

DEPARTMENT OF LAW  
 FY 2019-20 JOINT BUDGET COMMITTEE HEARING AGENDA

**Tuesday, January 15, 2019**  
**1:30 pm – 3:30 pm**

**GENERAL QUESTIONS**

Please provide an overview and list of district attorney salaries by judicial district, as set by county commissioners.

**Response:** The statutory minimum salary for elected District Attorneys is \$130,000 per year. This amount was established in 2012 and was intended to mirror the salary of a district court judge as a minimum benchmark. The minimum statutory salary has not been increased since that time. County Commissioners may elect to pay their respective DA more than the mandatory minimum.

1 <sup>st</sup> JD - \$231,800	2 <sup>nd</sup> JD - \$219,606
3 <sup>rd</sup> JD - \$130,000	4 <sup>th</sup> JD - \$215,000
5 <sup>th</sup> JD - \$130,000	6 <sup>th</sup> JD - \$130,000
7 <sup>th</sup> JD - \$160,000	8 <sup>th</sup> JD - \$216,000
9 <sup>th</sup> JD - \$130,000	10 <sup>th</sup> JD - \$130,000
11 <sup>th</sup> JD - \$130,000	12 <sup>th</sup> JD - \$130,000
13 <sup>th</sup> JD - \$130,000	14 <sup>th</sup> JD - \$130,000
15 <sup>th</sup> JD - \$130,000	16 <sup>th</sup> JD - \$130,000
17 <sup>th</sup> JD - \$225,000	18 <sup>th</sup> JD - \$205,000
19 <sup>th</sup> JD - \$194,000	20 <sup>th</sup> JD - \$196,000
21 <sup>st</sup> JD - \$130,000	22 <sup>nd</sup> JD - \$130,000

Please discuss the salary survey request for attorneys, including an overview of the market survey and past requests/increases.

**Response:** The DOL included in the November 1, budget request dollars to accommodate various proposed salary increases for the attorney classifications. Specifically, through the Total Compensation calculations the DOL requested:

	Recommended Total Pay Adjustment	Suggested Salary Survey	Suggested Merit
Deputies	8.60%	6.5%	2.00%
Firsts	7.90%	5.8%	2.00%
Seniors	3.20%	1.2%	2.00%
AAGS	8.00%	5.9%	2.00%

This request was intended to bring appropriate alignment of the DOL salaries to the average pay in the primary market. The DOL primary market is generally those cities and counties along the I-25 corridor (Boulder to Colorado Springs).

The DOL has reevaluated this request. The DOL has recently faced challenges in retaining top legal talent to represent the State of Colorado. The DOL has witnessed a recent turnover rate in excess of 16%, specifically in the Assistant Attorney General classification. In a phone conversation with the City and County of Denver, that attorney office has had recent turnover of 15% or less.

One of the DOL's primary issues with retaining the attorney positions is salary. Compensation offered by the DOL lags substantially in comparison to comparable public law offices, in particular, the City and County of Denver. This disparity is especially acute given the rising cost of living throughout the Denver Metropolitan Region. The DOL is requesting wage equalization so that all the attorney classifications are best positioned to compete and retain talent. As such, the DOL is requesting a hybrid approach. The DOL is requesting salary changes for the Deputies, Firsts, and Senior attorneys, to allow the DOL to be specifically competitive with the City and County of Denver. Additionally, the DOL is requesting the salary modification for the Assistant Attorney General classification in line with the need as compared to the DOL primary market. The modified salary increase request for the DOL attorney positions is:

	Recommended Total Pay Adjustment	Suggested Salary Survey	Suggested Merit
Deputies	14.70%	12.5%	2.00%
Firsts	16.30%	14.0%	2.00%
Seniors	15.40%	13.1%	2.00%
AAGS	8.00%	5.9%	2.00%

**Recent attorney salary increases include:**

Title	FY 14 Salary Increases	FY 15 Salary Increases	FY 16 Salary Increases	FY 18 Salary Increases	FY 19 Salary Increases
Assistant AG	11.00%	1.50%	3.30%	3.00%	3.20%
Senior Assistant AG	18.00%	1.27%	3.30%	3.00%	3.20%
First Assistant AG	21.00%	1.00%	3.30%	3.00%	3.20%
Deputy	15.00%	1.00%	3.30%	3.00%	3.20%

\*There were no salary increases for FY 17.

In addition to these salary changes, the DOL was approved:

- FY 14, 1.6% average merit pay increase for attorneys;
- FY 15, 1% average merit pay increase for attorneys;
- FY 16, 1% average merit pay increase for attorneys;
- FY 18, 0.75% average merit pay increase for attorneys.

The only year in which the legislature appropriation differed significantly from the DOL request was in FY 14. For that fiscal year, the DOL's initial request was a conservative 1.5% salary survey increase. The rationale for this request was to provide raises to attorneys through calculations similar to the salary adjustments being made for classified employees.

The JBC approved the DOL request and increased the Salary Survey calculation from 1.5% to 2.0% per JBC common policy. Subsequently, the Public Defender made a salary survey request (based on a joint outside consultant's survey) that would increase the salary of each attorney by the percentage difference between the current average salary being paid to their attorneys compared to the average salary for each attorney classification in the primary market. The JBC approved this request.

Because of this, the DOL requested a reconsideration of its Attorney Salary Survey calculation to be in line and consistent with the Office of State Public Defender's Attorney Salary Survey request.

For the DOL, this would mean that each attorney, based on his or her classification would receive a percentage increase based on the chart below. This was approved by the JBC.

<b>Job Class:</b>	Salary Comparisons to avg actual salaries in primary market
Deputies	(15.80%)
First Assistant Attorney General	(23.80%)
Seniors Assistant Attorney General	(18.80%)
Assistant Attorney General	(7.00%)

For the actual salary increases by classification, the DOL modified the increase slightly as demonstrated in the chart on the previous page. The intent of this modification was to do right by the entire organization within the resources appropriated, while specifically targeting the lower paid Assistant Attorney General (AAG) classification.

## APPELLATE BACKLOG

Please discuss the R2 Appellate Backlog request, the impact of past FTE increases, and the future outlook for the workload of the Appellate Unit. Why have previous increases been ineffective in addressing the backlog?

**Response:** The Criminal Appeals backlog has been an ongoing concern for the DOL. Recently, the DOL has made various requests to address this backlog.

The DOL requested an additional 6.0 FTE during the FY 2013-14 budget process. This request was approved by the legislature. The end of FY 2011-12 backlog was 608, which was one of the leading data points for this request. The forecast, at that time assumed the six additional FTE for fiscal years 2014, 15 and 16. Based on data at that time, the DOL assumed one FTE would be reduced for FY 17, which occurred and then three additional FTE would be reduced for the FY 18 budget cycle.

At the end of FY 2015-16, the Criminal Appeals Backlog was 428. As such, the DOL recognized the original estimate from the FY 2013-14 decision was inaccurate and the DOL needed to retain current staffing levels. The DOL made a formal budget request to retain the current staffing of the Criminal Appeals section during the FY 2017-18 budget request cycle, which was approved by the legislature.

The end of FY 2017-18 backlog was 494.

In prior years, in an attempt to bring down the backlog of DOL cases, some cases were able to be resolved without briefing by the AG's Office. Two mechanisms made that possible.

The first mechanism was the expedited docket, in which the Court of Appeals selected cases that could be resolved without full briefing. The Court ended that docket in the fall of 2014. The final cases on that docket were resolved by the end of FY 2014-2015.

The second mechanism was the experimental docket, which began in March 2012 by agreement with the Court of Appeals as a temporary measure to deal with cases that were not selected for the expedited docket, but which appeared to be cases that could be resolved without comprehensive briefing. This was a short-term fix to which the Court agreed pending Criminal Appeals staff increases at DOL. The judges prefer full briefing on all appellate cases, so once staff increases were realized, the Court discontinued the experimental docket. All of the experimental docket cases were completed by the end of FY 2014, and all cases now receive full briefing.

Additionally, several factors have increased the Appellate Unit's workload, affecting its ability to reduce the backlog. One factor is that, in recent years, the Judicial Department has seen a steady increase in the number of criminal appeals filed in the Court of Appeals. In FY 2015-16 there were 915 newly filed criminal appeals, in FY 2016-17 there were 990, and in FY 2017-18 there were 1,021. During those same years, the backlog in the DOL's Criminal Appeals Section also increased. At the end of FY 2015-16 the backlog was 429. At the end of FY 2016-17 the backlog was 466. At the end of FY 2017-18, the backlog was 494. The increasing number of appeals filed by defendants has increased the Section's workload.

In addition, briefs filed by the defense, in particular by the public defender's office, have become more involved and the issues have become more complex. The Court of Appeals has stressed the importance of the AG's Office responding to all arguments raised by the defense in the appropriate level of detail. In addition, in each year since FY 2015-16, the AG's Office was asked to respond to an increased number of certiorari petitions in the U.S. Supreme Court. (See Chart 1 below) Previously, the AG's Office was permitted to waive the filing of a response. These briefs opposing certiorari petitions are complex and require nationwide legal research, since the U.S. Supreme Court is concerned with the ways other states and the federal circuit courts are addressing certain issues. If certiorari is granted, briefing the U.S. Supreme Court on the merits of the case is very time consuming. The U.S. Supreme Court granted certiorari in two cases in FY 2015-16, and the merits briefs and oral argument preparations in those cases consumed hundreds of hours of attorney time. That "merits stage" attorney time can be entirely avoided by persuading the U.S. Supreme Court that a petition should be denied at the certiorari stage.

The DOL is requesting for FY 2019-20 four Fellow Attorneys to help staff the Criminal Appeals section and help address the backlog concern. A Fellow Attorney is a new attorney with two or less years of experience that is interested in beginning their career in public service. The DOL anticipates an annual salary of \$50,000 a year, with the expectation that each Fellow may work up to two years in this capacity and gain the experience so that they can better compete for other positions within the organization or outside the office. Additionally, this arrangement will develop a cadre of attorneys with significant and valuable public service experience.

The department is expecting that this solution will ensure that the DOL can keep pace with the increasing number of criminal appeals, as well as the more comprehensive briefing requirements in both state and federal appellate courts, and annually reduce the backlog over the next 5 years.

Please describe the status of people impacted by delays in the appeals process. Are people incarcerated while they await the outcome of cases?

**Response:** The DOL does not maintain statistics on whether criminal appellants are incarcerated, and the information is not readily available. However, in response to this request for information, the DOL researched the incarceration status of the defendants who had filed criminal appeals in the Colorado Court of Appeals during the month of November 2018. There were 68 defendants who filed such appeals; of those, 53 (or about 84 percent) were incarcerated.

Obviously, defendants with meritorious appellate arguments have a strong interest in having their appeals resolved as quickly as possible. Delays in the appellate process also affect others. Crime victims cannot truly have a sense of closure until appeal of the defendant's conviction is resolved, and decreasing the time taken to file appellate briefs helps advance the date when victims can achieve that closure. In addition, for those convictions that are reversed on appeal, it is best to have a new trial sooner rather than later. Witnesses' memories may fade over time, and as the years pass by, elderly witnesses may die or become unavailable for health reasons. When witnesses move out of state, the need to transport them back to Colorado can be inconvenient for them, and expensive. There are, therefore, many ways in which appellate delays impact people adversely.

What does the Department of Law consider to be a good measure for determining the appropriate backlog? Is there a good nationwide comparison measure to evaluate workload, the backlog level, and best practices for reducing the backlog?

**Response:** Under the Colorado Appellate Rules, an answer brief is due 35 days after the opening brief is filed. Because of the amount of work involved, on average each of DOL's Criminal Appeals Section attorneys can file only about 3 briefs per month. Ideally, each attorney would have no more than 6 briefs assigned to them on an ongoing basis, so that each brief could be filed within one 30-day extension of time beyond the initial deadline. With 30 line attorneys in the Section, that would require an appellate backlog of no more than 180 briefs.

Adding another 3 briefs to each attorney's workload, for a total of 9 briefs per attorney, would result in a backlog of 270 briefs, and would require that each brief get a 60-day extension beyond the initial deadline. The DOL believes that the appropriate backlog should be determined by considering how much delay is created by allocating the total backlog among the Section's 30 line attorneys.

The National Center for State Courts studied delays in appellate systems across the country, and in 2014 published "Model Time Standards for State Appellate Courts." Under those model

standards, in an intermediate appellate court such as the Colorado Court of Appeals, 75% of the criminal appeals should be resolved by that court no more than 450 days after the defendant files the notice of appeal. A separate study focused on Colorado determined that, for criminal appeals in the Colorado Court of Appeals, at the 75th percentile the time on appeal was 1,176 days for appeals disposed in FY 2016-17.

In order for the Colorado Court of Appeals to achieve the model standard of having 75% of its criminal appeals resolved within 450 days of the filing of the notice of appeal, and recognizing that significant portions of that 450 days would be consumed by the judiciary's completion of the appellate record, by defense counsel's own briefing time, and by the time it takes the Court of Appeals to decide the case after briefing is completed, it is important that DOL reduce its backlog so that DOL's own component of the delay is as small as possible.

## MAJOR LITIGATION

Please provide an overview and status update of major litigation pending against the state that could have a General Fund impact, including the following:

- CMS Report on Pueblo Regional Center (HCPF v. CMS)
- Hospital Provider Fee (TABOR Foundation v. HCPF. et al.)
- Heartland Biogas (Heartland Biogas, LLC v. The Department of Agriculture, et al.)
- Agilent Technologies (Agilent Technologies v. Department of Revenue)
- Oracle, Corp. & Subsidiaries (Oracle Corp. & Subsidiaries v. Department of Revenue)
- Election Funding (National Federation of Independent Businesses v. Williams)

### **Response:**

- CMS Report on Pueblo Regional Center (HCPF v. CMS)

In April 2015, the Department of Health Care Policy and Financing (HCPF) reported a number of serious incidents at the Pueblo Regional Center (PRC) to the Center for Medicare and Medicaid Services (CMS). In response, CMS conducted a detailed review of PRC documentation of the incidents and an on-site visit of the Pueblo Regional Center in 2016. In August 2016, the CMS sent the Department of Health Care Policy and Financing (HCPF) a report of its findings and requested development of a corrective action plan. The CMS asserts that HCPF violated federal administrative requirements regarding administration of the Medicaid Home and Community Based Services waiver program for the developmentally disabled. At this point, the CMS claims involve care provided pursuant to the waiver to approximately 60 individuals between November 2014 and November 2015.

The CMS seeks disallowances of payments to HCPF for services provided at the Pueblo Regional Center between at least November 1, 2014, and November 2015, and possibly beyond. The CMS also sought the development and implementation of a corrective action plan within twelve months, which is underway and a moratorium on admissions to the Pueblo Regional Center, which occurred

until the Center met certain benchmarks and the parties jointly agreed to lift the moratorium on August 15, 2018.

*Status.* On September 26, 2016, HCPF submitted its proposed Corrective Action Plan to CMS, which initiated an ongoing process of negotiation between HCPF and CMS. HCPF and CMS continue to exchange information in an effort to resolve concerns raised by CMS. Following the CMS response to the initial HCPF submission, HCPF filed a federal administrative appeal with the Department of Health and Human Services in October 2016 to dispute the scope of the corrective action plan and any proposed remedial sanctions. However, that appeal has been stayed to allow the parties to attempt to negotiate a resolution.

*Financial Impact:* The CMS has not provided an amount for the disallowances. However, information from HCPF and CMS suggests the disallowances may exceed \$5 million.

- Hospital Provider Fee (TABOR Foundation v. HCPF. et al.)

In June 2015, the TABOR Foundation sued the Department of Health Care Policy and Financing claiming that the hospital provider fee is a tax rather than a fee and thus requires a vote of the Colorado electorate before it may be levied or increased. The original complaint challenged the fee imposed in FY 2010-11, FY 2011-12, and FY 2012-13 and sought a refund of all revenue collected, kept, or spent unconstitutionally, plus interest.

On June 30, 2017, the plaintiff filed an amended complaint adding additional claims to: (1) include the additional fiscal years for the hospital provider fee since the suit was filed; (2) challenge the Colorado Healthcare Affordability and Sustainability Enterprise (CHASE, established in S.B. 17-267) as not meeting the definition of an enterprise; (3) challenge the CHASE fee as being a tax; (4) challenge the failure to fully adjust the TABOR spending limit in S.B. 17-267; and (5) challenge S.B. 17-267 as violating the constitutional single subject requirements.

*Status.* The plaintiffs filed the complaint in Denver District Court on June 26, 2015. The Department filed a motion to dismiss on September 2, 2015, the plaintiffs responded, and the Department filed a reply on October 16, 2015. The motion was fully briefed and pending before the district court for 20 months when plaintiffs filed an amended complaint. Per the court's order, on September 8, 2017, the Department filed a supplement to the motion to dismiss adding grounds to dismiss the new claims made in the amended complaint. On September 25, 2017, the Colorado Hospital Association filed a motion to intervene in the case, and which was granted on December 11, 2017. The parties filed cross-motions for summary judgment, which were fully briefed on August 20, 2018, and later argued before the District Court. After finding that the issues can be resolved on summary judgment, the Court vacated the five-day bench trial that was set to commence on October 29, 2018. A ruling has yet to be made.



*Financial Impact.* According to the Department, the estimated range of potential losses exceeds \$5.59 billion (through FY 2018-19), plus 10 percent annual simple interest and additional fees collected on an ongoing basis.

- Heartland Biogas (Heartland Biogas, LLC v. The Department of Agriculture, et al.)

Heartland Biogas also filed a state suit against the Colorado Department of Agriculture and the Colorado Department of Public Health and Environment. The claims, arising from the voluntary closure of the company's biogas facility, allege that the State agencies are liable under a theory of promissory estoppel and that the State's actions constituted a regulatory taking.

*Status.* The Department moved to dismiss the case. The court granted the motion to dismiss as to the promissory estoppel claims but denied the motion as to the regulatory takings claim. Heartland has now filed an amended complaint reviving the promissory estoppel claims, which the State objected to. A status conference was scheduled for December 3, 2018, and the court allowed the plaintiff to amend the complaint to add Weld County to the lawsuit. Weld County will be allowed to file a response, discovery will continue, and the court will set a new trial date. A trial is not currently set.

*Financial Impact:* The plaintiff is seeking more than \$100 million in compensatory damages. The Department indicates that the likelihood of an unfavorable outcome in this case is uncertain.

- Agilent Technologies (Agilent Technologies v. Department of Revenue)

In June 2014, Agilent Technologies, Inc. appealed the Department of Revenue's Notice of Final Determination to the Denver District Court, challenging the Department's determination of income tax, penalties, and interest for the period from June 3, 2000 through October 31, 2007. At issue in the case is the State income tax treatment of dividends paid to a holding company by foreign subsidiaries and whether the income of the holding company must be combined and included in the parent company's return and apportioned.

*Status.* The Department of Revenue prevailed after an administrative hearing, and Agilent appealed the Notice of Final Determination to the Denver District Court in June 2015. The parties to the case filed cross motions for determination of a question of law as well as cross motions for summary judgment. On January 20, 2016, the district court denied the Department of Revenue's motions for summary judgment and granted those filed by Agilent. The District Court entered its judgment and the Department appealed the case to the Court of Appeals on May 17, 2016. The parties completed briefing and the Court of Appeals heard oral arguments on August 15, 2017.

The Court of Appeals ruled in the taxpayer's favor on November 2, 2017. The Colorado Supreme Court issued a Writ of Certiorari on several issues and the parties are briefing the matters.

The Department reports that the issues in this case are novel issues in Colorado and that authorities across the country are split on many of the controlling issues.

*Financial Impact.* The amount at issue is \$13,720,507. The taxpayer has paid this tax pending the outcome of the proceedings. In the event of a loss, the State would pay interest on this amount in the form of a refund of the amount at issue plus statutory interest.

- Oracle, Corp. & Subsidiaries (Oracle Corp. & Subsidiaries v. Department of Revenue)

In April 2015, the Oracle Corporation and subsidiaries appealed the Department of Revenue's Notice of Final Determination to the Denver District Court, challenging the Department's determination of income tax, penalties, and interest for the period from June 1, 1999 through May 31, 2005. At issue in the case is the State income tax treatment of proceeds from the sale of stock received by Oracle's subsidiaries and whether the income of these subsidiaries must be combined and included in the parent company's return and apportioned.

*Status.* The Department of Revenue prevailed after an administrative hearing and Oracle appealed the Notice of Final Determination to the Denver District Court. The parties filed cross motions for summary judgment and argued those motions to the Court. On February 26, 2016, the District Court denied the Department's motion and granted Oracle's but determined that one issue could not be resolved on motions and stated that the remaining issue would be scheduled for trial. The parties settled the one issue that could not be resolved on motions. The District Court entered its judgment and the Department appealed the case to the Court of Appeals. The Court of Appeals ruled in the taxpayer's favor on November 30, 2017. The Colorado Supreme Court issued a Writ of Certiorari on several issues and the parties are briefing the matters.

Similar to the Agilent Technologies case discussed above, the Department reports that the issues in this case are novel issues in Colorado and that authorities across the country are split on many of the controlling issues.

*Financial Impact.* The amount at issue is \$22,262,299, including \$20,448,602 assessed by the Department of Revenue's Final Determination and \$1,813,697 that Oracle alleges as overpayment (although the Department of Revenue disputes a portion of the overpayment). In the event of a loss, the State would pay interest on the total amount in the form of a refund of the amounts plus statutory interest.

- Election Funding (National Federation of Independent Businesses v. Williams)

In December 2014, the National Federation of Independent Business (NFIB) sued the Secretary of State alleging that the use of business filing fees to support elections violates the Taxpayers Bill of Rights (TABOR).

*Status.* The parties filed cross-motions for summary judgement in Denver District Court in June 2015 and argued those motions in September 2015. On November 3, 2015, the Denver District Court issued an order granting summary judgement for the State. The Court did not decide whether the business and licensing fees are taxes but found that the statutory provisions authorizing the funding structure for the Secretary of State's office predate TABOR's enactment and are therefore not subject to challenge under TABOR. The Plaintiff filed a timely appeal to the Colorado Court of Appeals, and the matter was fully briefed. In an unpublished decision, the Court of Appeals reversed the trial court's grant of summary judgment in favor of the Secretary and remanded the case for further factual development on the question of whether and to what extent the Secretary's fees have increased post-TABOR's enactment. The parties filed a joint petition for rehearing that was summarily denied and then each party cross-petitioned for a writ of certiorari. Unless NFIB requests an extension of time to file its Reply Brief, the appeal will stand fully briefed on January 3, 2019, and oral arguments will likely be set sometime thereafter.

*Financial Impact.* The plaintiffs seek a refund of allegedly unconstitutionally collected registration fees and the imposition of penalties, interest, fees, and costs. The complaint does not seek a precise monetary award but the Department estimates potential exposure of approximately \$20 million. The Department notes a possibility that a decision with precedential value may implicate similar funding mechanisms in other state departments, which could implicate a significantly larger amount.

Please discuss the status and potential fiscal implications of the pending lawsuit brought by Disability Law Colorado concerning competency services [*Center for Legal Advocacy d/b/a Disability Law Colorado v. Reggie Bicha, in his official capacity as Executive Director of the Colorado Department of Human Services, and Jill Marshall, in her official capacity as Interim Superintendent of the Colorado Mental Health Institute at Pueblo*, Case No. 11-cv-02285-NYW (U.S. District Court for the District of Colorado)].

**Response:** A hearing is set on the Disability Law Colorado (DLC) lawsuit for March 18th through 22nd, and the team is actively engaged in extensive document review and production. At this time, it appears highly likely that DLC will seek and the Court will consider entering injunctive relief against DHS for alleged violations of the settlement agreement, but it is uncertain whether the Court will establish a fine structure for any future violations of the injunction. DLC has previously requested that the Court impose a fine structure of \$1000.00 per day, per pretrial detainee waiting over 28 days to be offered admission for inpatient services. Looking to the Washington case (*Trueblood v. Washington State Department of Social and Health Services*) as a comparison point,

the court established fines that mirror those sought by DLC and which has resulted in \$79 million in fines against the state. Additionally, if DLC succeeds in obtaining injunctive relief, they have stated they will seek attorneys' fees and costs. Between the last two actions DLC brought in this case, Risk Management paid ~\$200,000.00 in attorneys' fees/costs.

Are there significant cases and/or notices of claims that were not included in the Major Litigation briefing issue that the Joint Budget Committee should be aware of? Please include cases under the jurisdiction of the Risk Management Office and State Claims Board that could have a significant financial impact. Please explain what criteria you used for inclusion in the list.

**Response:** Although notices of claims in the nature of tort must be filed with the Attorney General pursuant to the Colorado Governmental Immunity Act (CGIA),<sup>1</sup> the Department of Personnel's State Risk Management Office and the State Claims Board have the responsibility to investigate, adjust, and settle such claims before they become lawsuits.<sup>2</sup> All tort and federal claims alleging damages against state agencies and employees, if settled, are to be paid out of the Risk Management Fund subject to the limits of the CGIA.

In fiscal year 2016/2017, the Attorney General received 1,243 Notices of Claims, 1,237 in fiscal year 2017/2018, and 731 to date in fiscal year 2018/2019. Due to the sheer number of claims, and the fact that many of these claims never result in litigation, we are unable to provide an assessment of the potential fiscal impact at this time. Even though a potential plaintiff may allege damages in excess of \$5 million in some of these claims, in many cases, the CGIA provides immunity or limits the amount recoverable to \$387,000.

**ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED. PLEASE RETAIN THE NUMBERING IN ORDER TO MAINTAIN CONSISTENT LABELING FOR COMMON QUESTIONS ACROSS DEPARTMENTS.**

- 1 Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not implemented or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.

**Response:** The Department of Law is not aware of any compliance issues with legislation or other statutory requirements.

- 2 Does the Department have any HIGH PRIORITY OUTSTANDING recommendations as identified in the "Annual Report: Status of Outstanding Audit Recommendations" that was published by the State Auditor's Office and dated June 30, 2018 (link below)? What is the

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<sup>1</sup> See Section 24-10-109, C.R.S.

<sup>2</sup> See Section 24-30-1501, *et seq.*, C.R.S.

Department doing to resolve the HIGH PRIORITY OUTSTANDING recommendations? [Please indicate where in the Department's budget request actions taken towards resolving HIGH PRIORITY OUTSTANDING recommendations can be found.](#)

<http://leg.colorado.gov/audits/annual-report-status-outstanding-audit-recommendations-june-30-2018>

**Response:** The Department of Law does not have any outstanding audit recommendations.

- 3 If the Department receives federal funds of any type, please respond to the following:
  - a. Are you expecting any changes in federal funding with the passage of the FFY 2018-19 or 2019-20 federal budget? If yes, in which programs, and what is the match requirement for each program?
  - b. Does the Department have a contingency plan if federal funds are eliminated?
  - c. Please provide a detailed description of any federal sanctions or potential sanctions for state activities of which the Department is already aware. In addition, please provide a detailed description of any sanctions that MAY be issued against the Department by the federal government during FFY 2018-19 or 2019-20.

**Response:** The DOL receives one federal grant to support 75% of the Medicaid Fraud Control Unit. The DOL is not aware of any current sanctions or future sanctions that would impact this award.

- 4 Is the Department spending money on public awareness campaigns? If so, please describe these campaigns, the goal of the messaging, the cost of the campaign, and distinguish between paid media and earned media. Further, please describe any metrics regarding effectiveness and whether the Department is working with other state or federal departments to coordinate the campaign?

**Response:** The DOL Consumer Protection is regularly identifying and prosecuting unscrupulous business practices and educating communities on topics such as common scams and identity theft.

To bolster these efforts, the DOL launched the second annual Colorado Consumer Protection Month. This initiative focuses on raising awareness and providing education about consumer fraud issues including common scams, financial abuses, and fraud affecting Coloradans across the state with a fiscal impact of \$211.90. The Colorado Attorney General's Office partnered with law enforcement, regulatory entities, and non-profit programs statewide to help Coloradans learn how to identify, prevent, and report fraudulent activity.

Additionally, the DOL is conducting a statewide campaign to further enhance fraud protection awareness throughout Colorado. The campaign includes the development of creative content along with leveraging various statewide outreach activities that include out-of-home announcements (billboards, bus station placards, etc.) along with robust digital activities (digital banners, video shorts, etc.) with total FY19 allocations of \$562.729.27. While the campaign is

scheduled to conclude with FY19, the first quarterly results from July 31, 2018 – October 31, 2018 successfully reflect a wide range of reach, having received 13,060,821 impressions and 979,177 completed video views from the campaign thus far.

Through the Office of Community Engagement, DOL is a co-funder of the [Stand Up Colorado Campaign](#) that raises awareness about ending relationship violence. Rather than focusing messaging on what victims can do, the campaign is targeted at the perpetrators with the message that “Relationship violence is not OK. It is OK to ask for help. Stand up Colorado is a statewide, collaborative, multi-year project that goes beyond raising awareness to alter behaviors and affect long-term social change. The contractor is the Colorado Coalition against Domestic Violence, now known as Violence Free Colorado.

In addition paid and earned media on television, the campaign has a heavy focus on social media messaging and posting of content on busses and billboards. A series of PSA were co-produced with the mascots of the local Colorado sports teams and that PSA and others were run on the Altitude Sports’ Channel/Program. The campaign also has 19 local community organization partners in thirteen communities across the state that assist in promoting the campaign. There is a hotline for a person who wants help to seek help and some of the organizational partners offer services for individuals seeking.

The FY19 allocation from DOL was \$101,128 for a six-month period of July 1, 2018 through December 31, 2018. Other funders of the campaign include: The Denver Foundation, Verizon, Quick Foundation, TJX Companies, and Denver VALE. No other state departments are contributing funds to this campaign.

- 5 Based on the Department’s most recent available record, what is the FTE vacancy and turnover rate by department and by division? To what does the Department attribute this turnover/vacancy? Do the statewide compensation policies administered by the Department of Personnel help or hinder in addressing vacancy or turnover issues?

**Response:** The Department of Law’s total vacancy rate was 3.4% for FY 18. The vacancy rate is a calculation of total hours paid by position divided by the total annual hours for each position. The FTE count is then subtracted against the total appropriated FTE in each line item. The vacancy rate is also reflective of the time it takes to fill positions. In some instances, the DOL did not staff up to appropriated FTE in a particular line item.

Line Item	FY 18 FTE Vacancy Rate	Total Vacant FTE
Administration	14.7%	(6.8)
Office of Community Engagement	5.7%	(0.4)
Legal Services to State Agencies	-3.2%	7.9
Special Prosecution	10.8%	(4.4)
Appellate Unit	3.9%	(1.5)
Medicaid Fraud Control Unit	8.8%	(1.5)
POST	16.7%	(2.0)
Auto Theft Prevention Grant	15.0%	(0.3)
Federal and Interstate Water Unit	14.5%	(0.8)
CERCLA	37.1%	(1.3)
Consumer Protection and Antitrust	7.8%	(2.6)
Consumer Credit Unit	11.5%	(2.3)
CORA and OML Attorney	30.0%	(0.3)
Department of Law Total	3.4%	(16.3)

Additionally, the DOL's turnover rate averaged 19% for FY18. This is up from 15% for both FY 17 and FY 16. The turnover remains highest in critical positions such as AAG's (line attorneys), Criminal Investigators, and administrative support. While the turnover rate reflects some of the typical reasons such as retirements and opportunities at private law firms (for attorneys and paralegals), the DOL has experienced turnover attributed to higher salaries being offered for both public and private sector jobs opportunities. Further, the DOL is experiencing its most difficulty in recent history with recruiting and hiring new employees in these critical areas. Generally, the number of interested candidates applying for positions is down over past years and often when a recruitment is completed, candidates report that the salary offered would require them to take a cut in pay for similar work.

- 6 Please identify how many rules you have promulgated in the past two years (FYs 2016-17 and 2017-18). With respect to these rules, have you done any cost-benefit analyses pursuant to Section 24-4-103 (2.5), C.R.S., regulatory analyses pursuant to Section 24-4-103 (4.5), C.R.S., or any other similar analysis? Have you conducted a cost-benefit analysis of the Department's rules as a whole? If so, please provide an overview of each analysis.

**Response:** C.R.S. §24-4-103(2.5)(a), specifies the process whereby any person may request that DORA require any agency proposing a rule to conduct a cost-benefit analysis. Additionally, C.R.S. §24-4-103(4.5)(a), allows any person to request that a state agency conduct a regulatory analysis of proposed rule changes. Each of these analyses have specified statutory requirements.

The DOL has neither been requested to conduct a cost benefit or a regulatory analysis by the Department of Regulatory Agencies (DORA) nor by any member of the public.

During CY 18, the Peace Officers Standards and Training Board modified various aspects of nine rules. During CY 17, this board modified 10 rules.

- 7 What are the major cost drivers impacting the Department? Is there a difference between the price inflation the Department is experiencing compared to the general CPI? Please describe any specific cost escalations.

**Response:** The DOL is not a major goods buyer; as such, changes due to inflation and the CPI are not major factors contributing to costs increases for the department.

The primary cost drivers for the DOL are salaries and associated state paid benefits and the costs associated with expert witnesses hired to support specific litigation efforts. The DOL is in constant competition with the private sector and other public sector attorney organizations. The DOL is making a Salary Survey and Merit Pay budget request, to help maintain the salary competitiveness. Based on our most recent Attorney Compensation Survey, the DOL is requesting the below salary changes by attorney classification.

	Recommended Total Pay Adjustment	Suggested Salary Survey	Suggested Merit
Deputies	14.70%	12.5%	2.00%
Firsts	16.30%	14.0%	2.00%
Seniors	15.40%	13.1%	2.00%
AAGS	8.00%	5.9%	2.00%

The DOL pays for all litigation costs on behalf of the client agencies. These costs are one of the factors associated with the Legal Allocations to each state agency. In some instances, the DOL must hire expert witnesses such as medical professionals, scientists or other specialized disciplines to help best support the state’s interests. The hourly rates charged by these disciplines are factored into the monthly spending projections to help ensure the DOL is most effectively meeting its obligations within spending authorities provided by the General Assembly.

- 8 How is the Department’s caseload changing and how does it impact the Department’s budget? Are there specific population changes or service needs (e.g. aging population) that are different from general population growth?

**Response:** Based on the 3-year average allocation for the client agencies, the DOL estimated the FY 2017-18 hours at 376,987. The actual FY 18 hours worked on behalf of the client agencies



was 392,152. The FY 19 calculated hours is 380,243. The DOL opened 4,443 new legal matters in FY 17 and 4,830 new legal matters in FY 18.

Some specific areas of growth include:

The Motor Vehicle Unit anticipates that it will continue see more appeals from administrative license revocations resulting from DUIs as a result of population growth and continued enforcement priorities for DUIs. Our office also assists the DAs with the DUI appeals and they are experiencing the same trend.

The Tax Unit's caseload has evolved from primarily litigation matters (administrative and district court matters) to growing general counsel work involving regulations, taxpayer guidance, and overall legal guidance to the department.

The Marijuana, Liquor and Bankruptcy Unit has also experienced an increased need for general counsel work involving regulations, assistance with the Department of Revenue's legislative agenda, process improvements, and legal guidance. The marijuana cases have become more complex as permitted ownership structures, particularly those allowing out-of-state owners and investors, have expanded. This trend is likely to escalate with anticipated 2019 legislation permitting publicly traded companies to enter the market. Since recreational marijuana was legalized in 2014, the Department of Revenue has been committed to auditing every single marijuana business. Given the relative immaturity of the marijuana industry, we also anticipate an uptick in marijuana tax cases from the Department of Revenue over the coming years.

The Public Utilities Commission Litigation Unit cases will continue to grow in complexity due to consistent attempts by utilities to use a future test year (using forecasted numbers) on which it bases its requests for rate increases (as opposed to using an historical year based on actual numbers) and also its requests for the rates to be approved over a longer period of time. In addition, its rate case filings include the written testimony of a growing number of expert witnesses whose positions must be analyzed. Further, we anticipate a growing number of cases involving the increasing consideration of renewable energy resources and vigorous representation by groups advocating for the use of those resources.

The Medical Boarded board went from 61 to 57 to 46 cases over the FY 16, 17 and 18 time Periods. However, the decrease in cases has not resulted in a decrease in legal support. There are several reasons for this: (1) more complex and novel cases are being litigated (for example, there are a number of marijuana certification cases that are requiring novel analysis by the appellate courts), and (2) the consequences for physicians accepting any discipline (even a "letter of admonition") can be catastrophic to a physician's practice (impact on preferred provider status by insurance providers, malpractice rates, etc.) – so many of these cases prove harder to settle.

The Natural Resources and Environment Section has witnessed an increase in enforcement proceedings, rulemakings, administrative appeals, and judicial review litigation. Stakeholders are engaging more often through these judicial and administrative forums. In addition, the increase in Colorado's population and the continued drought have caused some of our client agencies to engage in additional rulemaking, permitting and enforcement activities. This results in increased attorney workloads.

- 9 Please provide an overview of the Department's current and future strategies for the use of outward facing technology (e.g. websites, apps) and the role of these technologies in the Department's interactions with the public.

**Response:** The DOL website strategy is to provide the public department communications; constituent outreach; consumer fraud reporting; and provide an anonymous way to report school safety concerns. The DOL manages four websites and sponsors one web application to meet these ends. Three of the four current sites are presented on the Drupal 7 platform and hosted in the DOL data center. All four sites were evaluated in FY 2018 for the opportunity to migrate to the SIPA Pacific Platform (Drupal 7). One site was recently migrated to Pacific and hosted by Colorado Interactive; the other three sites were not selected for migration due to Pacific Platform constraints. Future strategy includes identifying additional web application outreach, communication and reporting opportunities and strengthening current community engagement activities by developing an Office of Community Engagement website focused on fostering partnerships across the state to inform the public; engage communities to address social issues; and inspire action to avoid fraud, crime and abuse.