

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Joint Budget Committee
FROM Scott Thompson, JBC Staff (303-866-4957)
DATE March 10, 2023
SUBJECT Department of Law: Recommended Legal Services Rate for FY 2023-24

On February 22, 2023, the Committee acted on the Department of Law's budget request, including funding for personal services and operating expenses for the Legal Services to State Agencies (LSSA) section of the Long Bill.

To calculate the appropriation to each state agency for the purchase legal services, and the corresponding appropriations to the Department of Law to receive and expend such payments, the Committee needs to approve an hourly legal services rate for FY 2023-24. These rates multiplied by the three-year average hours of legal services provided determines the final appropriations for each agency or program.

STAFF RECOMMENDATION:

To date, the Committee has taking action on all common policies that impact the determination of the legal services rate. However, if budget constraints require the Committee to make changes to any of its common policy decisions it may impact legal services rates significantly enough to warrant an adjustment to the staff recommendation. **Staff is presenting a recommendation based on most recent Committee action.** Staff requests permission to adjust the rate in the event changes are *de minimus*, but should the rate change significantly, staff will return with updated calculations.

To calculate appropriations for legal services line items statewide, JBC Staff recommends the Committee approve the following rates for FY 2023-24. The shading color links cells between the various tables.

FY 2023-24 RECOMMENDATED LEGAL SERVICES RATES	
Attorney rate	\$133.30
Legal Assistant rate	\$97.72
Blended rate	\$128.02

These rates will also be included in the final footnote that details the General Assembly's intent on legal service rates, which the Committee will review with the other Footnotes.

CALCULATION OF THE LEGAL SERVICES BILLING RATES

Once the cost of operating the LSSA section has been determined through figure setting, this cost must be translated into billing rates that will cover the estimated costs. Appropriations for legal services are calculated using one uniform rate for attorneys and another uniform rate for legal assistants. Staff and the Department calculate these rates as separate components:

- 1 An "attorney" component that covers the salaries and the associated Public Employees' Retirement Association (PERA) and Medicare expenses for the attorneys who supply the legal services;

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- 2 A "legal assistant" component that covers the salaries and the associated PERA and Medicare expenses for legal assistants who supply the legal services; and
- 3 A "common" component that covers other expenses of the LSSA section, including administrative support staff, the Deputy Attorneys Generals that are funded through the LSSA section and supervise groups of attorneys, operating and litigation expenses, licensing fees, and various other centrally appropriated line items (e.g., Carr Center leased space, employee health benefit expenses, etc.) not included in the personnel costs in the first two components.

The following two tables (1 and 2) compute these components.

TABLE 1: ATTORNEY AND LEGAL ASSISTANT COMPONENTS OF THE LEGAL SERVICES RATES			
	A = SALARY AND RELATED COSTS	B = HOURS BILLED	A/B = ATTORNEY OR LEGAL ASSISTANT COMPONENT OF RATE
Attorneys	\$39,211,925	436,320	\$89.87
Legal Assistants	4,123,923	75,960	44.28
Total	\$43,335,848	512,280	

TABLE 2: COMMON COMPONENT OF THE LEGAL SERVICES RATES	
Total cost of operating the LSSA section	\$64,584,197
- Salary and related cost of attorneys	(39,211,925)
- Salary and related costs of legal assistants	(4,123,923)
a = Common costs	\$22,248,350
b Total hours billed by attorneys and legal assistants	512,280
a/b = Common component of hourly rate	\$43.43

The total cost of the LSSA section includes allocations of centrally appropriated items as well as indirect cost recoveries collected by the LSSA section.

The hourly legal rates are then computed as follows:

TABLE 3: CALCULATION OF HOURLY LEGAL RATES	
Attorney component (from Table 1)	\$89.87
+ Common component (from Table 2)	43.43
Hourly attorney rate	\$133.30
Legal assistant component (from Table 1)	\$44.28
+ Common component (from Table 2)	43.43
Hourly legal assistant rate	\$97.72

The blended legal rate, which is used to convert the estimated hours to be billed into recommended appropriations for the Long Bill, is calculated using total recommended appropriations and total hours billed:

TABLE 4: CALCULATION OF BLENDED LEGAL RATE	
Total of Appropriations for LSSA section	\$65,584,197
÷ Total hours billed	512,280
= Blended Legal Rate	\$133.30

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The blended legal rate for FY 2023-24 represents an increase of \$23.67 per hour (21.6 percent) compared to the FY 2022-23 blended legal rate of \$109.63. The Department's less than modest increase to the blended legal rate this year is driven by two major changes:

- 1 The salary survey for attorneys this year. The newly approved ranges result in a \$4.7 million increase in Salary Survey for attorneys, and increases of \$500,000 in supplemental PERA payments costs and an additional \$600,000 for health, life, and dental, compared to current year.
- 2 Last year the Department continued rate setting to include a spending down the fund balance by \$5 million which offsets appropriations required by a like amount. The JBC approved this action once each in the past two fiscal years to ensure the fund balance in the LSSA Cash Fund continues compliance with state and federal requirements. For FY 2023-24, the Department requested and JBC Staff recommends as part of this calculation offsetting appropriations in FY 2023-24 with \$1.5 million from the LSSA Cash Fund. This results in an additional \$3.5 million being recovered via agency billings than the prior year.

Approving JBC staff recommendation will result in the follow amounts being allocated through the Long bill legal services line items. The amounts below are the TOTAL amounts appropriated to the line items in each agency, not the incremental change between FY 2022-23 and FY 2023-24. While the final General Fund impact will be included in the JBC Staff Director's next General Fund Overview, it's estimated that approximately 34.8 percent of statewide legal services appropriations originate as General Fund.

RECOMMENDED LEGAL SERVICES ALLOCATION BY CLIENT AGENCY		
LONG BILL DEPARTMENT	CLIENT AGENCY	FY 2023-24 APPROPRIATION
Agriculture	Agriculture and State Fair	\$816,451
Corrections	Corrections	4,182,213
Early Childhood	Early Childhood	1,009,460
Education	Education	1,486,783
Governor's Office	Governor's Office	372,326
Governor's Office	Governor's Energy Office, Legal Services	1,069,591
Governor's Office	Office of Information Technology, Legal Services	452,830
Health Care Policy and Financing	Health Care Policy and Financing	1,813,521
Human Services	Human Services	6,101,497
Judicial	Judicial	488,907
Judicial	Alternate Defense Council	39,506
Judicial	Child Protection Ombudsmen	22,505
Judicial	Child Representation	7,167
Judicial	Independent Ethics Commission	45,838
Judicial	Attorney Regulation Counsel	0
Judicial	Public Defender	80,368
Judicial	Office of the Public Guardianship	37,530
Judicial	Respondent Parents Counsel	8,888
Judicial	Judicial Discipline	129,011
Labor and Employment	Labor and Employment	1,741,253
Law	Attorney General's Office	211,769
Legislature	General Assembly	24,082
Local Affairs	Local Affairs	1,028,413
Military and Veterans Affairs	Military and Veterans Affairs	46,497
Natural Resources	Natural Resources	7,646,666

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LONG BILL DEPARTMENT	CLIENT AGENCY	FY 2023-24 APPROPRIATION
Personnel	Personnel and Administration	768,089
Personnel	Personnel Board	76,547
Personnel	Risk Management And Workers Compensation	6,753,532
Public Health and Environment	Public Health and Environment	6,326,261
Public Safety	Public Safety	897,927
Regulatory Agencies	Regulatory Agencies	14,796,015
Revenue	Revenue	5,441,268
State	State	1,195,027
Transporation	Transporation	2,263,882
Treasury	Treasury	440,154
	Subtotal Excluding Higher Ed	67,821,774
Higher Education Appropriated	Commission on Higher Education	2,926
Higher Education Appropriated	History Colorado	118,255
Higher Education Appropriated	Private Vocational Schools	49,962
Higher Education Unappropriated	Arapahoe Community College	3,154
Higher Education Unappropriated	Adams State University	156,129
Higher Education Unappropriated	Auraria Higher Education Center	40,076
Higher Education Unappropriated	Board of Governors	0
Higher Education Unappropriated	Aurora Community College	0
Higher Education Unappropriated	Community College of Denver	0
Higher Education Unappropriated	CCCOES	15,196
Higher Education Unappropriated	Colorado State University	269,974
Higher Education Unappropriated	University of Colorado - Boulder	405,828
Higher Education Unappropriated	University of Colorado - Health Science	0
Higher Education Unappropriated	University of Colorado - Denver	1,147
Higher Education Unappropriated	State Colleges Employee Disability Insurance Trust	4,444
Higher Education Unappropriated	Fort Lewis College	16,766
Higher Education Unappropriated	Front Range Community College	33,929
Higher Education Unappropriated	College Assist	30,598
Higher Education Unappropriated	Institute of Cannabis Research	3,584
Higher Education Unappropriated	Lamar Community College	3,079
Higher Education Unappropriated	Metropolitan State University of Denver	380,286
Higher Education Unappropriated	Colorado School of Mines	21,588
Higher Education Unappropriated	Colorado Mesa University	179,190
Higher Education Unappropriated	University of Northern Colorado	85,518
Higher Education Unappropriated	Northwestern Community College	1,577
Higher Education Unappropriated	Collegeinvest	0
Higher Education Unappropriated	Otero Junior College	2,437
Higher Education Unappropriated	Auraria Parking Enterprise	0
Higher Education Unappropriated	Pikes Peak Community College	4,287
Higher Education Unappropriated	Pueblo Community College	3,211
Higher Education Unappropriated	Red Rocks Community College	0
Higher Education Unappropriated	Colorado State University - Pueblo	33,191
Higher Education Unappropriated	Colorado Scholarship Initiative	0
Higher Education Unappropriated	Trinidad State Junior College	5,447
Higher Education Unappropriated	Western State Colorado University	222,005
Higher Education Unappropriated	CSU Global	0
Higher Education Unappropriated	Northeastern Junior College	1,147
Higher Education Unappropriated	Colorado Mountain College	43,143
Higher Education Unappropriated	Morgan Community College	2,437
Higher Education Unappropriated	University of Colorado - Colorado Springs	0
	Sub Total for Higher Education Client Agencies	\$2,140,511
	Total All Client Agencies	\$69,962,285