

JOINT BUDGET COMMITTEE



STAFF BUDGET BRIEFING FY 2021-22

DEPARTMENT OF LAW

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

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ADDITIONAL RESOURCES

Brief summaries of all bills that passed during the 2019 and 2020 legislative sessions that had a fiscal impact on this department are available in Appendix A of the annual Appropriations Report: <https://leg.colorado.gov/publications/appropriations-report-fiscal-year-2020-21>

The online version of the briefing document, which includes the Numbers Pages, may be found by searching the budget documents on the General Assembly's website by visiting leg.colorado.gov/content/budget/budget-documents. Once on the budget documents page, select the name of this department's *Department/Topic*, "Briefing" under *Type*, and ensure that *Start date* and *End date* encompass the date a document was presented to the JBC.

DEPARTMENT OF LAW

DEPARTMENT OVERVIEW

The Attorney General is one of five independently elected constitutional officers of the State, whose powers and duties are prescribed by the General Assembly¹. 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, with the exception of the legislative branch², serves as the legal counsel and advisor to all state agencies. The statutory responsibilities of the Department are summarized below.

Legal Counsel and Advice to the State

- Provide state agencies and elected officials with legal services such as legal representation, legal advice and opinions, contract review, and rule writing assistance.

Civil Enforcement

- Protect Colorado consumers against fraud and enforce state and federal consumer protection, antitrust, charitable solicitation, consumer lending, and fair debt collection laws.
- Represent the State's interests in interstate and federal water cases.
- Lead enforcement actions at sites contaminated with hazardous substances under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
- Pursue civil recoveries and damages from Medicaid providers for fraud and over billing.
- Enforce provisions of the tobacco master settlement agreements and protect the State's interests under the settlement payment calculation provision.

Criminal Enforcement

- Investigate and prosecute certain complex and multi-jurisdictional cases, environmental crimes, election fraud, and foreign fugitives.
- Provide investigative and prosecutorial support to district attorneys in complex homicides, cold cases, human trafficking cases, and large-scale drug conspiracies.
- Investigate and prosecute securities, insurance, and workers' compensation fraud.
- Represent the State in criminal appeal cases in state and federal courts.
- Investigate and prosecute Medicaid provider fraud and patient abuse.
- Oversee the Peace Officers Standards and Training (P.O.S.T.) Board, which manages the training and certification of peace officers.
- Assure that the constitutional and statutory rights of victims are preserved in criminal cases being prosecuted or defended by the Department.

¹ See Article IV, Section 1 of the Colorado Constitution and Article 31 of Title 24, C.R.S.

² Under certain circumstances the Legislative Branch does purchase legal services from the Department of Law, including requests for a legal opinion from the Attorney General or for legal representation when the interests of the Executive Branch and the Legislative Branch are consistent.

DEPARTMENT BUDGET: RECENT APPROPRIATIONS

FUNDING SOURCE	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22 ¹
General Fund ²	\$16,593,918	\$18,867,152	\$14,284,468	\$14,562,957
Cash Funds	17,747,080	17,688,477	19,459,500	19,371,180
Reappropriated Funds	47,855,062	53,606,154	55,459,431	58,726,122
Federal Funds	2,002,322	2,324,715	2,370,235	2,393,857
TOTAL FUNDS	\$84,198,382	\$92,486,498	\$91,573,634	\$95,054,116
Full Time Equiv. Staff	483.5	513.5	518.0	531.9

¹Requested appropriation.

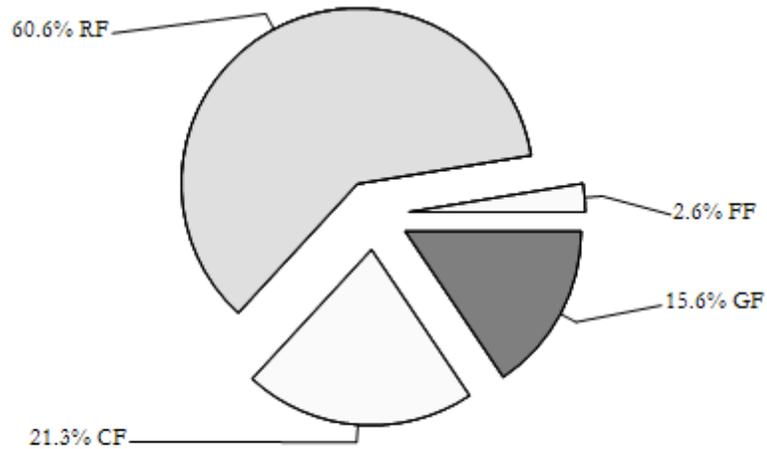
²Includes appropriations from the CARE subfund in the General Fund for FY 2019-20.

DEPARTMENT BUDGET: GRAPHIC OVERVIEW

Department's Share of Statewide General Fund

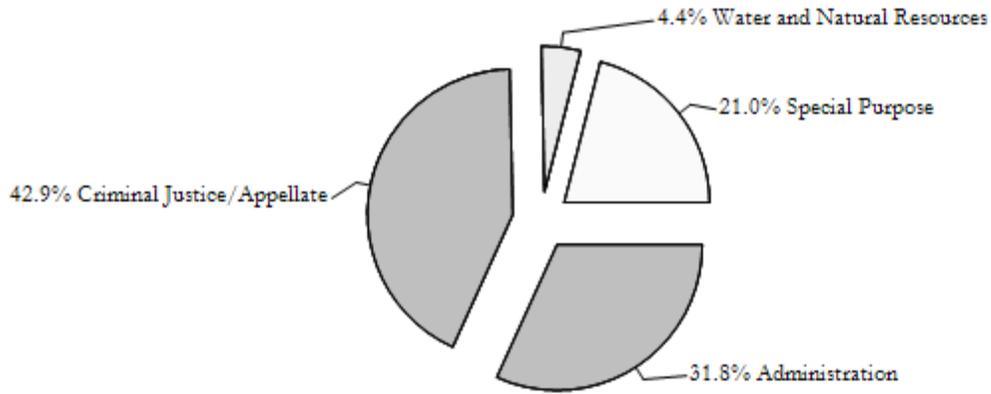


Department Funding Sources

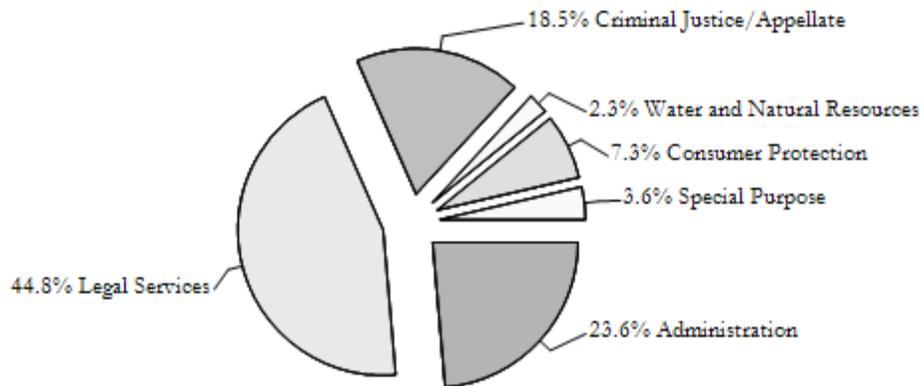


All charts are based on the FY 2020-21 appropriation.

Distribution of General Fund by Division



Distribution of Total Funds by Division



All charts are based on the FY 2020-21 appropriation.

GENERAL FACTORS DRIVING THE BUDGET

LEGAL SERVICES TO STATE AGENCIES

Prior to 1973, most state agencies were represented by "assistant solicitors" who were housed within and paid by the agencies they represented. The system became problematic as there were serious differences in legal policy between agencies, resulting in an inconsistent legal policy for the State in the courts. In 1973, the General Assembly passed legislation that moved all the assistant solicitors into the Department of Law, and prohibited any state agency from employing a person to perform legal services. As a trade-off, the Department of Law became subject to 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 provides spending authority to the Department of Law to spend money received from other state agencies.

Prior to FY 2017-18, the Department billed client agencies each month for the hours of legal services actually provided to the client during the previous month. For FY 2017-18, the General Assembly approved a departmental request to change the appropriation and billing system. Similar to other common policies, each client agency's annual appropriation is now based the client's prior years' usage of legal services. The Department is now billing each agency in twelve equal monthly installments rather than monthly bills based on actual usage.

For FY 2020-21, the General Assembly has authorized the Department of Law to spend up to \$46.2 million providing legal services to state agencies (including associated central appropriations for items such as employee benefits, leased space, and information technology costs). This amount represents 50.4 percent of the Department's total appropriation. Eight agencies, identified below, account for 83.4 percent of legal service hours worked. The table below details the total number of hours of legal services provided and the blended hourly rate charged by the Department.

LEGAL SERVICES TO STATE AGENCIES (BY HOUR)							
	FY 2015-16 ACTUAL	FY 2016-17 ACTUAL	FY 2017-18 ACTUAL	FY 2018-19 ACTUAL	FY 2019-20 ACTUAL	THREE-YEAR AVERAGE	% OF TOTAL
Regulatory Agencies	88,489	94,332	93,589	95,822	94,256	94,556	24.2%
Natural Resources	51,176	49,985	49,184	51,130	48,677	49,664	12.8%
Revenue	39,888	42,495	46,799	48,018	43,631	46,149	11.7%
Personnel	47,784	49,202	43,698	42,458	48,686	44,947	11.5%
Public Health & Environment	31,567	31,254	29,485	29,326	31,430	30,080	7.7%
Human Services	21,510	23,388	24,321	29,427	32,108	28,619	6.6%
Corrections	18,472	18,996	20,206	21,929	27,078	23,071	5.2%
Transportation	15,516	14,014	14,380	15,300	14,762	14,814	3.7%
Other agencies ¹	59,790	61,495	70,490	61,569	92,917	74,992	16.6%
Total	374,193	385,162	392,152	394,979	418,783	401,971	100.0%
Blended Legal Rate	\$95.0	\$95.1	\$106.6	\$103.6	\$106.6	\$105.6	

¹ Actual hours are provided by the Department of Law. Other agencies includes legal services provided to institutions of higher education and to the Public Employees' Retirement Association (PERA).

Fluctuations in legal services expenditures are due to: (1) changes in the Department's hourly rates; and (2) changes in the number of hours of legal services provided to state agencies by attorneys and

legal assistants. The hourly rates fluctuate based on the costs of employee salaries and benefits as well as operating expenses.

Following approval of the new billing methodology, the Department was requested to conduct a survey of client agencies and report back to the Joint Budget Committee on the implementation of the changes. The Department reports that, for the most part, the change in methodology has had a positive reception. Seventy-five percent of survey respondents agreed that the change in methodology is effective, reasonably accurate, and provides predictability. One important part of administering a common policy is clients being able to understand their billing statements. Of those that participated, 63 percent agreed that they use the monthly time billing statements provided by the Department to assess the Department’s performance. JBC staff is considering recommending eliminating the survey request for information, which current JBC practice requires every other year.

CRIMINAL JUSTICE AND APPELLATE

The largest allocation of General Fund in the Department is for the Criminal Justice and Appellate section, which accounts for 42.9 percent of General Fund appropriations to the Department for FY 2020-21. More than half of the General Fund in this section is devoted to the Appellate Unit, which represents the State in criminal appeals, and about one-third is devoted to the Special Prosecutions Unit, which investigates and prosecutes a variety of crimes. The following table provides expenditure and workload data for the Appellate Unit.

APPELLATE UNIT DATA: FY 2015-16 TO FY 20-21					
	FY 15-16 ACTUAL	FY 16-17 ACTUAL	FY 17-18 ACTUAL	FY 18-19 ACTUAL	FY 19-20 ACTUAL
Expenditures/Appropriations	\$3,498,574	\$3,854,792	\$3,664,404	\$4,006,102	4,021,320
FTE	36.2	35.8	36.5	37.6	40.5
Opening briefs received	1,056	968	971	1,002	974
Answer briefs filed	911	931	943	1,034	1,011
Case backlog	428	466	494	463	414

DISTRICT ATTORNEYS’ SALARIES

The Colorado Constitution requires each of the 22 judicial district to elect a district attorney. Similar to the Attorney General, district attorneys (DAs) are part of the executive branch of government and their powers and duties are prescribed by the General Assembly. Each DA is responsible for representing the legal interests of the people of the State of Colorado and prosecuting criminal cases for crimes committed within his or her judicial district on behalf of the people. Upon request, DAs provide legal advice and legal representation to county officers and employees, and render legal advice to peace officers pertaining to affidavits and warrants for arrests, searches, seizures, and court orders for the production of records.

Budgets for DA offices are primarily set and provided by their respective boards of county commissioners within each judicial district, the State provides direct funding for DAs, via state agencies, for certain purposes. The Department of Law's budget includes an annual appropriation for DA salaries. Pursuant to Section 20-1-306, C.R.S., the State contributes 80.0 percent of the funding for a minimum DA salary that is established in statute (including the associated costs of employer Public Employees’ Retirement Association contributions). In 2007 (H.B. 07-1170), the General Assembly raised the statutory minimum salary for DAs over a four-year period. A judicial district may choose to pay a salary that exceeds the statutory minimum using local funds.

The appropriation to the Department of Law for the State’s contribution for DA salaries currently accounts for 19.6 percent of total General Fund appropriations to the Department. This amount is up due to the General Fund cuts made in FY 2020-21, which compares to FY 2019-20 when it accounted for 14.7 percent of the General Fund appropriation.

STATE EXPENDITURES FOR DISTRICT ATTORNEY SALARIES: FY 2007-08 TO FY 2019-20			
FISCAL YEAR	EXPENDITURES/ APPROPRIATIONS	ANNUAL INCREASE	CUMULATIVE INCREASE
2007-08	\$1,315,985	n/a	n/a
2008-09	1,654,605	\$338,620	\$338,620
2009-10	2,096,027	441,422	780,042
2010-11	2,263,229	167,202	947,244
2011-12	2,479,847	216,618	1,163,862
2012-13	2,656,471	176,624	1,340,486
2013-14	2,676,960	20,489	1,360,975
2014-15	2,697,640	20,680	1,381,655
2015-16	2,718,249	20,609	1,402,264
2016-17	2,738,841	20,592	1,422,856
2017-18	2,749,138	10,297	1,433,153
2018-19	2,749,138	0	1,433,153
2019-20	2,754,858	5,720	1,438,873
2020-21 Appropriation	2,799,368	44,510	1,483,383

SUMMARY: FY 2020-21 APPROPRIATION & FY 2021-22 REQUEST

DEPARTMENT OF LAW						
	TOTAL FUNDS*	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
FY 2020-21 APPROPRIATION:						
HB 20-1360 (Long Bill)	91,244,902	14,760,572	19,397,708	54,716,387	2,370,235	509.7
Other legislation	328,732	(476,104)	61,792	743,044	0	8.3
TOTAL	\$91,573,634	\$14,284,468	\$19,459,500	\$55,459,431	\$2,370,235	518.0
FY 2021-22 REQUESTED APPROPRIATION:						
FY 2020-21 Appropriation	\$91,573,634	14,284,468	\$19,459,500	\$55,459,431	\$2,370,235	518.0
Annualize prior year legislation	1,468,992	51,961	(217,724)	1,634,325	430	8.0
Centrally appropriated line items	2,719,809	506,075	832,414	1,334,934	46,386	0.0
R1 One-time reduction in legal services revenue for budget balancing	0	0	0	0	0	0.0
Technical adjustments	(96,450)	(10,308)	(167,424)	81,282	0	5.8
Annualize prior year budget actions	(408,948)	(145,985)	(160,206)	(96,120)	(6,637)	0.1
Non-prioritized request items	(300,960)	(123,254)	(34,789)	(133,478)	(9,439)	0.0
Indirect cost assessment	95,966	0	(342,664)	445,748	(7,118)	0.0
TOTAL	\$95,052,043	\$14,562,957	\$19,369,107	\$58,726,122	\$2,393,857	531.9
INCREASE/(DECREASE)	\$3,478,409	\$278,489	(\$90,393)	\$3,266,691	\$23,622	13.9
Percentage Change	3.8%	1.9%	(0.5%)	5.9%	1.0%	2.7%

^a JBC staff identified a small error when finalizing this document that will be investigated and corrected before it can further impact the budget process. It is likely a base error because it was causing the total appropriation for FY 2020-21 to be overstated by \$2,073 and the total FY 2021-22 request to be understated by a like amount.

ANNUALIZE PRIOR YEAR LEGISLATION: The request includes a net increase of \$1.5 million total funds to reflect the FY 2021-22 impact of bills passed in previous sessions, summarized in the following table.

ANNUALIZE PRIOR YEAR LEGISLATION						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
HB20-1153 Partnership for CO jobs	\$1,111,623	\$0	(\$219,609)	\$1,331,232	\$0	7.0
HB20-1001 Nicotine produce regulation	204,672	0	0	204,672	0	1.1
HB20-1369 Deputy District Attorney training	150,000	150,000	0	0	0	0.0
SB20-204 Protect Air Quality Whistleblowers	50,102	0	0	50,102	0	0.3
SB18-200 PERA unfunded liability	16,553	(98,039)	1,885	112,277	430	0.0
SB20-200 Secure Savings Program	(42,638)	0	0	(42,638)	0	(0.2)
SB20-028 Substance Use Recovery Disorder	(10,660)	0	0	(10,660)	0	(0.1)
SB20-162 Fed Family First program	(10,660)	0	0	(10,660)	0	(0.1)
TOTAL	\$1,468,992	\$51,961	(\$217,724)	\$1,634,325	\$430	8.0

CENTRALLY APPROPRIATED LINE ITEMS: The request includes adjustments to centrally appropriated line item, as detailed in the following table.

CENTRALLY APPROPRIATED LINE ITEMS						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
Health, life, and dental adjustment	\$1,347,735	\$597,442	\$362,297	\$373,872	\$14,124	0.0
PERA Direct Distribution	1,212,659	297,982	189,543	725,134	0	0.0
Judicial Center leased space	61,136	(151,120)	78,967	131,287	2,002	0.0
Payment to risk management / property funds adjustment	56,369	6,275	12,064	36,401	1,629	0.0
Legal services adjustment	18,941	7,275	11,666	0	0	0.0
Vehicle lease payments adjustment	18,328	8,307	2,820	5,488	1,713	0.0
AED adjustment	15,710	(118,501)	85,835	34,776	13,600	0.0
SAED adjustment	15,710	(118,501)	85,835	34,776	13,600	0.0
Payments to OIT adjustment	0	0	0	0	0	0.0
Workers' compensation adjustment	(12,268)	(12,837)	2,161	(1,254)	(338)	0.0
CORE adjustment	(9,664)	(5,172)	(361)	(3,858)	(273)	0.0
Short-term disability adjustment	(4,274)	(5,075)	2,160	(1,688)	329	0.0
ALJ adjustment	(573)	0	(573)	0	0	0.0
TOTAL	\$2,719,809	\$506,075	\$832,414	\$1,334,934	\$46,386	0.0

R1 ONE-TIME REDUCTION IN LEGAL SERVICES REVENUE FOR BUDGET BALANCING: The request includes a one-time decrease of \$5 million revenue collected from client-agencies through the legal services common policy. This revenue reduction will save \$5 million in spending across the state enterprise and will not compromise the long-term viability of the Legal Services to State Agencies (LSSA) Cash Fund. Additionally, the Department estimates this revenue reduction will generate a one-time \$1.3 million savings in GF expenditures. The LSSA Cash Fund consists of revenue that has accumulated over the life of the fund. This revenue cannot be currently spent, due to the annual spending authority established by the General Assembly through the Long Bill and special bills. The actual General Fund impact of the revenue reduction will be dependent upon fund source splits for legal services hours determined at each Department. The estimated General Fund savings are based on the FY 2020-21 legal services allocations between the General Fund, cash funds, reappropriated funds, and federal funds.

TECHNICAL ADJUSTMENTS: The request includes five technical changes, as detailed in the table below.

TECHNICAL ADJUSTMENTS						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
Revenue adjustment to match request	\$25,929	\$0	\$25,929	\$0	\$0	0.0
Attorney registration and CLE	9,452	(10,308)	6,128	13,632	0	0.0
Annualize POTS to indirect recoveries	0	0	(199,481)	199,481	0	0.0
Correction to FTE allocation	0	0	0	0	0	6.8
Informational funds estimate adjustment	(131,831)	0	0	(131,831)	0	(1.0)
TOTAL	(\$96,450)	(\$10,308)	(\$167,424)	\$81,282	\$0	5.8

ANNUALIZE PRIOR YEAR BUDGET ACTIONS: The request includes adjustments related to prior year budget actions.

NON-PRIORITIZED REQUEST ITEMS: The request includes four decision items originating in other departments. The following table summarizes the non-prioritized requests, which will be addressed in separate staff briefings.

NON-PRIORITIZED REQUEST ITEMS						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
LAB Legal Request	\$30,061	\$0	\$0	\$30,061	\$0	0.0
DPA Center for Organizational Effectiveness	8,126	1,916	1,318	4,659	233	0.0
OIT Budget request package	(339,147)	(125,170)	(36,107)	(168,198)	(9,672)	0.0
TOTAL	(\$300,960)	(\$123,254)	(\$34,789)	(\$133,478)	(\$9,439)	0.0

INDIRECT COST ASSESSMENT: The request includes net adjustments to indirect costs across these Divisions.

INFORMATIONAL ISSUE: 2020 SESSION BUDGET BALANCING ACTIONS

In response to the budget challenges in the 2020 Session, the Joint Budget Committee and the General Assembly took actions that reduced the FY 2020-21 General Fund appropriations to the Department of Law by \$1.0 million. The General Assembly's actions made an additional \$1.0 million available for balancing purposes by reducing cash funds appropriations. These adjustments contributed to the net decrease in the Department's General Fund and total funds budget for FY 2020-21.

SUMMARY

FY 2020-21 Budget

- For FY 2020-21, the General Assembly's actions included \$3.6 million in General Fund reductions in the Department of Law, although increases in cash funds appropriations offset \$1.9 million of that decrease for specific programs.
- The FY 2020-21 balancing actions also included \$1.7 million in cash funds reductions that made those revenues (from the Marijuana Tax Cash Fund and tobacco litigation funds) available for budget balancing outside of the Department.

DISCUSSION

Confronting the budget challenges of the 2020 legislative session, the Committee and the General Assembly took a variety of budget balancing actions in the Department of Law for FY 2020-21.

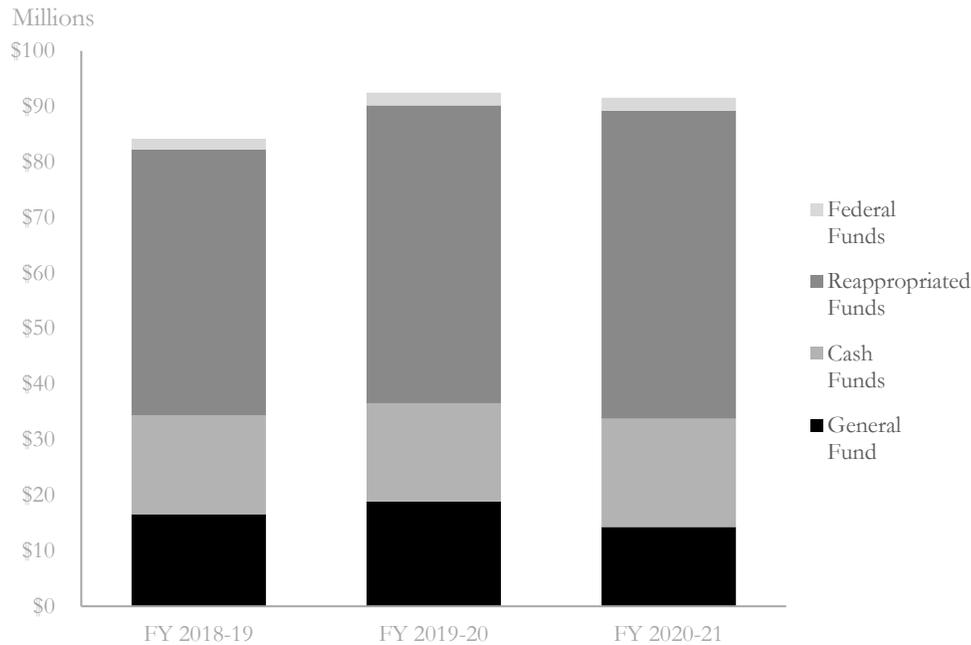
FY 2018-19 to FY 2019-20: Appropriations to the Department increased by \$8.3 million total funds from FY 2018-19 to FY 2019-20, including an increase of \$2.3 million General Fund. The most notable changes between FY 2018-19 and FY 2019-20 include:

- An increase of \$2.3 million total funds, including \$0.6 million General Fund and \$1.6 million reappropriated funds received for the provision of legal services to other state agencies, to fund increased salaries for the Department's attorneys and professional staff; and
- An increase of \$759,827 General Fund and 9.3 FTE for new staff to address backlogs and workload related to opioid litigation, water, the criminal appeals, and Medicaid fraud investigations.

FY 2019-20 to FY 2020-21: Facing revenue challenges for FY 2020-21, the General Assembly took a variety of actions to both reduce the Department's General Fund appropriations and to make other revenues available for balancing purposes. While the Department's *total* budget only decreased by \$0.9 million from FY 2019-20 to FY 2020-21, the General Fund appropriation was decreased by \$4.6 million (representing a decrease of \$2.3 million below FY 2018-19 levels).

The following graph shows the Department's annual appropriations for FY 2018-19 through FY 2020-21. A table with appropriations detail by major fund source follows the graph. Please note that the FY 2019-20 appropriations include the adjustments and reductions made during the 2020 Session.

Recent Department of Law Appropriations



DEPARTMENT OF LAW APPROPRIATIONS FY 2019-20 THROUGH FY 2020-21						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
FY 2018-19 Final	\$84,198,382	\$16,593,918	\$17,747,080	\$47,855,062	\$2,002,322	483.5
FY 2019-20 Adjusted	92,486,498	18,867,152	17,688,477	53,606,154	2,324,715	513.5
FY 2020-21	91,571,561	14,284,514	19,457,503	55,459,309	2,370,235	518.0
Change from FY 2019-20 to FY 2020-21	(\$914,937)	(\$4,582,638)	\$1,769,026	\$1,853,155	\$45,520	6.5
Percent change FY 2019-20 to FY 2020-21	(1.0%)	(24.3%)	10.0%	3.5%	2.0%	1.3%

SUMMARY OF 2020 SESSION BUDGET BALANCING APPROPRIATION CHANGES

The following table summarizes the budget balancing actions that impacted appropriations to the Department of Law for both FY 2019-20 and FY 2020-21, including actions taken through the Long Bill and other legislation.

Please note:

- Unless otherwise indicated, JBC Staff assumes that the FY 2020-21 adjustments are ongoing for FY 2021-22. Staff has noted where the Committee (or the General Assembly) specifically designated actions as one-time in nature. For this department, only the reduction associated with district attorney training (accomplished through H.B. 20-1369) was clearly one-time; continuing the reduction into FY 2021-22 would require further statutory change. Staff has also noted whether the Department’s budget request proposes to continue the reduction in FY 2021-22 or restore the funding.
- The table only reflects balancing actions that specifically changed appropriations. The cash fund reductions in the table below that do not have an associated GF reduction were part of actions to

make additional resources available for budget balancing purposes outside of the Department of Law.

- Actions to increase available revenues (such as transfers from cash funds to the General Fund) are not included in this table and are discussed in a separate section.

2020 SESSION BUDGET BALANCING APPROPRIATION CHANGES - DEPARTMENT OF LAW ^a						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
FY 2019-20 APPROPRIATION BALANCING ITEMS:						
None taken	\$0	\$0	\$0	\$0	\$0	0.0
TOTAL	\$0	\$0	\$0	\$0	\$0	0.0
FY 2020-21 APPROPRIATION BALANCING ITEMS:						
Appropriation Reductions						
PERA direct distribution (HB 20-1379) ^b	(\$1,119,139)	(\$326,104)	(\$135,653)	(\$657,382)	\$0	0.0
Eliminate MTCF appropriation to POST	(1,036,766)	0	(1,036,766)	0	0	0.0
HLD decrease/personal services base reduction	(714,506)	(714,506)	0	0	0	0.0
Tobacco litigation	(650,000)	0	(650,000)	0	0	0.0
Special Prosecutions Unit	(563,750)	(563,750)	0	0	0	(4.1)
Federal and Interstate Water Unit	(212,698)	(212,698)	0	0	0	(1.9)
Appellate Unit	(173,796)	(173,796)	0	0	0	(2.5)
District Attorney training (HB 20-1369) ^c	(150,000)	(150,000)	0	0	0	0.0
Subtotal - Appropriation Reductions	(\$4,620,655)	(\$2,140,854)	(\$1,822,419)	(\$657,382)	\$0	(8.5)
Fund Source Adjustments						
Consumer Protection Unit	\$0	(\$1,909,120)	\$1,909,120	\$0	\$0	0.0
Subtotal - Fund Source Adjustments	\$0	(\$1,909,120)	\$1,909,120	\$0	\$0	0.0
TOTAL	(\$4,620,655)	(\$4,049,974)	\$86,701	(\$657,382)	\$0	(8.5)
BALANCING ITEMS AS PERCENTAGE OF TOTAL APPROPRIATION:						
FY 2019-20 Appropriation	\$92,486,498	\$18,867,152	\$17,688,477	\$53,606,154	\$2,324,715	513.5
FY 2020-21 Appropriation	\$91,571,561	\$14,284,514	\$19,457,503	\$55,459,309	\$2,370,235	518.0
FY 2020-21 Actions as Percentage of FY 2019-20 Appropriation	(5.0%)	(21.5%)	0.5%	(1.2%)	0.0%	(1.7%)

^a Unless otherwise indicated, actions were reflected in the Long Bill (H.B. 20-1360)

^b House Bill 20-1379 eliminated PERA Direct Distribution appropriations for all departments.

^c This adjustment required statutory change and was made in H.B. 20-1369. Please note that this is a one-time reduction pursuant to the statutory change in the bill. Continuing this reduction in FY 2021-22 would require further statutory change.

FY 2020-21 APPROPRIATION – APPROPRIATION REDUCTIONS

ELIMINATE MTCF APPROPRIATION TO POST: The appropriation eliminates the Marijuana Tax Cash Fund (MTCF) appropriation to the Peace Officer Standards and Training Board for a total reduction of just over \$1.0 million, making those funds available budget balancing purposes outside of the Department of Law. Department's FY 2021-22 budget request continues this reduction.

HLD DECREASE/PERSONAL SERVICES BASE REDUCTION: The appropriation reduced appropriations for health, life, and dental insurance by \$714,506 General Fund in lieu of a 5.0 percent personal services base reduction. For FY 2021-22, the Department request continues this reduction.

TOBACCO LITIGATION: The appropriation includes a reduction to the appropriation for the Tobacco Litigation line item by \$650,000 cash funds, leaving a total appropriation of \$100,000 cash funds. The Department's FY 2021-22 budget request continues this reduction.

SPECIAL PROSECUTIONS UNIT: The appropriation includes a reduction of \$563,750 General Fund and 4.1 FTE, which eliminates a Criminal Investigator position. The Department plans to shift the remaining FTE to other vacancies within the Department. The Department's FY 2021-22 budget request continues this reduction.

FEDERAL AND INTERSTATE WATER UNIT: The appropriation includes a reduction of \$212,698 General Fund and 1.9 FTE in the Federal and Interstate Water Unit. This eliminates an Assistant Attorney General (AAG) FTE and moves a Senior AAG position to a vacant position in the Colorado River Unit. The Department's FY 2021-22 budget request continues this reduction.

APPELLATE UNIT: The appropriation includes a reduction of \$173,796 General Fund and 2.5 FTE (1.0 AAG and 1.5 Fellows). The AAG position is currently vacant. The Department's FY 2021-22 budget request continues this reduction.

DISTRICT ATTORNEY TRAINING (HB 20-1369): The enactment of H.B. 20-1369 reduced the appropriation for district attorney training by \$150,000 General Fund (from \$350,000 to \$200,000) on a *one-time* basis for FY 2020-21. Continuing this reduction in FY 2021-22 would require further statutory change, and the Department's budget request proposes to restore the funding in FY 2021-22. The Colorado District Attorney Council has asked the Joint Budget Committee to consider providing roll-forward spending authority for \$32,590 General Fund appropriated to it in FY 2019-20 through FY 2020-21, which could be accomplished by adding a footnote to the appropriation in a supplemental bill.

ELIMINATE CORA/OML APPROPRIATION: The appropriation includes a reduction of \$101,717 General Fund and 1.0 FTE to eliminate funding for an attorney focused on the Colorado Open Records Act (CORA) and Open Meetings Law (OML).

ELIMINATE SAFE2TELL MARKETING POSITION: The appropriation includes a reduction of \$56,175 General Fund and 0.9 FTE to eliminate a marketing and social media position within the Safe2Tell team in the Office of Community Engagement. The Department's FY 2021-22 budget request continues the prior year appropriation.

FY 2020-21 APPROPRIATION – FUND SOURCE ADJUSTMENTS

CONSUMER PROTECTION UNIT: The Long Bill appropriation eliminates the General Fund appropriation to the Consumer Protection Unit, which results in a reduction of \$1.9 million from the FY 2019-20 appropriation. The appropriation assumes that the Department will continue to support the Unit's activities with custodial cash funds, although those funds are at the discretion of the Attorney General. The Department's FY 2021-22 request maintains the FY 2020-21 funding levels for Consumer Protection including reflecting increased funding from custodial cash funds.

POINTS TO CONSIDER

Looking toward the FY 2021-22 budget, staff offers the following points to consider regarding the Department of Law.

- JBC Staff would like to highlight that the Department of Law did not submit as annualizations any of the items affecting by FY 2020-21 budget balancing actions. The one caveat is the bill for the District Attorney Training appropriation provided a one time cut. Thus, the budget request includes an annualization for \$150,000 General Fund associated with H.B. 20-1369.
- Based on discussions between JBC Staff and the Department of Law, after maintaining the reductions made in FY 2020-21 for the FY 2020-21 budget request, further budget cuts beyond the Department's reduced allocation of payments from legal services clients could lead to impacts to its ability to fulfill all its duties.
- The annual District Attorney Training appropriation is required by statute and H.B. 20-1369 suspended that requirement for FY 2020-21 only. As noted above, continuing that reduction in FY 2021-22 would require additional legislation. If the Committee considers legislation on this topic, it may also wish to discuss whether to repeal the statute requiring the General Assembly to appropriate a fixed General Fund amount to a program entirely. Such a provision may create a barrier to reducing funding in years with budget cuts, but it also creates a barrier for the Colorado District Attorney Council to seek additional funding in future years where the budget picture is on an upward trend.

ISSUE: MAJOR LITIGATION PENDING AGAINST THE STATE

The Department of Law submits an annual report to the State Controller discussing pending litigation against the State that could have a significant financial impact. The 2021-22 report includes cases involving the Department of Corrections related to hepatitis C medications for inmates, inmate work programs, and alleged violations of discrimination against transgendered inmates; the Department of Health Care Policy and Financing related to the Children's Basic Health Plan, operations at the Pueblo Regional Center, hepatitis C drugs for Medicaid beneficiaries, and the hospital provider fee; the Department of Higher Education related to tuition and student fees paid for the spring 2020 semester at four higher education institutions; the Department of Law related to a claim by Castle Law Group; the Department of Natural Resources related to water litigation; and the Department of Public Health and Environment related to the Heartland Biogas Facility.

SUMMARY

The following ongoing legal cases involving the State could have a significant financial impact:

DEPARTMENT OF CORRECTIONS

- *Hepatitis C Drugs for Inmates.*
- *Lawsuit filed by one former and three current inmates in Colorado correctional facilities.*
- *Class action lawsuit on behalf of all transgender women who are or will be incarcerated with the Colorado Department of Corrections (CDOC).*

HEALTH CARE POLICY AND FINANCING

- *CHIPRA Bonus Recovery.*
- *Pueblo Regional Center CMS Report.*
- *Hepatitis C Drugs for Medicaid Beneficiaries.*
- *Hospital Provider Fee.*

DEPARTMENT OF HIGHER EDUCATION

- *Four separately filed class action lawsuits on behalf of all students who have paid tuition and have paid the mandatory student fees for the spring 2020 semester to:*
 - 1 Colorado State University (CSU);
 - 2 Metropolitan State University of Denver (MSU); and
 - 3 Two against the University of Colorado - Boulder (CU)

DEPARTMENT OF LAW

- *Castle Law Group Notice of Claim*

NATURAL RESOURCES

- *Rio Grande River Compact Litigation*

PUBLIC HEALTH AND ENVIRONMENT

- *Heartland Biogas Facility State Court Litigation*

RECOMMENDATION

Staff recommends that the Committee ask the Department to discuss the status of the various cases listed in the report, as well as any other cases the Attorney General believes warrant the Committee's attention, at the Department's upcoming hearing.

DISCUSSION

The Department of Law submits an annual report to the State Controller concerning pending or threatened litigation, claims, and assessments with amounts in controversy exceeding \$5 million, brought against the State and to which the Department has devoted substantial attention on behalf of the State. The Department's annual report describes the nature and status of each case, the claims asserted by the plaintiff and the objectives and/or damages sought, how management is responding to the litigation, the Attorney General's evaluation of the likelihood of an unfavorable outcome, and an estimate as to the amount or range of potential loss. This annual report does not, however, include information about two types of cases or claims:

- Those against state-entities not represented by the Attorney General and
- Those involving pre-litigation claims that are settled by the states' Risk Management Office.

The report excludes information involving the University of Colorado Board of Regents or the General Assembly (except in cases under the Risk Management Fund), because those entities are not represented by the Attorney General

Likewise, the impact of potential litigation against the state that are yet to be filed with a court are also excluded. Although notices of claims in the nature of tort must be filed with the Attorney General pursuant to the Colorado Governmental Immunity Act (CGIA)³, 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 lawsuits⁴. All tort and federal claims alleging damages against state agencies and employees, if settled, are paid out of the Risk Management Fund to the limits of the CGIA.

The Department submitted the 2020 annual report to the State Controller on September 15, 2020. Based on the report, as well as additional information from the Department of Law, staff has provided a brief summary of unresolved cases in which the potential financial impact, either through damages, attorneys' fees and costs, or the cost of state compliance with court orders, exceeds \$5 million. Cases are also included if multiple parties have amounts in controversy less than \$5 million but that exceed \$10 million when aggregated. In cases where the Plaintiff has alleged more than \$5 million in damages, but the law limits the plaintiff's potential recovery to an amount less than \$5 million (such as the limits on damages provided by the Colorado Governmental Immunity Act), the litigation is not included in this report.

³ See Section 24-10-109, C.R.S.

⁴ See Section 24-30-1501, *et seq.*, C.R.S.

CORRECTIONS

Hepatitis C Drugs for Inmates

Case. On July 19, 2017, the plaintiffs filed a class action asserting that the denial and/or delay in the provision of “breakthrough” direct acting anti-viral medications recently approved by the Food and Drug Administration (FDA) for Hepatitis C patients violated inmates’ constitutional rights. The plaintiffs argue that the community standard of care now, as endorsed by major medical associations, requires treating all chronic Hepatitis C patients with the direct acting anti-viral medications and that the Department of Corrections (DOC) is delaying/denying this treatment based upon unconstitutional eligibility criteria. The plaintiffs are not seeking damages but are seeking declaratory and injunctive relief requiring the State to pay for these drugs for all Hepatitis C patients, as well as attorney fees.

Status. DOC requested, and the General Assembly approved, funding for Hepatitis C treatment for FY 2018-19 and FY 2019-20. Following these appropriations, the parties requested the case be administratively closed until mediation between the parties concluded. Since the end of FY 2019-20, discussions are underway with opposing counsel regarding filing a joint motion to dismiss

Financial Impact: Parties have agreed to resolve the plaintiffs request for attorney fees and costs in the amount of \$175,000.

Lawsuit filed by one former and three current inmates in Colorado correctional facilities

Case. Plaintiffs ask the court to declare that the state’s inmate work programs constitute slavery or involuntary servitude in violation of Colorado Constitution, Article II, Section 26 and the Equal Protection guarantee in the Fourteenth Amendment of the U.S. Constitution. Article II, Section 26 bans slavery in Colorado. Plaintiffs claim that the citizen amendment in 2018 removing the exception for slavery “as punishment for crime, whereof the party shall have been duly convicted” renders Colorado’s inmate work programs unconstitutional because inmates are forced to work and are treated differently than state employees by being denied minimum wages, medical and dental insurance, and paid leave.

Status. Plaintiffs filed their complaint on July 21, 2020. Defendant CoreCivic filed a motion to dismiss the complaint on August 28, 2020, and the State defendants filed a motion to dismiss the complaint on September 4, 2020.

Financial Impact: If plaintiffs succeed in getting an order requiring back pay retroactive to December 2018, the amount will depend on the number of inmates the order applies to, the amount of hours each inmate worked during the time period, and the minimum wage at the time of the hours worked. State resources have not been dedicated to discovery or fact investigation at this early stage of litigation but early figures estimate recovery could exceed \$5 million.

Class action lawsuit on behalf of all transgender women who are or will be incarcerated with the Colorado Department of Corrections (CDOC).

Case: Plaintiffs are seven transgender women who bring a class action on behalf of at least 160 women against the CDOC, Governor Jared Polis, CDOC Executive Director Dean Williams, and five other current or former CDOC administrators. Plaintiffs allege violations of the Colorado Anti-Discrimination Act (CADA) for discrimination in a place of public accommodation based on sexual orientation and disability.

Status: The Court approved the State's motion to dismiss claims under the Colorado Constitution, but denied those claims made under CADA. The Court denied a motion to dismiss filed by the Governor's Office in July. The Governor's Office is appealing the decision and filed a responsive pleading on September 15, 2002.

Financial Impact: The complaint seeks an unspecified amount of compensatory damages, but with a class of at least 160 individuals, the claimed damages are expected to be significant. Additionally, should Plaintiffs prevail, they would be entitled to recover their attorneys' fees. Plaintiffs' counsel contends that Plaintiffs have already incurred attorneys' fees in the mid-six figures.

HEALTH CARE POLICY AND FINANCING

CHIPRA Bonus Recovery

Case. On April 30, 2019, the Center for Medicare and Medicaid Services (CMS) issued a demand that Colorado return \$38.4 million in performance bonus payments paid under the Children's Health Insurance Program Reauthorization Act of 2009. The Department disagrees with the CMS finding that the Department improperly included individuals in the enrollment counts provided to CMS for FYs 2009-10 through 2012-13.

Status. The Department filed an appeal at the federal Departmental Appeals Board on May 30, 2019 and provided a brief and written argument in September 2019.

Financial Impact. CMS seeks to recover \$38.4 million.

Pueblo Regional Center CMS Report

Case. In April 2016, 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.

Hepatitis C Drugs for Medicaid Beneficiaries

Case. On April 13, 2017, three plaintiffs filed a case seeking a permanent injunction enjoining the Department of Health Care Policy and Financing (HCPF) from enforcing its prior authorization criteria for the direct acting anti-viral drugs to treat Hepatitis C in Medicaid beneficiaries. Under previous authorization criteria, HCPF limited the use of these medications to Hepatitis C patients meeting specific criteria. The plaintiffs assert that the medications are medically necessary for all individuals diagnosed with Hepatitis C and that any Medicaid recipient for whom a doctor has prescribed the medications should have access to the medications.

Status. The original three plaintiffs filed the class action on April 13, 2017. An amended complaint was filed on May 9, 2017, adding a fourth plaintiff. The plaintiffs filed a motion to certify a class and, over the Department's objections, the court certified the class. While the lawsuit was pending, HCPF underwent its yearly review of all criteria required for approval of treatment with certain classes of medications, including the anti-viral drugs. During this process, the criteria at issue was eliminated (effective January 1, 2018).

Because the criteria was eliminated through the ordinary course of evaluating authorization requirements, the parties to the lawsuit have agreed to settle Plaintiffs' claims. The settlement agreement was approved by the Court on April 25, 2019, and on May 9, 2019, the Court dismissed the case. The Department's obligations under the settlement agreement ended on January 1, 2020. This matter is now concluded.

Financial Impact: Not a current risk.

Hospital Provider Fee

Case. 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.

On March 5, 2019, the District Court found that the plaintiffs had standing to bring the case, but found in favor of the state for all claims (listed above). An appeal has been filed and the plaintiffs and the State have submitted Opening briefs. Both parties filed appeals and oral argument were heard on September 9, 2020. The Department awaits the decision from the Court of Appeals.

Financial Impact. The estimated range of potential losses exceeds \$8.2 billion (through FY 2020-21), plus 10 percent annual simple interest and additional fees collected on an ongoing basis.

DEPARTMENT OF HIGHER EDUCATION

Class action lawsuit on behalf of all students enrolled at Colorado State University (CSU) who have paid tuition at CSU campus and have paid the mandatory student fees for the spring 2020 semester.

Case: Plaintiff is a student who brings a class action against CSU on behalf of a class of similarly situated students who paid tuition and fees to CSU during the spring 2020 semester. Plaintiff alleges breach of contract and, in the alternative, unjust enrichment. The dispute involves CSU's transition to remote delivery of educational services for the latter portion of the spring 2020 semester in response to the COVID-19 pandemic. Plaintiff claims that CSU's actions, including canceling campus events and closing or limiting access to certain buildings, breached its contract with Plaintiff, or in the alternative, unjustly enriched CSU.

Status: A complaint was filed in Denver District Court in April 2020. Plaintiff filed an amended complaint on August 19, 2020. CSU filed a motion to dismiss on September 9, 2020.

Financial Impact: Assuming the court were to award a full refund of fees paid for the portion of the semester during which educational services were delivered remotely to all enrolled students, the university's liability could potentially exceed \$5 million.

Class action lawsuit on behalf of all students enrolled at the University of Colorado (CU) who have paid tuition and have paid the mandatory student fees for the spring 2020 semester.

Case: Plaintiff is a student who brings a class action against CU on behalf of three classes of similarly situated CU students enrolled in the spring 2020 semester: (1) students who paid tuition; (2) students who paid fees; and (3) students who paid room and board. Plaintiff alleges breach of contract and, in the alternative, unjust enrichment. The dispute concerns the same operational changes identified in the previous case description.

Status: A complaint was filed in U.S. District Court of the District of Colorado in April 2020. CU conferred with Plaintiff on a motion to dismiss, and Plaintiff filed an amended complaint on July 27, 2020. CU anticipates timely filing a motion to dismiss the amended complaint.

Financial Impact: Assuming the court were to award a full refund of fees paid for the portion of the semester during which educational services were delivered remotely to all enrolled students, the university's liability could potentially exceed \$5 million.

Class action lawsuit on behalf of all students enrolled at Metropolitan State University of Denver (MSU) who have paid tuition at the MSU campus and have paid the mandatory student fees for the spring 2020 semester.

Case: Plaintiff is a student who brings a class action against MSU on behalf of a class of similarly situated students who paid tuition and fees to MSU during the spring 2020 semester. Plaintiff alleges breach of contract and, in the alternative, unjust enrichment. The claims are similar to the other cases pending against the Department of Higher Education.

Status: A complaint was filed in Denver District Court in April 2020. Plaintiff filed an amended complaint on September 3. MSU anticipates filing a motion to dismiss by September 17.

Financial Impact: Assuming the court were to award a full refund of fees paid for the portion of the semester during which educational services were delivered remotely to all enrolled students, the university's liability could potentially exceed \$5 million.

Class action lawsuit on behalf of all students enrolled at the University of Colorado - Boulder (CU) who have paid tuition and mandatory student fees for the spring 2020 semester.

Case: Plaintiff is a student who brings a class action against CU on behalf of a class of similarly situated students who paid tuition and fees to CU during the spring 2020 semester. Plaintiff alleges breach of contract and, in the alternative, unjust enrichment. The claims are similar to the other cases pending against the Department of Higher Education.

Status: A complaint was filed in Denver District Court in April 2020. Plaintiff filed an amended complaint on August 19, 2020. CU filed a motion to dismiss on September 9, 2020.

Financial Impact: Assuming the court were to award a full refund of fees paid for the portion of the semester during which educational services were delivered remotely to all enrolled students, the university's liability could potentially exceed \$5 million.

LAW

Castle Law Group Notice of Claim

Case. The Castle Claimants assert that the actions of the Attorney General and his representatives, i.e., investigating and filing a lawsuit against the Castle Claimants, resulted in unlawful and tortious interference with the Claimants' contractual relationships with their clients, abuse of process, defamation and a deprivation or taking of Castle Claimants' property or interest without due process of law.

The Castle Claimants also contend that the Attorney General's website contained false statements about the Castle Claimants, which Claimants allege were substantially groundless and/or substantially frivolous, made with reckless disregard for the truth, and were otherwise libelous and slanderous.

Financial Impact: Castle Claimants estimate that monetary and non-monetary damages will likely exceed \$25 million; although, they did not have a precise calculation at the time they sent the Notice of Claim. Unless the Castle Claimants are successful in proving willful and wanton conduct, any judgment for damages would be covered by Risk Management.

NATURAL RESOURCES

Rio Grande Compact Litigation

Case. Texas filed suit against New Mexico for alleged violation of the Rio Grande Compact, asserting that New Mexico is consuming more water than allowed under the Compact. No claims have been made against Colorado at this time – and New Mexico and Texas have indicated they do not want to involve Colorado any more than necessary – but the State is listed as a defendant because it is a signatory to the Compact.

Status. The case was filed in January 2013 and was accepted by the U.S. Supreme Court. New Mexico filed a motion to dismiss, and oral arguments were heard in August 2015. Oral arguments for exceptions to the Special Master’s First Interim Report occurred on January 8, 2018. In March, the Court issued its ruling, allowing the U.S. to pursue claims under the Compact under very narrow conditions, and denying New Mexico’s motion to dismiss. Due to the protracted nature and extended timeframe associated with litigation, the case is expected to last years.

Financial Impact. No specific dollar amount has been identified against Colorado. Depending on the Court’s interpretation of the Compact, either Texas or New Mexico (or both) may seek damages in the future.

PUBLIC HEALTH AND ENVIRONMENT

Heartland Biogas Facility State Court Litigation

Case. Heartland Biogas filed a state suit against the Colorado Department of Public Health and Environment (CDPHE). 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. Heartland alleges the Department promised that all zoning approvals needed to operate a solid waste facility were obtained and that the facility could distribute wastewater to third parties. Heartland alleges that the Department later took the position that Heartland did not have the proper zoning permits and prohibited the company from distributing wastewater.

Status. The state moved to dismiss based upon the Colorado Governmental Immunity Act and requested dismissal because Heartland failed to state a claim. The Denver District Court judge denied the motion. CDPHE filed an interlocutory appeal, arguing the district court conducted an improper governmental immunity analysis and that the case should be dismissed. CDPHE lost in a two-to-one decision in the Colorado Court of Appeals. Based in part on a strong dissent in the Colorado Court of Appeals decision, CDPHE is considering filing a Petition for Writ of Certiorari in the Colorado Supreme Court.

Financial Impact: The plaintiff is seeking more than \$110 million in compensatory damages. The Department indicates that the likelihood of an unfavorable outcome in this case is uncertain.

APPENDIX A
NUMBERS PAGES
(DIGITAL ONLY)

Appendix A details actual expenditures for the last two fiscal years, the appropriation for the current fiscal year, and the requested appropriation for next fiscal year. This information is listed by line item and fund source. *Appendix A is only available in the online version of this document.*

Appendix A: Numbers Pages

	FY 2018-19 Actual	FY 2019-20 Actual	FY 2020-21 Appropriation	FY 2021-22 Request	Request vs. Appropriation
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DEPARTMENT OF LAW
Phil Weiser, Attorney General

(1) ADMINISTRATION

Personal Services	<u>4,016,004</u>	<u>4,298,562</u>	<u>4,495,724</u>	<u>4,496,644</u>	
FTE	40.4	48.2	48.2	48.2	
General Fund	87,365	0	0	0	
Cash Funds	0	0	0	0	
Reappropriated Funds	3,928,639	4,298,562	4,495,724	4,496,644	
Federal Funds	0	0	0	0	
Office of Community Engagement	<u>855,299</u>	<u>926,944</u>	<u>885,788</u>	<u>880,836</u>	
FTE	6.5	9.0	8.1	8.0	
General Fund	790,563	734,556	693,079	687,937	
Cash Funds	0	192,388	192,709	192,899	
Reappropriated Funds	64,736	0	0	0	
Federal Funds	0	0	0	0	
Health, Life, and Dental	<u>4,446,369</u>	<u>5,069,951</u>	<u>4,821,004</u>	<u>6,168,739</u>	
General Fund	1,214,540	1,332,613	727,932	1,325,374	
Cash Funds	630,564	609,537	631,515	993,812	
Reappropriated Funds	2,457,733	2,982,564	3,314,428	3,688,300	
Federal Funds	143,532	145,237	147,129	161,253	

Appendix A: Numbers Pages

	FY 2018-19 Actual	FY 2019-20 Actual	FY 2020-21 Appropriation	FY 2021-22 Request	Request vs. Appropriation
Short-term Disability	<u>80,820</u>	<u>78,605</u>	<u>81,203</u>	<u>76,929</u>	
General Fund	22,619	20,740	21,806	16,731	
Cash Funds	9,336	9,634	9,975	12,135	
Reappropriated Funds	46,767	46,287	47,611	45,923	
Federal Funds	2,098	1,944	1,811	2,140	
S.B. 04-257 Amortization Equalization Disbursement	<u>2,126,857</u>	<u>2,311,928</u>	<u>2,388,324</u>	<u>2,404,034</u>	
General Fund	595,245	609,996	641,356	522,855	
Cash Funds	245,682	283,366	293,386	379,221	
Reappropriated Funds	1,230,722	1,361,377	1,400,312	1,435,088	
Federal Funds	55,208	57,189	53,270	66,870	
S.B. 06-235 Supplemental Amortization Equalization					
Disbursement	<u>2,126,857</u>	<u>2,311,928</u>	<u>2,388,324</u>	<u>2,404,034</u>	
General Fund	595,245	609,996	641,356	522,855	
Cash Funds	245,682	283,366	293,386	379,221	
Reappropriated Funds	1,230,722	1,361,377	1,400,312	1,435,088	
Federal Funds	55,208	57,189	53,270	66,870	
PERA Direct Distribution	<u>0</u>	<u>1,173,886</u>	<u>0</u>	<u>1,214,732</u>	
General Fund	0	310,469	0	297,982	
Cash Funds	0	146,761	0	191,616	
Reappropriated Funds	0	687,277	0	725,134	
Federal Funds	0	29,379	0	0	

Appendix A: Numbers Pages

	FY 2018-19 Actual	FY 2019-20 Actual	FY 2020-21 Appropriation	FY 2021-22 Request	Request vs. Appropriation
Workers' Compensation	<u>189,682</u>	<u>211,095</u>	<u>206,773</u>	<u>194,505</u>	
General Fund	54,227	60,148	58,670	45,833	
Cash Funds	27,465	30,019	29,376	31,537	
Reappropriated Funds	102,871	115,332	112,804	111,550	
Federal Funds	5,119	5,596	5,923	5,585	
Attorney Registration and Continuing Legal Education	<u>114,348</u>	<u>131,908</u>	<u>141,076</u>	<u>150,528</u>	
General Fund	26,763	33,868	35,863	25,555	
Cash Funds	2,818	4,275	4,275	10,403	
Reappropriated Funds	84,523	92,340	99,513	113,145	
Federal Funds	244	1,425	1,425	1,425	
Operating Expenses	<u>199,121</u>	<u>202,917</u>	<u>202,917</u>	<u>202,917</u>	
General Fund	0	0	0	0	
Cash Funds	0	0	0	0	
Reappropriated Funds	199,121	202,917	202,917	202,917	
Federal Funds	0	0	0	0	
Legal Services	<u>25,766</u>	<u>35,800</u>	<u>9,498</u>	<u>28,439</u>	
General Fund	12,538	17,421	3,648	10,923	
Cash Funds	13,228	18,379	5,850	17,516	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Administrative Law Judge Services	<u>5,736</u>	<u>1,307</u>	<u>775</u>	<u>202</u>	
General Fund	0	0	0	0	
Cash Funds	5,736	1,307	775	202	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	

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	FY 2018-19 Actual	FY 2019-20 Actual	FY 2020-21 Appropriation	FY 2021-22 Request	Request vs. Appropriation
Payment to Risk Management and Property Funds	<u>203,937</u>	<u>231,888</u>	<u>145,673</u>	<u>202,042</u>	
General Fund	58,414	66,073	41,335	47,610	
Cash Funds	29,153	32,975	20,694	32,758	
Reappropriated Funds	110,855	126,693	79,472	115,873	
Federal Funds	5,515	6,147	4,172	5,801	
Vehicle Lease Payments	<u>42,930</u>	<u>66,876</u>	<u>61,432</u>	<u>79,760</u>	
General Fund	26,604	28,615	24,787	33,094	
Cash Funds	10,202	20,259	15,537	18,357	
Reappropriated Funds	5,975	17,462	20,568	26,056	
Federal Funds	149	540	540	2,253	
Information Technology Asset Maintenance	<u>669,808</u>	<u>1,375,402</u>	<u>1,358,969</u>	<u>1,124,439</u>	
General Fund	200,209	395,965	385,607	264,966	
Cash Funds	95,563	194,779	193,064	182,312	
Reappropriated Funds	361,374	748,351	741,374	644,874	
Federal Funds	12,662	36,307	38,924	32,287	
Ralph L. Carr Colorado Judicial Center Leased Space	<u>3,320,567</u>	<u>3,379,635</u>	<u>3,440,771</u>	<u>3,501,907</u>	
General Fund	951,100	962,949	976,319	825,199	
Cash Funds	474,661	480,597	488,817	567,784	
Reappropriated Funds	1,805,013	1,846,504	1,877,084	2,008,371	
Federal Funds	89,793	89,585	98,551	100,553	
Payments to OIT	<u>639,106</u>	<u>895,196</u>	<u>940,700</u>	<u>601,553</u>	*
General Fund	182,708	255,065	266,923	141,753	
Cash Funds	92,539	127,300	133,642	97,535	
Reappropriated Funds	346,610	489,102	513,191	344,993	
Federal Funds	17,249	23,729	26,944	17,272	

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	FY 2018-19 Actual	FY 2019-20 Actual	FY 2020-21 Appropriation	FY 2021-22 Request	Request vs. Appropriation
Statewide training	<u>0</u>	<u>0</u>	<u>0</u>	<u>8,126</u> *	
General Fund	0	0	0	1,916	
Cash Funds	0	0	0	1,318	
Reappropriated Funds	0	0	0	4,659	
Federal Funds	0	0	0	233	
CORE Operations	<u>81,395</u>	<u>47,529</u>	<u>60,148</u>	<u>50,484</u>	
General Fund	23,268	13,542	17,068	11,896	
Cash Funds	11,785	6,760	8,546	8,185	
Reappropriated Funds	44,145	25,967	32,811	28,953	
Federal Funds	2,197	1,260	1,723	1,450	
Attorney General Discretionary Fund	<u>200</u>	<u>5,000</u>	<u>5,000</u>	<u>5,000</u>	
General Fund	200	5,000	5,000	5,000	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Salary Survey for Classified Employees	<u>403,959</u>	<u>383,066</u>	<u>0</u>	<u>0</u>	
General Fund	136,002	100,341	0	0	
Cash Funds	112,053	118,149	0	0	
Reappropriated Funds	131,697	139,664	0	0	
Federal Funds	24,207	24,912	0	0	
Salary Survey for Exempt Employees	<u>1,071,536</u>	<u>1,588,834</u>	<u>0</u>	<u>0</u>	
General Fund	274,637	414,511	0	0	
Cash Funds	52,558	62,248	0	0	
Reappropriated Funds	731,902	1,094,014	0	0	
Federal Funds	12,439	18,061	0	0	

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	FY 2018-19 Actual	FY 2019-20 Actual	FY 2020-21 Appropriation	FY 2021-22 Request	Request vs. Appropriation
Merit Pay for Exempt Employees	<u>0</u>	<u>689,740</u>	<u>0</u>	<u>0</u>	
General Fund	0	165,099	0	0	
Cash Funds	0	23,928	0	0	
Reappropriated Funds	0	492,399	0	0	
Federal Funds	0	8,314	0	0	
Merit Pay for Classified Employees	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	
General Fund	0	0	0	0	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
TOTAL - (1) Administration	20,620,297	25,417,997	21,634,099	23,795,850	10.0%
<i>FTE</i>	<u>46.9</u>	<u>57.2</u>	<u>56.3</u>	<u>56.2</u>	<u>(0.2%)</u>
General Fund	5,252,247	6,136,967	4,540,749	4,787,479	5.4%
Cash Funds	2,059,025	2,646,027	2,321,547	3,116,811	34.3%
Reappropriated Funds	12,883,405	16,128,189	14,338,121	15,427,568	7.6%
Federal Funds	425,620	506,814	433,682	463,992	7.0%

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	FY 2018-19 Actual	FY 2019-20 Actual	FY 2020-21 Appropriation	FY 2021-22 Request	Request vs. Appropriation
(2) LEGAL SERVICES TO STATE AGENCIES					
Personal Services	<u>28,937,337</u>	<u>31,380,735</u>	<u>35,230,340</u>	<u>36,437,232</u> *	
FTE	258.4	269.9	281.5	296.3	
General Fund	0	0	0	0	
Cash Funds	0	19,866	377,181	0	
Reappropriated Funds	28,937,337	31,360,869	34,853,159	36,437,232	
Federal Funds	0	0	0	0	
Operating and Litigation	<u>927,202</u>	<u>1,682,203</u>	<u>1,907,419</u>	<u>2,040,671</u> *	
General Fund	0	0	0	0	
Cash Funds	0	202,207	241,909	200,000	
Reappropriated Funds	927,202	1,479,996	1,665,510	1,840,671	
Federal Funds	0	0	0	0	
Indirect Cost Assessment	<u>3,266,800</u>	<u>3,552,478</u>	<u>3,843,839</u>	<u>3,863,288</u>	
General Fund	0	0	0	0	
Cash Funds	1,080,050	1,287,309	1,836,064	1,397,312	
Reappropriated Funds	2,186,750	2,265,169	2,007,775	2,465,976	
Federal Funds	0	0	0	0	
TOTAL - (2) Legal Services to State Agencies	33,131,339	36,615,416	40,981,598	42,341,191	3.3%
FTE	<u>258.4</u>	<u>269.9</u>	<u>281.5</u>	<u>296.3</u>	<u>5.3%</u>
General Fund	0	0	0	0	0.0%
Cash Funds	1,080,050	1,509,382	2,455,154	1,597,312	(34.9%)
Reappropriated Funds	32,051,289	35,106,034	38,526,444	40,743,879	5.8%
Federal Funds	0	0	0	0	0.0%

Appendix A: Numbers Pages

	FY 2018-19 Actual	FY 2019-20 Actual	FY 2020-21 Appropriation	FY 2021-22 Request	Request vs. Appropriation
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(3) CRIMINAL JUSTICE AND APPELLATE

Special Prosecutions Unit	<u>4,613,835</u>	<u>4,460,237</u>	<u>4,092,988</u>	<u>4,084,745</u>	
FTE	35.7	38.8	34.7	34.6	
General Fund	2,025,232	2,180,540	1,708,325	1,699,156	
Cash Funds	1,795,179	1,491,217	1,558,704	1,559,250	
Reappropriated Funds	793,424	788,480	825,959	826,339	
Federal Funds	0	0	0	0	
Auto Theft Prevention Grant	<u>269,073</u>	<u>295,544</u>	<u>295,544</u>	<u>163,713</u>	
FTE	2.0	2.0	2.0	1.0	
General Fund	0	0	0	0	
Cash Funds	0	0	0	0	
Reappropriated Funds	269,073	295,544	295,544	163,713	
Federal Funds	0	0	0	0	
Appellate Unit	<u>4,006,102</u>	<u>4,319,481</u>	<u>4,452,296</u>	<u>4,453,986</u>	
FTE	37.6	42.2	40.1	40.1	
General Fund	3,581,023	3,874,455	3,839,619	3,737,850	
Cash Funds	0	0	0	0	
Reappropriated Funds	425,079	445,026	612,677	716,136	
Federal Funds	0	0	0	0	

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	FY 2018-19 Actual	FY 2019-20 Actual	FY 2020-21 Appropriation	FY 2021-22 Request	Request vs. Appropriation
Medicaid Fraud Control Unit	<u>1,517,672</u>	<u>2,223,658</u>	<u>2,299,642</u>	<u>2,300,214</u>	
FTE	14.4	20.0	20.0	20.0	
General Fund	385,269	555,910	574,910	575,052	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	0	0	
Federal Funds	1,132,403	1,667,748	1,724,732	1,725,162	
Peace Officers Standards and Training Board Support	<u>5,794,089</u>	<u>5,971,985</u>	<u>5,105,534</u>	<u>4,956,041</u>	
FTE	11.1	14.6	14.6	15.0	
General Fund	0	0	0	0	
Cash Funds	5,794,089	5,971,985	5,105,534	4,956,041	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Indirect Cost Assessment	<u>601,149</u>	<u>672,893</u>	<u>704,657</u>	<u>667,568</u>	
General Fund	0	0	0	0	
Cash Funds	379,147	401,474	401,047	378,115	
Reappropriated Funds	86,776	91,887	91,789	84,750	
Federal Funds	135,226	179,532	211,821	204,703	
TOTAL - (3) Criminal Justice and Appellate	16,801,920	17,943,798	16,950,661	16,626,267	(1.9%)
FTE	<u>100.8</u>	<u>117.6</u>	<u>111.4</u>	<u>110.7</u>	<u>(0.6%)</u>
General Fund	5,991,524	6,610,905	6,122,854	6,012,058	(1.8%)
Cash Funds	7,968,415	7,864,676	7,065,285	6,893,406	(2.4%)
Reappropriated Funds	1,574,352	1,620,937	1,825,969	1,790,938	(1.9%)
Federal Funds	1,267,629	1,847,280	1,936,553	1,929,865	(0.3%)

Appendix A: Numbers Pages

	FY 2018-19 Actual	FY 2019-20 Actual	FY 2020-21 Appropriation	FY 2021-22 Request	Request vs. Appropriation
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(4) WATER AND NATURAL RESOURCES

Federal and Interstate Water Unit	<u>534,391</u>	<u>800,845</u>	<u>621,497</u>	<u>612,908</u>	
FTE	4.5	6.4	4.6	4.5	
General Fund	534,391	800,845	621,497	612,908	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Defense of the Colorado River Basin Compact	<u>427,018</u>	<u>442,877</u>	<u>465,675</u>	<u>465,929</u>	
FTE	3.5	3.5	3.5	3.5	
General Fund	(818)	0	0	0	
Cash Funds	427,836	442,877	465,675	465,929	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Defense of the Republican River Compact	<u>48,651</u>	<u>110,000</u>	<u>110,000</u>	<u>110,000</u>	
General Fund	0	0	0	0	
Cash Funds	48,651	110,000	110,000	110,000	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Consultant Expenses	<u>90,706</u>	<u>275,000</u>	<u>275,000</u>	<u>275,000</u>	
General Fund	0	0	0	0	
Cash Funds	90,706	275,000	275,000	275,000	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	

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	FY 2018-19 Actual	FY 2019-20 Actual	FY 2020-21 Appropriation	FY 2021-22 Request	Request vs. Appropriation
Comprehensive Environmental Response, Compensation and Liability Act	<u>332,706</u>	<u>531,548</u>	<u>544,562</u>	<u>544,562</u>	
FTE	2.6	3.5	3.5	3.5	
General Fund	0	0	0	0	
Cash Funds	0	0	0	0	
Reappropriated Funds	332,706	531,548	544,562	544,562	
Federal Funds	0	0	0	0	
Indirect Cost Assessment	<u>46,726</u>	<u>49,477</u>	<u>49,425</u>	<u>45,635</u>	
General Fund	0	0	0	0	
Cash Funds	0	0	0	0	
Reappropriated Funds	46,726	49,477	49,425	45,635	
Federal Funds	0	0	0	0	
Comprehensive Environmental Response, Compensation and Liability Act Contracts	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	
General Fund	0	0	0	0	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
TOTAL - (4) Water and Natural Resources	1,480,198	2,209,747	2,066,159	2,054,034	(0.6%)
FTE	<u>10.6</u>	<u>13.4</u>	<u>11.6</u>	<u>11.5</u>	<u>(0.9%)</u>
General Fund	533,573	800,845	621,497	612,908	(1.4%)
Cash Funds	567,193	827,877	850,675	850,929	0.0%
Reappropriated Funds	379,432	581,025	593,987	590,197	(0.6%)
Federal Funds	0	0	0	0	0.0%

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	FY 2018-19 Actual	FY 2019-20 Actual	FY 2020-21 Appropriation	FY 2021-22 Request	Request vs. Appropriation
(5) CONSUMER PROTECTION					
Consumer Protection and Antitrust	<u>3,012,258</u>	<u>3,466,185</u>	<u>3,792,393</u>	<u>3,793,048</u>	
FTE	31.4	33.0	34.2	34.2	
General Fund	1,445,826	1,802,915	0	0	
Cash Funds	1,585,225	1,514,506	3,638,665	3,639,066	
Reappropriated Funds	(18,793)	148,764	153,728	153,982	
Federal Funds	0	0	0	0	
Consumer Credit Unit	<u>1,750,229</u>	<u>1,925,826</u>	<u>2,220,954</u>	<u>2,247,416</u>	
FTE	18.6	21.4	23.0	23.0	
General Fund	0	115,273	0	0	
Cash Funds	1,750,229	1,810,553	2,220,954	2,247,416	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Indirect Cost Assessment	<u>554,034</u>	<u>586,661</u>	<u>628,402</u>	<u>745,798</u>	
General Fund	0	0	0	0	
Cash Funds	534,009	565,456	607,220	726,240	
Reappropriated Funds	20,025	21,205	21,182	19,558	
Federal Funds	0	0	0	0	
TOTAL - (5) Consumer Protection	5,316,521	5,978,672	6,641,749	6,786,262	2.2%
FTE	<u>50.0</u>	<u>54.4</u>	<u>57.2</u>	<u>57.2</u>	<u>(0.0%)</u>
General Fund	1,445,826	1,918,188	0	0	0.0%
Cash Funds	3,869,463	3,890,515	6,466,839	6,612,722	2.3%
Reappropriated Funds	1,232	169,969	174,910	173,540	(0.8%)
Federal Funds	0	0	0	0	0.0%

Appendix A: Numbers Pages

	FY 2018-19 Actual	FY 2019-20 Actual	FY 2020-21 Appropriation	FY 2021-22 Request	Request vs. Appropriation
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	FY 2018-19 Actual	FY 2019-20 Actual	FY 2020-21 Appropriation	FY 2021-22 Request	Request vs. Appropriation
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(6) SPECIAL PURPOSE

District Attorneys' Salaries	<u>2,749,138</u>	<u>2,754,858</u>	<u>2,799,368</u>	<u>2,800,512</u>	
General Fund	2,749,138	2,754,858	2,799,368	2,800,512	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Deputy District Attorney Training	<u>350,000</u>	<u>400,000</u>	<u>200,000</u>	<u>350,000</u>	
General Fund	350,000	400,000	200,000	350,000	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Litigation Management	<u>200,000</u>	<u>200,000</u>	<u>200,000</u>	<u>200,000</u>	
General Fund	0	0	0	0	
Cash Funds	200,000	200,000	200,000	200,000	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Tobacco Litigation	<u>15,576</u>	<u>750,000</u>	<u>100,000</u>	<u>100,000</u>	
General Fund	0	0	0	0	
Cash Funds	15,576	750,000	100,000	100,000	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	

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	FY 2018-19 Actual	FY 2019-20 Actual	FY 2020-21 Appropriation	FY 2021-22 Request	Request vs. Appropriation
CORA OML Attorney	<u>74,516</u>	<u>96,010</u>	0	0	
FTE	0.7	1.0	0.0	0.0	
General Fund	74,516	96,010	0	0	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
TOTAL - (6) Special Purpose	3,389,230	4,200,868	3,299,368	3,450,512	4.6%
<i>FTE</i>	<u>0.7</u>	<u>1.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0%</u>
General Fund	3,173,654	3,250,868	2,999,368	3,150,512	5.0%
Cash Funds	215,576	950,000	300,000	300,000	0.0%
Reappropriated Funds	0	0	0	0	0.0%
Federal Funds	0	0	0	0	0.0%
TOTAL - Department of Law	80,739,505	92,366,498	91,573,634	95,054,116	3.8%
<i>FTE</i>	<u>467.4</u>	<u>513.5</u>	<u>518.0</u>	<u>531.9</u>	<u>2.7%</u>
General Fund	16,396,824	18,717,773	14,284,468	14,562,957	1.9%
Cash Funds	15,759,722	17,688,477	19,459,500	19,371,180	(0.5%)
Reappropriated Funds	46,889,710	53,606,154	55,459,431	58,726,122	5.9%
Federal Funds	1,693,249	2,354,094	2,370,235	2,393,857	1.0%

APPENDIX B FOOTNOTES AND INFORMATION REQUESTS

UPDATE ON LONG BILL FOOTNOTES

The General Assembly includes footnotes in the annual Long Bill to: (a) set forth purposes, conditions, or limitations on an item of appropriation; (b) explain assumptions used in determining a specific amount of an appropriation; or (c) express legislative intent relating to any appropriation. Footnotes to the 2020 Long Bill (H.B. 20-1360) can be found at the end of each departmental section of the bill at <https://leg.colorado.gov/bills/HB20-1360>. The Long Bill footnotes relevant to this document are listed below.

- 76 Department of Law, Administration, Health, Life, and Dental — The General Fund appropriation includes a decrease of \$714,506 that is equal to 5.0 percent of the General Fund portion of estimated base salary for the Department. The reduction in this General Fund appropriation is in lieu of a 5.0 percent personal services base reduction and provides the Department with increased flexibility to absorb the reduction and engage in more considered targeted reductions across all department divisions and programs. This reduction is not intended to reduce the Health, Life, and Dental benefit provided to state employees. It is the General Assembly's intent that Health, Life, and Dental costs for employees, as approved in budget actions, be fully paid within personal services appropriations augmented by Department allocations from central benefits appropriations.

COMMENT: This footnote explains assumptions used in determining the amount of the FY 2020-21 appropriation for Health, Life, and Dental. The footnote describes the adjustment made as a statewide compensation balancing action. This item is addressed in the Statewide Compensation briefing document.

- 77 Department of Law, Legal Services to State Agencies – In making this appropriation, it is the General Assembly's intent that hourly billing rates charged by the Department for legal services to state agencies not exceed \$110.46 per hour for attorneys and not exceed \$82.05 per hour for legal assistants, which equates to a blended legal rate of \$106.34 per hour.

COMMENT: The Department is billing client agencies at the stated rates.

- 78 Department of Law, Special Purpose, Litigation Management -- It is the General Assembly's intent 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 2020-21. It is also the General Assembly's intent 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 General Assembly's intent 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: The Department is complying with this footnote.

UPDATE ON LONG BILL REQUESTS FOR INFORMATION

The Joint Budget Committee annually submits requests for information to executive departments and the judicial branch via letters to the Governor, the Chief Justice, and other elected officials. Each request is associated with one or more specific Long Bill line item(s), and the requests have been prioritized by the Joint Budget Committee as required by Section 2-3-203 (3), C.R.S. Copies of these letters are included as Appendix L of the annual Appropriations Report. The requests for information relevant to this document are listed below.

- 1 Department of Law, Legal Services to State Agencies, Personal Services -- The Department is requested to provide by November 1, 2020 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.

COMMENT: The Department submitted its response as requested by November 1, 2020, and can be found in Appendix D in the electronic version of this document.

- 2 Department of Law, Criminal Justice and Appellate, Appellate Unit -- The Department is requested to provide by November 1, 2020 a report concerning the Appellate Unit's progress in reducing its case backlog, including the following data for FY 2019-20: the number of opening briefs received; the number of answer briefs filed; and the case backlog as of June 30, 2019.

COMMENT: The Department submitted its response as requested by November 1, 2020, and can be found in Appendix D in the electronic version of this document.

- 3 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: The Department plans to include as part of its statutorily required January 2021 report the requested information about expenditures and recoveries related to the Unit's criminal investigations.

- 4 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 Colorado District Attorney Council submitted the required report on November 1, and can be found in Appendix D in the electronic version of this document.

APPENDIX C

DEPARTMENT ANNUAL PERFORMANCE REPORT

Pursuant to Section 2-7-203 (1)(b), C.R.S., the Department of Law is required to publish an **Annual Performance Report** for the *previous fiscal year* by November 1 of each year. This report is to include a summary of the Department's performance plan and most recent performance evaluation for the designated fiscal year. In addition, pursuant to Section 2-7-204 (3)(a)(I), C.R.S., the department is required to develop a **Performance Plan** and submit the plan for the *current fiscal year* to the Joint Budget Committee and appropriate Joint Committee of Reference by July 1 of each year.

For consideration by the Joint Budget Committee in prioritizing the Department's FY 2021-22 budget request, the FY 2019-20 Annual Performance Report and the FY 2020-21 Performance Plan can be found at the following link:

<https://coag.gov/resources/budget-and-accounting/>

APPENDIX D: RESPONSES TO REQUESTS FOR
INFORMATION SUBMITTED BY THE DEPARTMENT
(DIGITAL ONLY)



Joint Budget Committee Request for Information:

Department of Law, Legal Services to State Agencies, Personal Services – The Department is requested to provide by November 1, 2020, 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.

Background:

The Attorney General and the Department of Law (“DOL” or “Department”), collectively referred to as the Colorado Attorney General’s Office, represent and defend the legal interests of the people of the State of Colorado and its sovereignty. The Attorney General exercises the responsibilities given to the Department by the Colorado Constitution, statutes enacted by the Colorado General Assembly, and the common law.

Along with other specified statutory responsibilities, the Attorney General is also the chief legal counsel and advisor to the Judicial and Executive Branches of State government including the governor, all principal departments of State government, and State agencies, boards, and commissions.

DOL legal services are delivered through six operational sections. These sections carry out their specific responsibilities in order to provide the highest quality legal representation for State clients. These six sections include:

- **Business and Licensing Section** – Provides legal advice and litigation services to several state agencies, including the Department of Regulatory Agencies and the Divisions of Professions and Occupations, Banking, Civil Rights, Financial Services, Insurance, Real Estate, and Securities. The Section also represents the Department of Agriculture, the State Personnel Board, and the Independent Ethics Commission.
- **Civil Litigation and Employment Law Section** – Defends State employees and agencies in administrative, state, and federal courts. Cases may involve personal injury suits, property damage, constitutional violations, or employment discrimination among others. The Section also prosecutes

civil rights violations in administrative and state courts and provides employment law advice to all state agencies. The Section provides day-to-day advice to the Departments of Corrections, Public Safety, and Transportation. The Section also advises and represents all State agencies on labor and employment issues, including advice regarding the classified personnel system and collective bargaining agreements with state employee organizations.

- **Consumer Protection Section** – Protects Colorado consumers and businesses by enforcing State and federal laws designed to maintain a fair and competitive business environment while protecting consumers from being targets of fraud. The Consumer Protection Section is devoted to meeting the goals of keeping Coloradans safe by enforcing antitrust laws, combating unfair or deceptive trade practices, enforcing data privacy and cyber security laws, stopping unscrupulous lenders and debt collectors, assuring fair and reasonable utility rates, and fighting fraud against older Coloradans. The Consumer Protection Section also works to hold those who caused or contributed to the opioid epidemic accountable, including by actively investigating and suing irresponsible drug manufacturers, distributors, retailers, and others for their deceptive actions that fueled this crisis.
- **Natural Resources and Environment Section** – Works with client agencies to protect and improve the quality of Colorado’s natural environment. The Section provides legal counsel and representation to the Department of Natural Resources on the regulation of mining, oil and gas, parks and wildlife, state lands, and water rights, and to the Department of Public Health and Environment on the regulation of air quality, water quality, radiation control, and hazardous and solid waste management. The Section also advocates on behalf of the State Natural Resource Trustees and the Colorado Energy Office.
- **Revenue and Utilities Section** – Provides litigation and general counsel support to the Department of Revenue, the Public Utilities Commission trial staff, the Property Tax Administrator and Property Tax Division within the Department of Local Affairs, and statewide clients regarding bankruptcy matters.
- **State Services Section** – Provides representation to eight of sixteen executive branch principal departments and Colorado’s five statewide elected public officials: the Governor, Lieutenant Governor, Attorney General, Secretary of State, and Treasurer. The Section also represents the Judicial Branch, the Public Utilities Commission, the Departments of Human Services, Health Care Policy and Financing, Personnel and Administration, Public Health and Environment (on health matters), State Institutions of Higher Education, Department of Higher Education, and the Department of Education. The Section reviews hundreds of state contracts and defends the State against claims typically involving the inadequacy of funding of various programs. The Section also advises state agencies on data privacy and cybersecurity, and the Colorado Open Records Act.

Prior to FY 2018 Legal Services Budgeting Methodology:

- Agency legal expenses were based upon “budgeted hours” and a “blended hourly rate”.
- Most client agencies received direct appropriations for legal services, the majority of which were re-appropriated to the DOL, the balance being cash revenue from the higher education community.
- The DOL billed each client agency based upon the number of hours worked on behalf of that client each month multiplied by the attorney or legal assistant billing rate.
- The DOL paid litigation costs and was reimbursed by the client agency for costs.

- The legal services appropriation did not allow for payment of these litigation costs and the agency typically paid for these costs from their operating or personal services budget line items.

Current Methodology:

- For the 2017-18 and 2018-19 budget cycles, the Legislature set the legal services budget for State agencies based on a 3-year lookback on actual legal hours worked on behalf of each client agency. Additionally, for FY 2018-19 and out years a 3-year lookback on litigation expenses is also included in the calculation.
- This new legal services budgeting methodology is consistent with other statewide common policy appropriations, such as Department of Personnel and Administration's Risk Management, Workers' Compensation, and Administrative Law Judge common policy appropriations.
- Based upon the legal services appropriation, the DOL charges each client agency 1/12 of the agency's allocation on a monthly basis. The annual legal services budget for each client agency is intended to cover the anticipated annual legal hours used and associated litigation expenses. Additionally, the DOL continues to provide monthly reports to each client agency documenting the actual hours worked on behalf of each client, including descriptive narratives of the work performed.

The DOL developed a questionnaire to better understand the various impacts on our client agencies—both positive and negative— associated with the current legal services budgeting methodology. Additionally, the DOL wanted to better understand how client agencies use the monthly time billing reports and whether other methods may be better suited to effectively partner with DOL client agencies in delivering legal services. The DOL emailed the survey to 129 State employees representing 45 distinct State agencies, institutions of higher education, and the Community College System. Specifically, the DOL targeted employees on the State Budget Directors and CFO list and the State Controller's list, as well as board members, executive leadership, and program managers identified by DOL personnel. The DOL received a total of 56 responses, from 20 different agencies or institutions of higher education.

The DOL asked respondents to rate their level of agreement, on a scale ranging from Strongly Disagree to Strongly Agree, on each of the statements below.

1. Overall, the existing three-year rolling average methodology to estimate my organization's need for legal services is effective – i.e., it is reasonably accurate and provides predictability.
2. My organization evaluates individual time billing records to measure the value and performance of DOL employees in delivering legal services.
3. I would like other ways (e.g., dashboards, monthly reports, quarterly discussions, etc.) to assess the value and performance of DOL employees in delivering legal services.
4. My organization would benefit from an increase in communication with the DOL about our goal setting and priorities, and how they relate to our legal service priorities and budget.

Additionally, each respondent had the option to provide a brief explanation for their rating.

Results:

Overall, 75% of the respondents indicated “Somewhat Agree,” “Agree,” or “Strongly Agree” that the 3-year average budget methodology is effective, reasonably accurate, and provides predictability. Additionally, 63% of the respondents indicated “Somewhat Agree,” “Agree,” or “Strongly Agree” that they use the monthly time billing statements provided to client agencies to evaluate DOL employees in delivering legal services.

Respondents were relatively evenly split with respect to question #3. To assess if there are other methods the DOL may utilize for client agencies to assess the value and performance of the DOL’s legal efforts, 28% of the respondents indicated “Somewhat Disagree,” “Disagree,” or “Strongly Disagree,” while 36% of the respondents indicated “Neither Agree nor Disagree,” and 36% of the respondents also indicated “Somewhat Agree,” “Agree,” or “Strongly Agree.”

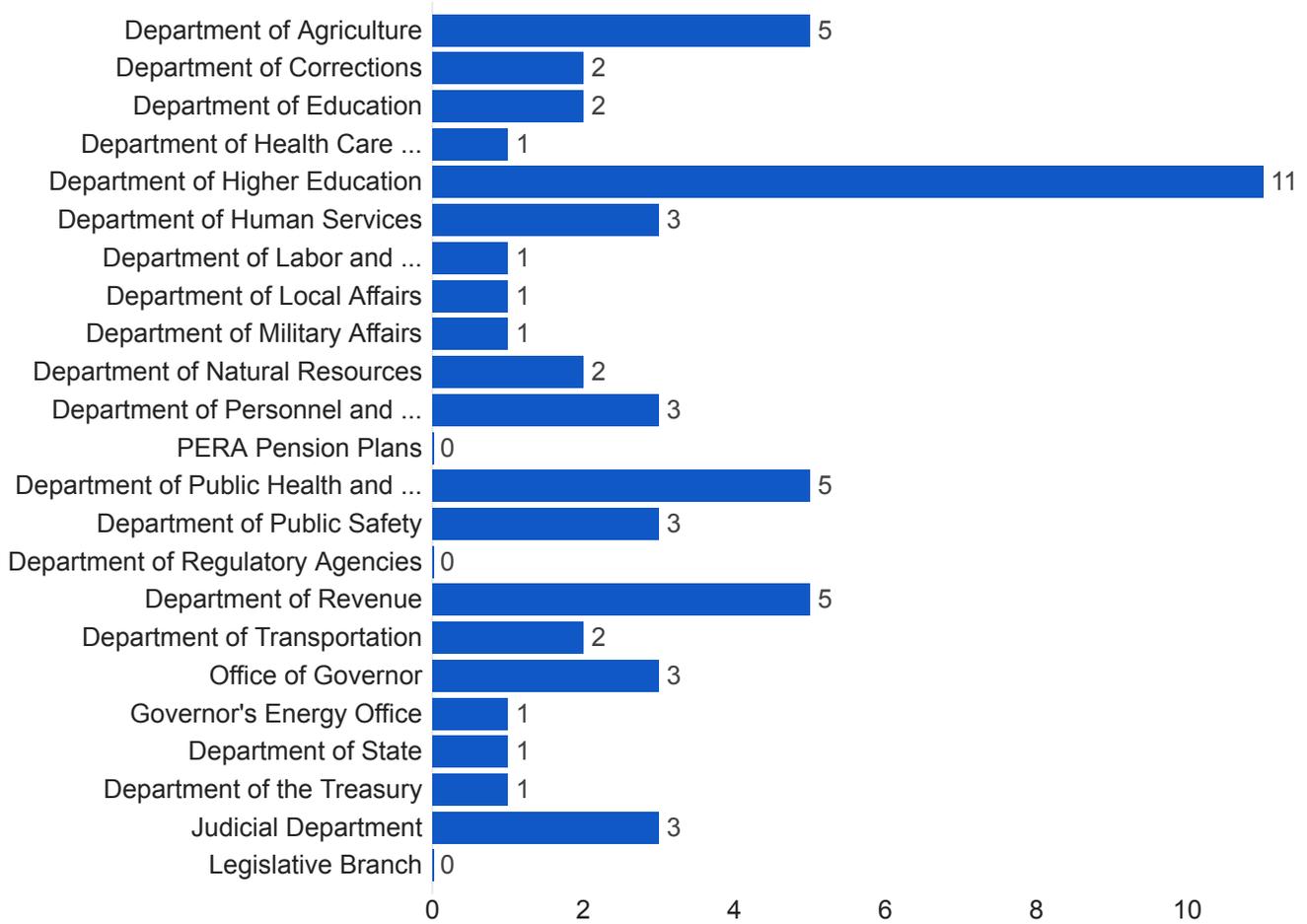
Lastly, 53% of the respondents indicated “Neither Agree nor Disagree” for the statement that their organization would benefit from increased communication with the DOL about the client agency’s goal setting and priorities, and how they relate to legal service priorities and budget, and 31% of the respondents indicated “Somewhat Agree”, “Agree”, or “Strongly Agree” with this statement.

Conclusions:

Based on the analysis of the questionnaire responses, the DOL believes the current budget allocation methodology is more accurate and provides more predictable estimates of the client agency’s legal needs than the previous monthly invoicing for actual costs model. Additionally, while many State agencies find value in the current monthly billing reporting, the DOL is embarking on an effort to show the value of the legal services provided through alternative metrics. The DOL is working closely with client agencies to pursue alternative reporting and communication channels that complement the client agency goal setting and priorities, and how they relate to the legal service priorities and budget.

Please find below the detailed results, which include a summary of the responses for each question and each respondent’s specific insight into their response.

Department/Agency/Institution of Higher Education:



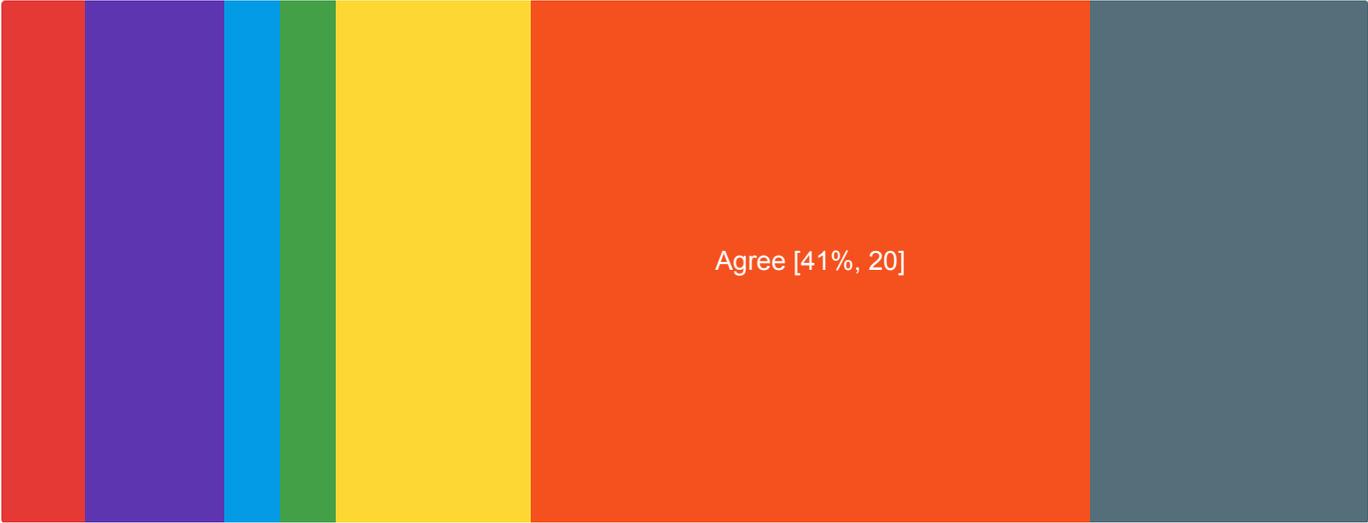
● Choice Count

Job Title:	Department/Agency/Institution of Higher Education:
Accounting Manager	Department of Corrections
Vice President and General Counsel, Colorado School of Mines	Department of Higher Education
Controller	Department of Public Safety
Controller - Colorado State University	Department of Higher Education
Senior Director of Taxation	Department of Revenue
CFO	Department of Personnel and Administration
Budget and Policy Analyst	Office of Governor
1	Department of Agriculture
Division of Gaming Controller	Department of Revenue
Controller	Department of Human Services
Controller	Department of the Treasury
Controller	Office of Governor
Director of Accounting Services	Department of Higher Education
Chief Financial Officer	Department of Agriculture
Vice President and General Counsel	Department of Higher Education
Budget Director	Department of Personnel and Administration
Controller	Department of Higher Education
Deputy Controller	Department of Health Care Policy and Financing
Chief Administrative Officer	Department of Higher Education
Expenditure Controller	Department of Revenue
Controller	Department of Personnel and Administration
Budget Director	Department of Public Health and Environment
Senior Policy Anayst	Department of Human Services
Controller	Department of Transportation

CFO	Department of Education
Budget Director	Department of Transportation
Controller	Department of Revenue
Director of Business Operations	Department of Higher Education
Controller & Budget Director	Department of State
Director of Environmental Programs	Department of Public Health and Environment
Chief Financial Officer	Department of Human Services
Budget Director	Department of Revenue
Chief Operating Officer (Office of the Child's Representative)	Judicial Department
Controller	Department of Agriculture
Director of Finance	Department of Education
Controller	Department of Natural Resources
d	Department of Agriculture
Controller	Judicial Department
Controller	Department of Labor and Employment
Budget Director	Department of Public Safety
Deputy General Counsel - Colorado School of Mines	Department of Higher Education
Finance Director	Department of Local Affairs
OIT Finance Director & Budget Director	Office of Governor
Deputy CFO	Department of Public Health and Environment
Deputy CFO and Controller	Department of Higher Education
Accounting Supervisor for State Fair	Department of Agriculture
Environmental Programs Operations Manager	Department of Public Health and Environment
History Colorado Budget Director	Department of Higher Education
Budget Director	Department of Military Affairs
Controller	Department of Higher Education

Budget Director	Department of Corrections
Director of Accounting & Budget	Governor's Energy Office
Director, Office of Legal and Regulatory Compliance	Department of Public Health and Environment
Deputy Controller	Department of Public Safety
CFO	Judicial Department
Budget Analyst	Department of Natural Resources

Overall, the existing three-year rolling average methodology to estimate my organization's need for legal services is effective – i.e., it is reasonably accurate and provides predictability.



- Strongly Disagree [6%, 3]
- Disagree [10%, 5]
- Somewhat Disagree [4%, 2]
- Neither Agree or Disagree [4%, 2]
- Somewhat Agree [14%, 7]
- Agree [41%, 20]
- Strongly Agree [20%, 10]

Please provide some insight into your response in the text box below:

Please provide some insight into your response in the text box below:

We like the predictability of knowing exactly how much will be coming out of our appropriations, especially those that are cash funded.

This methodology seems to be adequate.

Couldn't be better - gives us great consistency in our budgets. Predictable

Somewhat agree

We are required to prepare monthly financial statements and distribute basically our net income annually. Because of this, we prefer to have actual expenses billed to us every month. In addition, we must split out Sports Betting expenses and Fantasy Sports expenses. Having the current charges match what we are currently paying - like it used to be - would save us a great deal of time.

The new methodology was a bit of a problem in year 1 (FY18) because Treasury gets charged for work for which we ultimately get reimbursed, so we had to do additional calculations to determine how much reimbursement to request. Finally, for our FY20 budget, we worked with the JBC to change the Long Bill annotation for legal services so that the funding sources better represent who is benefiting from those services. Also, from FY19 to FY20, we saw a 166% increase in our legal services appropriation, but it leveled out with the FY21 appropriation.

The Office of the Governor's legal needs are variable year-to-year and the three-year rolling average does provide predictability in our budgeting process.

Our billing amount has varied greatly every year, yet to us, our use of the State's legal services remains fairly consistent year-over-year. Perhaps it was that 1st year's billing that was excessively high that the true-up is now affecting later years...

Our legal costs vary significantly by program. the rolling average helps smooth some of that volatility and gives us a more consistent budget to plan for

We would prefer to be billed in "real time" for fees as incurred, a best practice for law firms. The university is, in effect, penalized for high-demand billing years; we "pay" for a particular billing cycle in subsequent years in the three-year cycle, even though the matters may have been long resolved and the fees incurred in past billing cycles. Not paying on an "as incurred" basis also creates challenges for us in connection with matters for which we have coverage from our private liability insurer. The carrier, of course, prefers to monitor and pay for fees in "real time" - as incurred. Paying on a three-year "rolling average" is not a customary practice from the carrier's perspective.

The estimate has been over for the last 2 years but as of FY21 we will use way more than the estimate.

Provides adequate detail that is reviewed and allows for necessary adjustments.

Have only been with History Colorado for 10 months, so I can't provide additional context at this time.

It is certainly more labor efficient and, to be redundant, is reasonably accurate and provides predictability.

Predictability of expenses is very helpful.

This methodology makes it easier to plan for annual expenditures, and is much preferred to real time billing.

n/a

This methodology works well with CDOT.

I have no other suggested approach.

We don't currently have any issues with the estimating methodology.

The Lottery's legal services appropriation is allocated in our Operating POTS from DOR. We assume the amount that we are allocated is pro rated from the entire DOR billing (three-year rolling average). This allows for predictability of our legal expenses from an accounting standpoint.

It seems a reasonable method

As a cash-funded agency, I very much appreciate the certainty in the common policy billing methodology. However, I recognize that the three-year rolling average presents challenges for both agencies when there is a sudden spike in expenses, such as for us in FY 2020 and which has continued thus far into FY 2021.

The methodology is too retrospective and fails to account for significant changes that may occur from legislative (e.g., air and oil/gas legislation), external (e.g., COVID, litigation targeting) or other factors. CDPHE has been experiencing these factors recently, which will either lead to unbudgeted future increases or control of legal costs now.

Being able to know what our legal costs are going to be each year is extremely valuable to us.

This methodology provides predictability and seems fairly accurate based on the data I receive

A three-year rolling average tends to smooth spikes that may occur in a single fiscal year due to "unusual" legal needs related to a unique event or events.

We have seen a 59.5% increase in legal service costs for Fiscal Year 2020-21 versus Fiscal Year 2017-18.

The Charter School Institute appreciates the predictability that this method provides.

d

The new methodology is wonderful. Agencies do not need to worry about overspending an appropriation to obtain legal advice from the Attorney General. Obtaining legal advice should not be artificially restrained by budget capacity as it was under the previous methodology. Under the previous methodology, if an agency needed advice in June and did not have sufficient budget then they were forced to make a decision between overspending the legal services budget or waiting until the next fiscal year to obtain the legal advice. Sometimes legal questions cannot wait until the next fiscal year. Please keep the new methodology.

I have not had much experience with legal services for CDLE yet.

Having a set appropriation and knowing that the department will only be billed for that amount in the fiscal year allows programs to plan/project their expenses/revenues for the year.

Because the Colorado School of Mines does not have a line item for legal services, and is insured outside of State Risk Management, the existing methodology provides little to no predictability. The existence of a large litigation matter in one year causes the three-year average to fluctuate wildly and impact billing for years after the matter has been resolved. The three-year average would be a reasonable approach with respect to billing for general advice, but should not be used for litigation - which is unpredictable year-to-year. Mines is entitled to be reimbursed in real time by its insurer for various litigation matters. We have concerns that it may not be ethical for us to submit the AGO monthly bill as a basis for reimbursement because the defense cost incurred will not be fully realized until the completion of the three-year look back. This is because the hourly billing rate changes year to year, while the look-back is based on net hours utilized.

It provides some predictability for current fiscal years, but I have no clear indication of how much legal services will go up or down for the next fiscal year budget submission.

Unsure about accuracy due to the rolling average, however it's predictable and easy to budget. Based on recent activity with OIT-HR, we expect legal expenses to increase.

The methodology is clear and data is provided to properly distribute costs to the Department.

It helps budget our expenses on an annual basis but could result in slightly inaccurate information.

It helps for budgeting purposes for State Fair to not overbudget for the unexpected that may or may not take place and still have the chance of running over budget.

The three year rolling average methodology deprives both the client agency and DOL of the ability to actively manage limited resources. There is no mechanism for the AGO to rightsize based on agency needs, nimble expansion or contract, or a pathway for a client agency to reduce legal services as there is nothing to help DOL distinguish from genuine reduction of services and under-resourcing. It does not provide an accurate picture or enable predictability. It does not enable DOL or the client agency to redirect resources.

Three year average, plus ongoing monthly billings for actual expenditures and same year true up, provide insight needed for cost allocations, etc.

The backup spreadsheet showing hours used to calculate amount is very useful.

Department of Higher believes this methodology is reasonably accurate and provides predictability.

My agency had a significant increase in hours in FY 20 which would have been difficult to absorb had we been billed for actual costs. The 3-year average method evens out the wild swings, especially if there was a driver that was one-time in nature.

CEO has experienced large increases for legal services over the past several years. The legal services appropriation has lagged far behind CEO's actual need for legal services.

The AG's office provides outstanding legal services for our agency; however, we respectfully believe that legal services costs should be paid based on actual billings for that year rather than using a rolling three year average methodology. For years when we underspend the appropriation, we are overpaying for services, and for years when we overspend, we know we will see an increase in our legal services costs as these are included in the three year calculation. In any given year we may wish to spend less in legal services dollars than the appropriation now requires, and this methodology does not give us the control to do so and immediately see the cost savings.

I'm not closely enough engaged in working with this allocation to express opinion.

I agree that it's an effective tool.

There has been some catch up from divisions in understanding how the appropriation is determined. That be said, the current methodology seems reasonable and makes sense to DNR.

My organization evaluates individual time billing records to measure the value and performance of DOL employees in delivering legal services.



- Strongly Disagree [2%, 1]
- Disagree [9%, 4]
- Somewhat Disagree [4%, 2]
- Neither Agree or Disagree [22%, 10]
- Somewhat Agree [15%, 7]
- Agree [39%, 18]
- Strongly Agree [9%, 4]

Please provide some insight into your response in the text box below:

Please provide some insight into your response in the text box below:

The department seems to be satisfied.

We, in accounting, do not use the services of DOL employees very often; however, Gaming's Directors do and the Director of Administration reviews the Law Bill.

Management employees who work closely with the DOL employees do not regularly review the detailed invoices.

The Office of the Governor's Office of Legal Counsel broadly reviews the billing on a monthly basis.

I don't believe we are provided with detail of the DOL's time billing records...

Some programs look at the detail more than others but most do not, but use the information for budgeting purposes

We review the monthly billing statements to assess whether attorney and para-professional time is accurately allocated to the university, and to assess the quality and efficiency of services provided.

We review what was worked on to ensure it's for our organization.

This review is done by the experts in the department and acted upon accordingly to affect change.

I review each billing.

I've never been directly involved in a situation that required DOL's services. However, from my distant perspective, I believe DOR inherently trusts DOL to provide effective and cost-efficient legal services.

Division staff perform regular monthly reviews of the billing details.

I do not currently use the billing records for this.

Every month we forward the bills to program for their input on the accuracy of the bills. The Chief Legal Director reviews the billing and descriptions to ensure that the time billed seems right and the descriptions support the billing.

The reviews are based on results on services provided.

We do not evaluate the hourly response, though we have historically, and do currently have a positive relationship with the AG's office.

We review billing against services provided and do not currently have any issues with this process.

This is handled by the Lottery's Deputy Director.

We do not attempt to measure the performance of DOL Employees

Our reviewer takes a thorough look at the monthly billing detail reports and signs off on them.

We do review these records, but plan to do more to assist with budget planning and prioritization.

All of our billings are distributed to each program for review and approval

Our AFS team evaluates the billing but it is difficult to know what value the service brings without taking with the specific division.

The OCR typically reviews individual billing records to determine accuracy of the records. As the OCR does not incur significant DOL costs, it is relatively easy to associate detail billing to the annual allocation.

Program staff are responsible for the evaluation of the accuracy of billing provided on monthly invoices.

We do review the invoices each month to ensure accuracy. Overall we are highly satisfied with the value and performance of the services we receive.

d

I am new to my agency so I am not sure if we do carefully review the legal billings.

I have not had much experience with legal services for CDLE, except on the periphery.

My organization utilizes DOL services as needed.

As an institution of higher education, the Colorado School of Mines does not have a appropriated line item for legal services. Therefore, we must closely review billing records to ensure value for the institution, and in order to submit these bills for reimbursement by our insurer.

Our largest users of legal services regularly engage with DOL staff on legal billings and charges.

Most legal issues are related to HR and is tracked by HR to monitor time, effort and performance. Because most legal issues are not directly related to finance, we do not review the performance.

Divisions receive copies of monthly billing statements for review.

We have one staff member who reviews the bills each month when they come in.

I review the billings for accountability.

We do evaluate the time billing records; however, time bill does not measure the value of the services or manage the services. Litigation is historically an activity that is worked until it is done; client agencies no longer work under this model so it is increasingly difficult to communicate; in addition, it suggests all funds need to be directed to litigation services when the service array is appropriately broader than that, as it is appropriate for a client agency to seek legal opinions on legislative matters, rulemaking, interpretation of federal laws and rules, etc. to maximize agency success. While client agencies can attempt to manage by billing codes, this is most likely going to mean over-management by client agencies as back briefing and other processes valued by DOL may not be valued by the client agency. Overall, billing information is more helpful to track the topics being worked than managing the work.

Review for anomalies is more common. Some DOL employees bill admin lines more frequently than others rather than using specific bill codes.

We do review the records to make sure items are accurate and to see what we are spending our time on.

Department of Higher Ed evaluates individual time billing records to measure the value and performance of DOL employees in delivering legal services. Thank you for your services

Not aware if the billing records are reviewed.

Monthly billings are disseminated to unit Directors to review the billing records for accuracy.

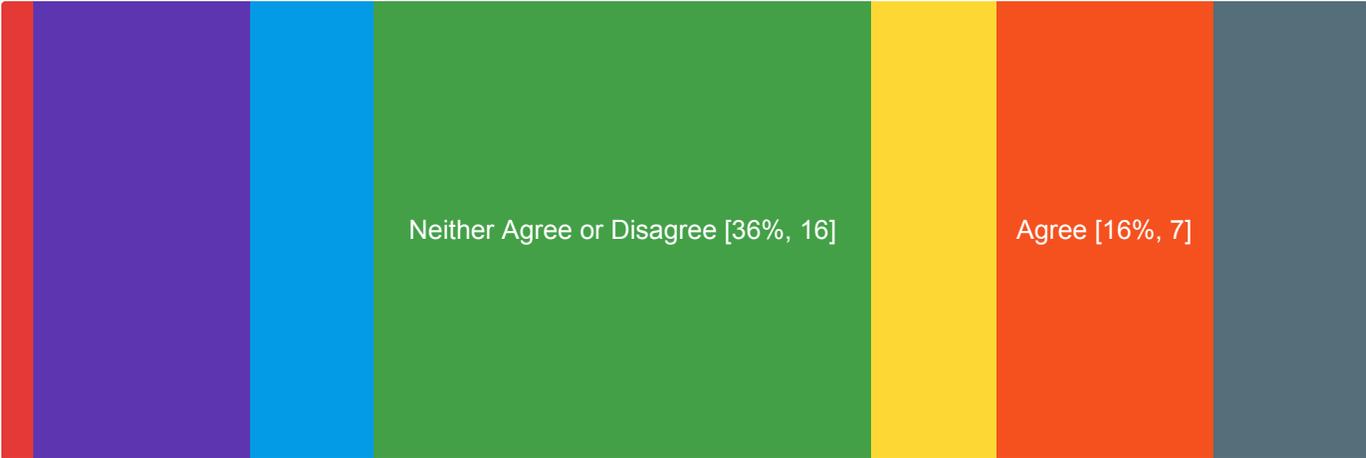
We have numerous attorneys at the DOL who provide our divisions legal services, and each division reviews the monthly "bills" to ensure we are in agreement with the scope and quality of legal services received. We use these bills as a way to manage the overall services being provided, and make informed decisions about what work needs to be done and what legal services we may need to slow down or stop.

I'm not aware of whether or not anyone is doing this.

We typically get statements from SCAO to evaluate.

Accounting and DNR divisions review monthly billing for any erroneous errors and to ensure accuracy. DOL has also been very responsive to requests from DNR for corrections or additional billing information.

I would like other ways (e.g., dashboards, monthly reports, quarterly discussions, etc.) to assess the value and performance of DOL employees in delivering legal services.



- Strongly Disagree [2%, 1]
- Disagree [16%, 7]
- Somewhat Disagree [9%, 4]
- Neither Agree or Disagree [36%, 16]
- Somewhat Agree [9%, 4]
- Agree [16%, 7]
- Strongly Agree [11%, 5]

Please provide some insight into your response in the text box below:

Please provide some insight into your response in the text box below:

I do not believe this is necessary.

We would be open to discussing the value of other assessment tools.

A dashboard along with monthly reporting would be helpful in determining the value and performance of delivered legal services.

I'm not sure how often people would use it

We are not always comfortable with the charges assessed against the university for matters for which multiple IHEs are sharing the costs/fees. We would like more transparency with regard to the other institutions that are sharing these expenses, and anticipated budget for such expenses.

This is not important to us.

A dashboard option would be great.

I would like a dashboard, or other summarized report by quarter, and year-over-year.

I believe the current methodology is sufficient for DOR's purposes.

Would be interested to hear of potential options.

I'm fine with the way we currently receive the information.

The CDHS Chief Legal Director is in constant communication with the Attorney General's office and has a good sense for the value and performance of DOL. She gives real time feedback, both positive and negative, to the value and performance. No additional tools needed at this time.

The legal services we receive is really specific to the task at hand. Having these overall reporting would not be effective for us.

A quarterly billing status would be ample.

We are accustomed to current process, but welcome improvements if they're available.

This is handled by the Lottery's Deputy Director.

I am fine with the current process

The detail reports are helpful and are reviewed by those who need the info in our agency. (Although, we're a small agency which influences this response.)

We are working with both our Divisions and AGs to develop these tools. They are essential to help manage our public resources and aligning with strategic plans.

We are fine with how it is but would be willing to change if it accommodated other people's needs.

Any data/reporting we can receive for common policies, the better.

As stated earlier, the OCR does not incur significant DOL costs. The current system is sufficient for the OCR.

The 3 year methodology makes it challenging to quantify utilization of services without having a comparison tool.

We feel we receive adequate information.

d

I guess a dashboard of some kind would not hurt. But I am not sure how closely we monitor the reports so it is difficult to say this is an important addition.

I have not yet had much experience with interacting with DOL.

I think quarterly reports would provide information for internal discussions within our organization.

We do not require additional data to evaluate the value and performance of DOL employees.

I don't specifically need more discussion in this area as long as users within the Department can engage with DOL staff on the value and performance of legal services. Far as I've heard they can.

This could be helpful for our HR department. Finance office is neutral.

Division leadership may be interested in dashboards.

If we have questions we will reach out on specific items.

I think this would be a question for our general manager to answer.

This question again focuses on value and performance but it doesn't get to managing work or cost. The value and performance is known through the ongoing interactions between staff and their counsel. For me, this is not the problem that needs to be solved.

DOL has proven to be a responsive common policy agency in addressing billing questions. Their existing summaries attached to each IET are sufficient and can be used to populate necessary departmental data for Agency review.

A quarterly report would be nice

The Department of Higher Ed does would like other ways (e.g., dashboards, monthly reports, quarterly discussions, etc.) to assess the value and performance of DOL employees in delivering legal services. This would be helpful.

Some other method of reporting utilization data throughout the year would be helpful. It would also heighten awareness of the types of legal services that are being used and the variations throughout the year and from year-to-year.

CEO currently receives monthly reports with detailed billing records.

The more data we can have that gives us details about the work being done, the better we can have a common understanding with the DOL about the work performed, the costs, the benefits, and the need, or lack thereof, for better management of the funds.

I'm not much engaged in this process. Easy-to-use information resources typically generate best use and higher user confidence.

I think what we have works great

My assumption is that this is happening already and the process is working well.

My organization would benefit from an increase in communication with the DOL about our goal setting and priorities, and how they relate to our legal service priorities and budget.



- Strongly Disagree [2%, 1]
- Disagree [7%, 3]
- Somewhat Disagree [7%, 3]
- Neither Agree or Disagree [53%, 23]
- Somewhat Agree [12%, 5]
- Agree [14%, 6]
- Strongly Agree [5%, 2]

Please provide some insight into your response in the text box below:

Please provide some insight into your response in the text box below:

This is a question for the Gaming Director.

Management employees may not have the necessary time to review such communications.

The Office's senior leadership and Office of Legal Counsel has significant communication with DOL about goal setting and priorities.

For our agency it would be helpful to create some standards on when to call legal services and when not to. That likely needs to be created internally but if there are other agencies that have that already or if DOL has some guidance that would be nice

We believe this communication should be at least an annual event, and be managed directly by the appropriate contacts at the AGO who provide us the legal services for which we are billed.

We communicate as needed.

This question is for the department legal staff.

N/A

From my perspective, I'm not informed enough of the history or trending of our legal services to know whether there's a practical opportunity to set goals and priorities that would benefit DOR on a long term basis.

This could prove useful.

I think communication between the Departments is generally beneficial to both parties.

We are in constant communication with the DOL, including regular meetings between the lead attorneys and our Senior Executive Team. We do not require an increase in communication on this front.

My Organization has no complaints about the communication with the DOL's services.

Our legal issues are primarily responsive.

We are very satisfied with the current process and level of information.

See previous answer.

No additional communication is required

No strong feelings

We've started these discussions with the AGO and believe both departments see the value.

More communication is never a bad thing. I do believe we have a good degree of discussion on these topics already.

DOL goals might be helpful, but wouldn't necessarily make an impact on how we utilize their service

While the OCR does not oppose additional communication, we are satisfied with the attention the DOL pays to OCR's needs.

Will defer to our CFO on preference, but believe we need to take this step considering the rapid increase in our costs the last 4 years.

We communicate frequently with the DOL and our counsel understands our priorities. If he doesn't, he is very good about seeking clarification.

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I really don't know if we would benefit from the increased communications. It depends what it looks like. we don't have time to read all our email now.

I have not yet had much experience with interacting with DOL.

I think the department tries to only utilize legal services as needed.

We have good communication with DOL regarding our legal services priorities. We remain disappointed, however, that DOL continues to use the three-year rolling average with respect to our litigation matters, despite our many concerns. Institutions of higher education, particularly those that have opted out of State Risk Management, are not similarly situated to other state agencies with respect to the provision of legal services. It is our hope that DOL will reconsider its position, and provide requested flexibility.

Not sure this would help DOLA since the biggest drivers of legal services relate to fulfilling statutory mission and aren't really optional. This is true for Division of Property Taxation and the Board of Assessment Appeals. Decisions by outside parties are the biggest factor in utilizing legal services.

Current level of communication is fine.

Not needed.

We feel we have a good working relationship with the AG's office and feel they are responsive to our requests.

Again this might be a question for our general manager to provide input.

DOL is our attorney, not part of our program. It is helpful for DOL to know our priorities but the intersection of goal setting and priorities only applies to the elected office of AGO. This is a critical distinction. Agencies have been harmed by conflicts. Increased transparency that recognizes the distinction between work performed for the elected official's office and the services obtained by clients is merited.

Communication from budget director meetings is frequent and consistent. Staff are quick to respond to billing questions and issues.

A lot of our expenses are personnel related and can not predict level of activity.

Department of Higher Ed would benefit from an increase in communication with the DOL about our goal setting and priorities, and how they relate to our legal service priorities and budget.

Although I believe there is some amount of communication from the Executive Director to the AG, I'm not sure there is as much dialogue in other areas such as contracts review, labor issues, etc.

DOL has been very responsive to establishing an annual workplan with CEO.

We have already engaged with the DOL on this topic for our largest users of legal services within our agency, and are very pleased with their collaboration and willingness to continue these conversations and ensure that we have a shared vision of our priorities as an agency and how they will help meet our legal services needs.

May be a good way to facilitate proactive planning on both sides.

Communication is always a good thing. :)

More information is always appreciated! :)

November 1, 2020

Department of Law FY 2019-20 RFI #2

Department of Law, Criminal Justice and Appellate, Appellate Unit -- The Department is requested to provide by November 1, 2020 a report concerning the Appellate Unit's progress in reducing its case backlog, including the following data for FY 2019-20: the number of opening briefs received; the number of answer briefs filed; and the case backlog as of June 30, 2019.

Criminal Appeals Section backlog

The Criminal Appeals Section experienced a modest decrease in reduction in cases closed in FY 2020. In FY 2019, the Section closed 1,034 cases; by contrast, in FY 2020, it closed 1,011 cases. However, in FY 2020, the Section's backlog also decreased. In FY 2020, the Section only opened 974 new cases, which was 37 less than the number of cases it closed. As a result, the backlog decreased from 463 at the end of FY 2019 to 414 at the end of 2020. The backlog, however, remains large enough to cause the briefing of appeals to be delayed.

Delays in the appellate process is a problem, for several reasons. First, crime victims cannot truly achieve closure until the appeal of the defendant's conviction is resolved; decreasing the time taken to file appellate briefs extends the date when victims can achieve that closure. Second, for those convictions that are reversed on appeal, it is best to have a new trial sooner rather than later, since witnesses' memories may fade over time. Third, defendants with meritorious appellate arguments have a strong interest in having their appeals resolved as quickly as possible.

The Colorado Supreme Court and Court of Appeals both recognized the importance of decreasing the time it takes to resolve appeals, and have held a series of meetings with the Criminal Appeals Section, the Public Defender's Office, and Alternative Defense Counsel to find ways to expedite the process. Based on input from those three entities, in January 2018 the Supreme Court implemented an informal protocol to shorten and standardize the extensions of time it grants for filing merits briefs, and in January 2019 implemented a similar protocol to shorten and standardize the extensions of time it grants for filing petitions for writ of certiorari (appeals for review by the Colorado Supreme Court). Those protocols required the Criminal Appeals Section to consistently prioritize briefing cases in the Colorado Supreme Court over briefing cases in the Court of Appeals. The

Section nonetheless continues efforts to decrease the time it takes to close cases in both appellate courts.

In the effort to decrease the time it takes for appeals to be resolved, there are some factors the Criminal Appeals Section has little control over: court staff must complete the appellate record; the defense must file their briefs; and judges must decide the appeal. The Section, however, does have some control over how long it takes to file its own briefs, by prioritizing answer briefs in the Court of Appeals and Supreme Court based on when the defendant's opening brief was filed.

The Section uses automated weekly reports generated from a case management system to track case aging, monitor attorney workload, and redistribute cases to avoid excessive extensions of time. The Section also monitors the backlog, because a large backlog of cases causes briefing to be delayed: the more cases in each attorney's queue, the longer it will be before the attorney can work on the most recently arrived case.

In 2019, several new attorneys selected as Ralph Carr Fellows began work at the Department of Law. The Carr Fellow have made an important contribution to the Section's efforts to reduce the backlog.

Backlog

As of June 30, 2020, the backlog was 414 cases.

Incoming and outgoing cases

In FY 2020, the Criminal Appeals Section opened 974 new cases and closed 1,011 cases.

Future outlook

During the first three months of FY 2021, the Criminal Appeals Section experienced a modest increase in the appellate backlog. During that three-month period, the Section opened 260 new cases and closed 251 cases. The backlog therefore increased by 9 cases, from 414 at the end of June 2020 to 423 at the end of September 2020.

There has been modest progress in decreasing the backlog in recent years. The backlog was 466 at the end of FY 2017, 494 at the end of FY 2018, 463 at the end of FY 2019, and 414 at the end of FY 2020.

It is difficult to forecast the backlog's future outlook. The COVID-19 pandemic created budget constraints that required the Section to reduce staffing by 3.0 FTE—one attorney position and two fellow positions. These reductions will reduce the annual output of the Section. Also, the pandemic will likely give rise to complex new legal issues, including speedy trial issues caused by pandemic-related trial delays, and issues concerning the propriety of pretrial proceedings conducted through video conferencing and trials conducted using social distancing in the courtroom. The time required to research and respond to such novel issues may add to the Section's workload in a way that could undermine progress with the backlog. It is therefore important that the Section maintain current staffing levels and fill the vacant attorney position when the budget permits.

The Section currently has twenty-nine line attorneys who carry full caseloads, in addition to a Deputy Attorney General and three First Assistant Attorneys General who carry partial caseloads along with their managerial responsibilities. When a backlog of over 400 cases is allocated among the Section's attorneys, the number of cases in each attorney's queue means that the most recently arrived case cannot be briefed for many months. Reducing the backlog to about 240 would result in a much more manageable number of cases per attorney, allowing for more expedited briefing.

The Section will continue to monitor the backlog, as well as the time it takes to file appellate briefs.

**Colorado District Attorneys' Council Training Fund Annual Report
July 1, 2019 – June 30, 2020 (FY 19-20), RFI #5
HB 14-1144 Training Funds**

Expenditures	
Personnel	\$176,234.83
Supplies & Operating	\$11,181.42
Travel	\$3,480.19
Registration Fees	\$98,955.00
Scholarships	\$26,308.53
Equipment	\$0.00
	\$317,330.51

Expenditure Summary

Personnel: Salary and benefits

As contemplated by the legislation, this funding covers one (97%) training and resource staff attorney for prosecution related trainings and services who is a readily available resource to prosecutors in every jurisdiction on case law, legislation and case strategy and preparation. He assists on prosecution related services including legislative issues and legal analysis of court decisions and often serves as a subject matter expert on such topics for prosecutors, law enforcement and legislators when necessary. This staff attorney travels the state on a regular basis and provided various in person trainings to prosecutors and law enforcement all over the state within the last twelve months. He has also actively mentored new prosecutors in several offices by spending time with them in the courtroom and in reviewing and preparing cases. Further, he has been instrumental in assisting prosecutors around the state in creating and facilitating working groups on specialized areas of prosecution. The impact and benefit of this position has been significant to the rural offices in Colorado.

This funding also covers approximately 24.5% of the funding for one training coordinator and 8% of the funding for one administrative/training coordinator for these projects and assignments, as well as accounting.

Supplies and Operating: Costs to organize trainings and training materials, maintain attorney status for full-time staff attorney, etc.

Covered expenses including copies, postage, class materials/supplies, CLE accreditation for trainings, subscriptions to create publications or provide trainings, and training books/materials. We were able to purchase an annual subscription to produce Zoom Webinars for conferences and trainings, which enabled us to train hundreds of district attorney staff while live trainings were unable to be conducted during the pandemic.

Colorado District Attorneys' Council Training Fund Annual Report
July 1, 2019 – June 30, 2020 (FY 19-20), RFI #5
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Travel: Mileage, transportation, lodging, and per diem

Covered staff travel expenses to CDAC-provided trainings and also for district attorney office staff to assist other offices with mentoring and training on various issues and cases.

Registration Fees: Reduced registration fees for DA office members

The HB 1144 funding allowed CDAC to reduce the registration fees for six previously existing CDAC trainings charged to DA office members. Registration fees for the major case course (3 day) were reduced from \$160 to \$0, from \$200 to \$75 for the annual conference (3 day), from \$210 to \$0 for three trial techniques courses (5 day), and from \$80 to \$0 for a felony prosecution skills class (3 day).

This resulted in savings of to every one of the district attorneys' offices. Total savings for the offices to send the 764 attendees was \$98,955. The net effect of this funding resulted in the ability of each office in the state to offer more training to their prosecutors than was previously available through local budgets alone. Further, as a direct result of this funding, there was record attendance at the CDAC annual training conference this September. The conference provides a single training where the prosecutors can fulfill nearly all of their required CLE credits at one time each year.

Scholarships: Mileage, transportation, lodging, airfare, and per diem

We were able to provide reimbursements for the offices to send employees to various trainings of benefit that Colorado prosecutors have historically been unable to attend due to lack of resources. This included sending individuals to CDAC trainings at greatly reduced or no cost and also to in-state or out-of-state trainings not sponsored by CDAC. Scholarships covered registration fees for non-CDAC trainings as well as the travel expenses. This enabled district attorney staff throughout the state to get high caliber multi-day trainings in a myriad of specialties. Most of the funds were used to send attorneys in the DA offices, but we were also able to provide much needed resources to victim advocates, investigators, and administrative staff through these scholarships.

Colorado District Attorneys' Council Training Fund Annual Report
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Equipment: Training laptops and equipment

A new training laptop was purchased to conduct presentations in our in-house training area. The total cost was \$1,170.

Unspent Funds – COVID - 19:

Due to the impact of the COVID-19 pandemic, most if not all live training events that prosecutors attended in the past were cancelled from March through the end of the fiscal year. Very few providers offered alternative options. As a result, CDAC has unspent funds for \$32,669.49. Most of this amount reflects a reduction in payments due to the inability to send people to trainings on scholarships (\$32,590). CDAC requests permission to rollover these remaining funds into the FY 20/21 budget to offset the severe budget cuts made to the fund this spring because of the COVID-19 pandemic. As part of the significant across the board budget cuts made at the end of the 2020 legislative session, the legislature cut the HB 14-1144 training fund from \$350,000 to \$200,000 for FY 20/21. This more than 40% cut to the fund will cause significant challenges to the CDAC training effort this year to the detriment of prosecutors statewide. We believe there are many virtual and some live trainings becoming available and that more options will continue to evolve as we all adapt to these challenging circumstances. Accordingly, CDAC respectfully requests the authority to roll the \$32,590 remaining funds from the FY 19/20 budget into this year's FY 20/21 budget to help offset the 40% cuts made to the training fund.