its Investment and Development Fund, and moneys received by the Attorney General as an award of attorney fees or costs.					
District Attorneys' Salaries General Fund	<u>2,697,640</u> 2,697,640	<u>2,718,249</u> 2,718,249	<u>2,738,841</u> 2,738,841	<u>2,749,138</u> 2,749,138	<u>2,749,138</u> 2,749,138
Deputy District Attorney Training General Fund	<u>350,000</u> 350,000	<u>350,000</u> 350,000	<u>405,000</u> 405,000	<u>405,000</u> 405,000	<u>405,000</u> 405,000
Litigation Management Cash Funds	<u>119,583</u> 119,583	<u>7,336</u> 7,336	<u>200,000</u> 200,000	<u>200,000</u> 200,000	<u>200,000</u> 200,000
Tobacco Litigation Cash Funds	<u>612,808</u> 612,808	<u>702,534</u> 702,534	<u>1,250,000</u> 1,250,000	<u>1,250,000</u> 1,250,000	<u>1,250,000</u> 1,250,000
CORA OML Attorney FTE General Fund	<u>0</u> 0.0 0	<u>31,198</u> 0.4 31,198	<u>90,297</u> 1.0 90,297	<u>90,297</u> 1.0 90,297	<u>90,297</u> 1.0 90,297
Lowry Range Litigation Expenses Cash Funds	<u>285,760</u> 285,760	<u>0</u> 0	<u>0</u> 0	<u>0</u> 0	<u>0</u> 0
TOTAL - (6) Special Purpose	4,065,791	3,809,317	4,684,138	4,694,435	4,694,435
<i>FTE</i>	<u>0.0</u>	<u>0.4</u>	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>
General Fund	3,047,640	3,099,447	3,234,138	3,244,435	3,244,435
Cash Funds	1,018,151	709,870	1,450,000	1,450,000	1,450,000

JBC Staff Staff Figure Setting - FY 2017-18
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	FY 2014-15 Actual	FY 2015-16 Actual	FY 2016-17 Appropriation	FY 2017-18 Request	FY 2017-18 Recommendation
TOTAL - Department of Law	67,795,437	71,232,808	78,480,493	81,695,037	81,215,713
<i>FTE</i>	<u>437.7</u>	<u>445.4</u>	<u>484.5</u>	<u>496.5</u>	<u>493.7</u>
General Fund	13,493,640	14,677,871	15,195,675	16,522,163	16,286,460
Cash Funds	12,633,619	13,757,583	15,628,679	17,448,194	17,229,632
Reappropriated Funds	40,000,698	41,162,591	45,870,868	45,897,483	45,872,424
Federal Funds	1,667,480	1,634,763	1,785,271	1,827,197	1,827,197