

**PHIL WEISER**  
Attorney General  
**NATALIE HANLON LEH**  
Chief Deputy Attorney General  
**ERIC R. OLSON**  
Solicitor General  
**ERIC T. MEYER**  
Chief Operating Officer



**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000

**Office of the Attorney General**

December 8, 2022

The Honorable Rachel Zenzinger  
Chair  
Joint Budget Committee  
Colorado General Assembly  
State Capitol  
Denver, CO 80203

**RE: Executive Session to Discuss Pending Litigation on December 12,  
2022**

Dear Senator Zenzinger:

The Joint Budget Committee has requested a briefing regarding the status of various litigation that may involve the award of state moneys. Because this discussion pertains to pending litigation, this discussion may be held in executive session pursuant to C.R.S. § 24-6-402(3)(a)(II) upon motion of the Committee.

Sincerely,

**PHILIP J. WEISER**  
**ATTORNEY GENERAL**

DEPARTMENT OF LAW  
FY 2023-24 JOINT BUDGET COMMITTEE HEARING AGENDA

**Monday, December 12, 2022**

**10:30 am – 12:00 pm**

**10:30-10:45 INTRODUCTIONS AND OPENING COMMENTS**

Presenter: Philip J. Weiser, Colorado Attorney General

**10:45-11:00 COMMON QUESTIONS**

Main Presenter:

- Philip J. Weiser, Colorado Attorney General

Topics:

- Common Question 1: Page 1.
- Common Question 2: Page 1.

**11:00-11:30 CURRENT BUDGET, NEW REQUESTS, AND JBC STAFF ISSUE DISCUSSION**

Main Presenters:

- Philip J. Weiser, Colorado Attorney General

Supporting Presenters:

- Jon Reitan, Budget Director

Topics:

- Department of Law's Current Billing Methodology for Legal Services to State Agencies: Page 2, Question 3 in the packet.
- R1 Federal and Interstate Water Staff: Pages 3-4, Questions 4-5 in the packet.
- Other Related Questions, Organized Retail Crime: Page 4, Question 6 in the packet.
- Codifying Litigation Management Footnote: Page 5, Question 7 in the packet.

**11:30-12:00 MAJOR LITIGATION PENDING AGAINST THE STATE AND OTHER TOPICS THAT REQUIRE EXECUTIVE SESSION**

*\* The Committee may meet in an Executive Session to discuss any ongoing litigation or Patterns and Practices investigations.*

Main Presenters:

- Philip J. Weiser, Colorado Attorney General
- Natalie Hanlon-Leh, Chief Deputy Attorney General

Supporting Presenters:

Topics:

- Overview of Major Litigation, Discussion of cases requiring Executive Session, and Discussion of R4 Patterns and Practices budget request requiring Executive Session: Pages 5-7, Questions 8-14 in the packet.

DEPARTMENT OF LAW  
FY 2023-24 JOINT BUDGET COMMITTEE HEARING AGENDA

Monday, December 12, 2022

10:30 am – 12:00 pm

COMMON QUESTIONS FOR DISCUSSION AT DEPARTMENT HEARINGS

- 1 Please describe the implementation plan for new programs added to the Department from one-time stimulus funds (such as the CARES Act, ARPA, and one-time General Fund), as well as any challenges or delays to program implementation.*

**Response:** The Department of Law (“DOL” or “Department”) was the recipient of \$120,000 in CARES Act funding provided by HB 20-1411. With these funds, the Department’s Safe2Tell program completed a public awareness campaign during FY 2020-21 to address the impact of the COVID-19 pandemic on Colorado’s youth. The Department completed implementation from funding received and does not anticipate receiving any additional one-time stimulus funds.

- 2 Please identify how many rules you have promulgated in the past year (FY 2021-22). With respect to these rules, have you done any cost-benefit analyses pursuant to Section 24-4-103 (2.5), C.R.S., regulatory analyses pursuant to Section 24-4-103 (4.5), C.R.S., or any other similar analysis? Have you conducted a cost-benefit analysis of the Department’s rules as a whole? If so, please provide an overview of each analysis.*

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

During FY 2021-22, the Peace Officers Standards and Training Board (“POST”) promulgated or modified 17 rules. No cost benefit analyses were requested of these rules.

CURRENT BUDGET, NEW REQUESTS, AND JBC STAFF ISSUE  
DISCUSSION

## DEPARTMENT OF LAW'S BILLING METHODOLOGY

*[Sen. Zenzinger] Discuss the Department of Law's current billing methodology and common policy development. Discuss any feedback the Department has received from client agencies.*

**Response:** The DOL submitted a FY 2017-18 decision item proposing to change the legal allocation and billing methodology. After requesting feedback from all impacted client agencies on the billing methodology, the Joint Budget Committee ("JBC") voted unanimously to approve the new billing methodology as part of the DOL's figure setting. The vote was consistent with the JBC staff recommendation.

### Prior to FY 2017-18 Legal Services Budgeting Methodology:

- Agency legal appropriations were based upon "budgeted hours" and a "blended hourly rate".
- Most client agencies received direct appropriations for legal services, the majority of which were reappropriated 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 it worked on behalf of that client each month multiplied by the attorney or legal assistant billing rate.
- The DOL paid litigation costs upfront 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. This often resulted in agency litigation costs that created operational and budgetary constraints that were difficult to predict and proactively manage.

### Current Methodology:

- The Legislature sets the legal services budget for state agencies based on a 3-year look-back on actual legal hours worked on behalf of each client agency and a 3-year look-back on litigation expenses incurred on behalf of each client agency. Additionally, the DOL incorporates a "true up" on each of these factors. As an example, if an agency was allocated 1,000 hours in a fiscal year and the DOL only worked 900 hours in that fiscal year, the next fiscal year's budget allocation will include a reduction of 100 hours as part of the assessment for the request year's legal services budget.
- The current 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 surveyed each client agency and delivered reports to the Committee on October 1, 2018 and November 1, 2020.

Some respondents expressed difficulties with matching actual legal costs with programmatic needs, such as insurance recoveries. Additionally, there were expressed concerns that there may be an exacerbated disconnect between the needs of the client agency and how the level and type of legal support best complements those needs within budgetary limits. However, in both surveys, a majority of respondents agreed, “that the 3-year lookback budget methodology is effective, reasonably accurate, and provides predictability.” Additionally, this methodology has generally helped in ensuring legal advice and representation needs are met and that fee setting and budget management decisions are more predictable.

The DOL has not formally surveyed client agencies since 2020 regarding this methodology. However, the DOL has not been made aware of any client concerns with this budget methodology. The DOL periodically receives questions from client agencies on the factors impacting a particular legal allocation and has provided explanations through email and other communications.

### **FEDERAL AND INTERSTATE WATER STAFF RESOURCES**

***[Rep. Bird] Discuss the Department’s approach to litigation involving state water rights. Please include choices on performing the work internally or via contracting with outside counsel. If the Department utilizes both kinds of attorneys, discuss factors that impact the decision.***

**Response:** Over the last two decades the Department built an internal team of interstate water law experts. Multiple times, that team successfully represented the State of Colorado in litigation against other states before the federal courts. The Department’s investment in these experts resulted in substantial taxpayer savings. Many other states contract with outside counsel that assign teams of attorneys to the case and can bill thousands of dollars per hour for their services and costs. Over the course of decades-long litigation, the expense of contracting with outside counsel can be significant, and the results are not guaranteed.

***[Sen. Kirkmeyer] If the Department’s budget requests are approved, what is the total number of department staff and outside resources that would be working on interstate water issues?***

**Response:** If approved, the Department will employ 11.0 FTE (8 attorneys, 2 paralegals, and 1 administrative assistant) working directly on interstate water issues. These FTE are budgeted in two Long Bill line items: Federal and Interstate Water Unit and the Defense of the Colorado River Basin Compact. . Additionally, an Assistant Deputy Attorney General oversees and, at times, works directly on interstate water issues to protect Colorado’s water rights and resources.

The Department also contracts with 8 outside technical experts who support the Department’s work on interstate water issues. The Department contracts with 4 outside technical experts for the Colorado River, 1 for the Republican River, and 3 for the Rio Grande. These outside experts are budgeted through the Colorado Water Conservation Board’s Litigation Fund under Section 37-60-121(2.5)(a), C.R.S. This fund provides the funding for three Department budget lines: Defense of the Colorado River Basin Compact, Defense of the Republican River Compact, and Consultant Expenses.

**OTHER RELATED QUESTIONS**

***[[JBC Staff] Distinguish the types of crimes targeted by the funding requested for Special Prosecution of Organized Retail Crime differs from those targeted by H.B. 22-1099 (Online Marketplaces and Third Party Sellers). Also provide on update on workload driven by H.B. 22-1099.***

**Response:** House Bill 22-1099 requires high-volume on-line sellers to satisfy certain requirements, such as providing contact information and a method for consumers to report suspicious activity. This new law authorizes the Attorney General and district attorneys to enforce the statutory requirements. A violation of the law constitutes an unfair or deceptive trade under the Consumer Protection Act. This legislation will help law enforcement identify high-volume sellers who are fencing stolen and/or fraudulent goods. The law goes into effect on January 1, 2023.

While the Department's budget request #2 "Special Prosecution Organized Retail Crime" will support investigations that grow out of complaints associated with H.B. 22-1099, the scope of the work will be broader. The requested funding will allow the DOL to support organized crime investigations and prosecutions across the state. The focus will be on organized criminal enterprises involved in numerous thefts and fencing stolen property, which may or may not be online. These cases normally involve multiple persons working in a coordinated effort to commit a series of crimes (theft, robbery, possession and distribution of controlled substances, human trafficking).

Currently, there is an Organized Retail Crime Council that was formed by investigators representing a variety of corporations. The Department is aware of only two law enforcement teams working these investigations; one in Colorado Springs, and one in Douglas County. Successful investigations require regular communication between businesses and law enforcement, as well as prosecutors who understand organized crime cases and can facilitate legal processes to obtain evidence. The Department is uniquely postured to collaborate on these cases given the Department's access to the statewide grand jury and its experience working complex organized crime cases.

***[[JBC Staff] Discuss the Department of Law's usage of the footnote on the Litigation Management line item that the JBC Staff recommended the Joint Budget Committee sponsor legislation to codify. Discuss the ways the Department or the General Assembly benefit from the footnote.***

**Response:** The current Long Bill Footnote reads:

"Department 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 the FY 2022-23 fiscal year. It is also the General Assembly's intent that the 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."

With the exception of the annual change for the referenced fiscal year, this language has not been modified since the 2014 legislative session. The Department traditionally uses this budget line in those instances where expert costs and other litigation support are required of a particular case, and no other budget line is appropriate and no client agency is the beneficiary of the litigation. The Department’s actual annual expenditures from this line item are:

FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
\$200,000	\$25,114	\$187,530	\$89,917

The DOL is in agreement with JBC staff that substantive policy direction by the General Assembly be placed in statute, instead of an annual Long Bill footnote.

### **MAJOR LITIGATION PENDING AGAINST THE STATE AND OTHER TOPICS THAT REQUIRE EXECUTIVE SESSION**

*[Sen. Zenzinger] Provide an overview of the major litigation pending against the state and highlight those the Attorney General believes would be of most interest to the Joint Budget Committee.*

**Response:** The Department advises that this topic be discussed in Executive Session.

*[Rep. Sirota] When the state receives a judgment against it or enters into a settlement that requires a payout to the other litigant(s), what is the typical source of awards when it is not covered by the risk management program?*

**Response:** When awards are not covered by the risk management program, the source of funds would depend on the nature of the claim and the particular accounts of the state agency or institution of higher education (“IHE”). Some institutions of higher education opted out of the risk management program, including but not limited to University of Northern Colorado and most of the Colorado State University system. Agencies and IHEs will pay awards or portions of awards to the extent the underlying claim is not compensable under the risk management system. This often occurs in claims involving State Personnel Board disputes, and occasionally for other claims, including those that have a contract dispute component. The DOL typically is not aware of how clients fund these types of non-risk management program payouts. As such, the Department recommends the JBC consult the Office of the State Controller and the budget offices of state agencies and IHEs.

*[Rep. Benevidez] Are there any legislative solutions that have yet to be undertaken to address the taxes at issue in the Department of Revenue v. Anschutz tax dispute? Would the Department support seeking such changes?*

**Response:** The Department advises that discussions on this case be discussed in Executive Session. The Department also defers to the Department of Revenue regarding any potential legislative response to case decisions.



***[Rep. Bird] Describe any pending litigation the state has initiated where damage awards are likely to come to the state. Describe the terms and conditions that typically accompany and restrict the use of such awards. Is there a publicly facing resource that describes such damage awards comprehensively?***

**Response:** The nature of litigation that the State pursues is only reported systematically on the Department website once the litigation is resolved. Additionally, this information is often conveyed in press releases. Pending litigation involves too much uncertainty to provide reportable information that may have budget consequences. In many of the cases, the DOL asserts a range of claims and seeks different remedies that focus primarily on injunctive relief which may include monetary injunctive remedies in the form of restitution, disgorgement, payment for fees and costs, and in some cases civil money penalties. By statute those recoveries go to different funds depending on the nature of the payment.

Pending cases filed by the Attorney General include:

- *Colorado v. Google LLC*, No. 20CV03715, 2020 WL 10963869 (D.D.C. filed Dec. 17, 2020)
- *Utah v. Google LLC*, No. 21CV05227 (N.D. Cal. July 7, 2021)
- *New York v. Meta Platforms, Inc.*, No. 21-7078 (D.C. Cir. July 29, 2021)
- *In re Generic Pharms. Pricing Antitrust Litig.*, No. MDL 2724, 2017 WL 4582710 (U.S. Jud. Pan. Mult. Lit. Aug. 3, 2017)
- *In re Suboxone (Buprenorphine Hydrochloride & Naloxone) Antitrust Litig.*, No. 13-MD-2445, 2017 WL 4910673 (E.D. Pa. Oct. 30, 2017)
- *Fed. Trade Comm'n v. Syngenta Crop Protection AG*, No. 22CV00828 (M.D.N.C. Sept. 29, 2022)
- *Fulford v. Tormey Bewley Corp.*, No. 19CV033428 (Denver Dist. Ct. June 24, 2020)
- *In re: State of Colorado v. JUUL Labs, Inc.*, 2022SA000111 (Colo. Sept. 26, 2022)
- *Colorado v. Center For Excellence In Higher Education*, 2021SC781 (Colo. Oct. 27, 2021)
- *Fed. Trade Comm'n v. Roomster Corp.*, 22CV7389 (S.D.N.Y. Aug. 30, 2022)
- *Colorado v. E.I. Du Pont De Nemours and Co.*, 22CV030552 (Denver Dist. Ct. Feb. 28, 2022)
- *Colorado v. Purdue Pharma Lp*, 2018CV33300 (Denver Dist. Ct. Sept. 6, 2018)

***[JBC Staff] Discuss any notable changes or updates related to any of the items included in the Major Litigation Pending Against the State report to the Controller for 2021.***

**Response:** The Department advises that this topic be discussed in Executive Session.

***[JBC Staff] If applicable, discuss any other litigation pending before the state for which an Executive Session with the Committee is required.***

**Response:** The Department advises that this topic be discussed in Executive Session.

*[[JBC Staff] Provide an update on the Patterns and Practices investigations program. While in Executive Session, please emphasize workload demands that cannot be shared publically due to the confidential nature of the program. Describe the investigations which have been delayed due to insufficient resources.*

**Response:** The Department advises that this topic be discussed in Executive Session.

DEPARTMENT OF LAW  
FY 2023-24 JOINT BUDGET COMMITTEE HEARING  
**WRITTEN RESPONSES ONLY**

**COMMON QUESTIONS: PLEASE RETAIN THE NUMBERING IN ORDER TO MAINTAIN CONSISTENT LABELING FOR COMMON QUESTIONS ACROSS DEPARTMENTS.**

- 1** *What are the major cost drivers impacting the Department? Is there a difference between the price inflation the Department is experiencing compared to the general CPI? Please describe any specific cost escalations, including but not limited to impacts driven by employee compensation, workforce challenges, and construction costs.*

**Response:** The primary cost drivers for the Department of Law (“DOL” or “Department”) are compensation for employee salaries, including associated state paid benefits, and expert witnesses costs to support specific litigation efforts. Additionally, the Department regularly reviews and assesses technology needs to make continuous improvements in support of legal services to the State and its clients to provide a high level of service.

The Department is in constant competition for talent with the private sector and other public sector employers. For attorney positions, the Department is experiencing an increase in attorney departures and declined job offers due to insufficient salaries. In response, the Department completed a more robust annual salary analysis that included a compensation study, equity analysis, and pay adjustment model to identify pay inequities. The analysis concluded that the Department does not currently pay at a competitive placement within the pay range, and the pay ranges of attorney management jobs are below the labor market ranges. To maintain competitiveness with comparable markets, the Department is requesting a FY 2023-24 budget amendment that includes a 6% salary increase for all attorney positions, a 7% increase for Deputy Attorney General positions, and adjustments using a wage progression model that will provide a mechanism for attorney positions to reach the midpoint of their pay range at 10 years of experience. The requested adjustments are targeted to align the salary distribution of current attorney positions with the market and improve market competitiveness when making salary offers to candidates.

Additionally, the Department has experienced many criminal investigator position offers being declined. The primary reported variable for this trend are the salaries that the Department can offer are not market competitive with salaries being offered by comparable public employers. The Department has made a budgetary request (BR#3 DOL Criminal Investigator Coordinated Compensation) to align criminal investigator salaries with criminal investigator salaries in other State agencies.

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

Furthermore, the Department is assessing various technology solutions to support our legal services provided for client agencies, consumer protection, and criminal justice efforts. Depending on the business needs of the organization, the Department may submit future budget requests to address these potentially emerging needs.

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

**Response:** DOL staff worked 467,456 legal hours during FY 2021-22 on behalf of client agencies – representing a roughly 25,000 legal hour increase over the previous fiscal year. This data demonstrates increased demand for legal services across State agencies. Additionally, there were 14,227 open client cases on June 30, 2022.

The DOL is also experiencing an increase in open cases in the Special Prosecution Unit. This Unit is designed as a statewide prosecution resource for law enforcement and district attorneys to investigate and prosecute crimes that occur across county/judicial district boundaries. The demand for the Unit's resources has increased, particularly to combat complex and organized criminal activity. In FY 2020-21, the DOL opened 101 cases during the fiscal year. During FY 2021-22, the DOL opened 265 cases. This budget cycle, the DOL has requested additional resources through BR#2 (Special Prosecution Organized Retail Crime Unit).

**3** *Provide a list of any legislation with a fiscal impact that the Department has: (a) not implemented, (b) partially implemented, or (c) missed statutory deadlines. Please specifically describe the implementation of ongoing funding established through legislation in the last two legislative sessions. Explain why the Department has not implemented, has only partially implemented, or has missed deadlines for the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.*

**Response:** The Department has implemented all 2021 Legislative Bills. Additionally, the Department has implemented all 2022 Legislative bills except for 4 bills that are partially implemented as of December 5, 2022. Those 4 bills are described below; in each case the Department has missed no statutory deadlines and has no suggested modifications to legislation.

*H.B. 22-1082 Establishes the Fair Housing Unit in Department of Law*

The bill enables the enforcement of civil and criminal action for several housing statutes through a new DOL Fair Housing Unit; any necessary personnel and operating resources are supported by the Mortgage Fraud Settlement Custodial Cash Fund, which is continuously appropriated to the Department. The Department receives approximately 11,000 consumer complaints annually and it is unknown how many of these complaints will be specific to housing issues that will result in cases brought forward by the Attorney General. The Department is in the process of hiring the resources identified in the fiscal note to support this legislation.

*H.B. 22-1119 False Claims Act*

The bill established the Colorado False Claims Act, which sets penalties, procedures, and limitations to any person who defrauds the State, including fraud by false payment, record, delivery, or receipt. The bill

authorizes the DOL to investigate potential violations and take civil actions. Any necessary personnel and operating resources are supported by the Consumer Protection Custodial Fund, which is continuously appropriated to the Department. The Department is in the process of hiring personnel identified in the fiscal note to investigate complaints.

*S.B. 22-161 Enforcement of Laws Governing the Employer-Employee Relationship*

The bill makes changes to laws and enforcement procedures related to wage claims and establishes a new Worker and Employee Unit within the Consumer Protection Section to investigate and enforce wage theft, unemployment insurance, misclassification of employees, and certain workplace safety claims. The bill included General Fund appropriations in support of legal services to the Department of Labor and Employment and 0.8 FTE to DOL. The Department is in the process of hiring the personnel identified in the fiscal note to support this legislation.

*S.B. 22-205 Intoxicating Hemp and THC Products*

The bill creates an unfair or deceptive trade practice and establishes violations related to hemp and associated hemp products that is enforceable by the Department. The bill is expected to increase the number of complaints received by the DOL Consumer Protection Section and subsequent investigations. The necessary personnel and operating resources to implement the bill are appropriated to the Department from the Marijuana Tax Cash Fund, including 3.0 FTE. To date, two attorney positions have been hired. The DOL is currently finalizing the position description for the final investigator position for posting.

- 4 ***State revenues are projected to exceed the TABOR limit in each of the next two fiscal years. Thus, increases in cash fund revenues that are subject to TABOR will require an equivalent amount of General Fund for taxpayer refunds. Using the attached spreadsheet, please:***
- a. ***List each source of non-tax revenue (e.g., fees, fines, parking revenue, etc.) collected by your department that is subject to TABOR and that exceeds \$100,000 annually. Describe the nature of the revenue, what drives the amount collected each year, and the associated fund where these revenues are deposited.***
  - b. ***For each source, list actual revenues collected in FY 2020-21, and projected revenue collections for FY 2021-22 and FY 2022-23.***
  - c. ***List each decision item that your department has submitted that, if approved, would increase revenues subject to TABOR collected in FY 2022-23.***

***NOTE: An example template for providing data for this question will be provided by the JBC Staff.***

**Response:**

Table 1: Non-Tax Revenues Collected by Department That Are Subject to TABOR  
(excluding sources that amount to less than \$100,000/year)

Revenue Source	Associated Cash Fund	FY 2020-21 Actual	FY 2021-22 Actual	FY 2022-23 Projection	FY 2023-24 Projection
Insurance Fraud Registration Fee	Insurance Fraud Cash Fund #16Z0.	\$2,573,683	\$2,360,165	\$2,401,550	\$2,501,550

Business Registrations	Collection Agency Board Cash Fund #1500	793,401	862,300	960,000	1,019,000
Business Registrations	Uniform Consumer Credit Code Cash Fund #1510	1,933,119	2,494,796	1,900,000	1,900,000
Business Registrations	Student Loan Ombudsperson and Student Loan Servicer Cash Fund #1511	429,625	596,483	400,000	500,000
Certification and Inspection Fees	Peace Officers Standards and Training Board Cash Fund #2960	168,071	190,496	170,000	170,000
<b>TOTALS</b>		<b>\$5,897,900</b>	<b>\$6,504,240</b>	<b>\$5,831,550</b>	<b>\$6,090,550</b>

The DOL has submitted two decision items that would be partly funded by a cash fund listed above.

First, the DOL’s budget request #3 “DOL Criminal Investigator Coordinated Compensation” budget request includes requested salary modifications for the criminal investigators that conduct insurance fraud investigations. Currently, the DOL employs 5.7 FTE Criminal Investigators that are funded by the Insurance Fraud Cash Fund.

Secondly, the DOL’s budget request #5 “Information Technology Asset Maintenance” requests additional funding across all DOL fund sources to right size the DOL Information Technology Asset Maintenance Line. This request will provide the necessary resources to address the annual replacement of the Department’s IT infrastructure.

**5 Recent trends in funded and actual full time equivalent employee positions.**

- a. Please use the attached spreadsheet to summarize the department’s funded and actual FTE for the last three fiscal years.*
- b. Please use the attached spreadsheet to identify the origin of changes in funded FTE for FY 2021-22, including the number of new positions the Department has been able to fill.*
- c. If positions have not been filled, please respond to the following:*
  - i. How have vacancy savings been utilized?*
  - ii. What challenges are preventing positions from being filled?*

**NOTE: A template for providing data with sample responses for this question will be provided by the JBC Staff.**

**Response:**

Part A: Please summarize the Department's funded and actual FTE for the last three fiscal years.

**Trend Information: Funded FTE and Actual FTE**

Fiscal Year	Funded FTE*	Actual FTE	Actual Above/(Below) Funded FTE	% Difference
2019-20	513.5	491.8	(21.7)	-4.4%
2020-21	518.0	507.0	(11.0)	-2.2%
2021-22	560.2	538.8	(21.4)	-4.0%
2022-23	592.1	n/a	n/a	n/a
FTE Change over 3 years	78.6			
% Change over 3 years	15.3%			

\* "Funded FTE" equals the number of full-time equivalent positions specified in the annual Long Bill or in appropriation clauses in other acts. These FTE figures reflect the number of positions that correspond to the amounts appropriated.

Part B: Please identify the origin of changes in funded FTE for FY 2021-22, including the number of new positions the Department has been able to fill.

FY 2021-22: Status of New Funded FTE				
Fiscal Year	Funded FTE	Actual FTE	Actual Above/(Below) Funded FTE	% Difference
<b>TOTAL BASE: 2020-21</b>	<b>518</b>	<b>507</b>	<b>11</b>	<b>-2%</b>
<i>Decision Items:</i>				
FY 21-22: BA1 Patterns and Practices Investigation staff	1.8	1.0	0.8	-44%
FY 20-21 General Fund HLD reduction	0.1	0.1	0.0	
Annualize HB 20-1153 Partnership for CO jobs	7.0	7.0	0.0	
Annualize HB 20-1001 Nicotine produce regulation	1.1	1.1	0.0	
Annualize SB 20-162 Federal Family first program	(0.1)	(0.1)	0.0	
Annualize SB 20-1360 Special prosecutions unit	4.0	2.0	2.0	
Technical Adjustments	1.8	1.8	0.0	0%
<i>Bills:</i>				

SB 21-088 Child sex abuse act	5.9	0.0	5.9	-100%
SB 21-103 Office of consumer counsel	0.8	0.8	0.0	0%
SB 21-148 Financial empowerment office	1.8	0.4	1.4	-76%
SB 21-175 Prescription drug affordability board	2.0	2.0	0.0	0%
SB 21-248 Loan program for agriculture	0.9	0.2	0.7	-74%
SB 21-251 Family medical leave program loan	0.6	0.6	0.0	0%
SB 21-260 Transportation System	2.6	2.6	0.0	0%
HB 21-1007 State apprenticeship agency	0.4	0.4	0.0	0%
HB 21-1122 First responders and disabled	0.5	0.5	0.0	0%
HB 21-1232 Health benefit plan option	1.1	1.1	0.0	0%
HB 21-1233 Conservation easement tax credits	0.9	0.9	0.0	0%
HB 21-1250 Law enforcement accountability	3.0	3.0	0.0	0%
HB 21-1266 Environmental justice	2.0	2.0	0.0	0%
HB 21-1282 Regulate mortgage servicers	0.5	0.5	0.0	0%
HB 21-1304 Early childhood system	1.0	1.0	0.0	0%
HB 21-1317 Marijuana concentrates	0.5	0.5	0.0	0%
Various Special Bills** (0.3 FTE or less related to legal services to state agencies appropriations)	2.0	2.0	0.0	0%
<b>TOTAL: 2021-22</b>	560	539	22	-4%

\*\* Includes FTE added less than or equal to 0.3 FTE (SB 21-021, SB 21-056, SB 21-082, SB 21-087, SB 21-108, SB 21-126, SB 21-146, SB 21-264, HB 21-1189, HB 21-1195, HB 21-1301, HB 21-1306).

- i) During the 2021 Legislative Session, there were 29 bills that included a FY 2021-22 appropriation and FTE allocation to the DOL. Of these, 21 bills included appropriations and FTE to the DOL of less than 1.0 FTE. The majority of these appropriations were to the Legal Services to State Agencies line to provide attorney services in support of client agencies. Incremental increases to DOL in



support of its client agencies are incorporated into DOL's existing resources, where possible, to avoid unnecessary permanent increases in resources to the State and to avoid difficulty in hiring for attorneys at less than a full-time position. In addition, the DOL has hired above the Legal Services to State Agencies Line item to account for anticipated turnover, maintain appropriate legal support, and meet business needs within spending authority. On occasion, temporary pay differentials, and additional pay such as overtime are, mechanisms used to allocate resulting work on a temporary basis to existing staff. In some cases, to ensure funds are not spent unnecessarily, the Department of Law will not immediately fill positions because the anticipated workload identified in the fiscal note to the legislation does not materialize during implementation (SB 21-088 is an example of this). In each of these scenarios, vacancy savings related to the legislation are generated and is reflected in DOL reverted spending authority by line item. It is also important to note that reverted spending authority can occur for a variety of reasons, including reduced operating costs and travel related to business changes from the pandemic, or employee departures or job offers being declined for reasons associated with salary.

- ii) The Department is experiencing an increase in attorney departures and job offers being declined due to salary. Employees that left state government for outside employment largely reported their departures were due to the State's less competitive salary levels. While historically, DOL attorney positions are not positioned to compete with private sector attorney salaries, the DOL is experiencing recent departures of its attorneys to other public employers along the front range. Additionally, the DOL is experiencing an increase in candidates declining job offers due primarily to the salary the Department is able to offer a candidate. The Equal Pay for Equal Work Act requires employers to pay a salary to a candidate near equal to other like employees based on multiple factors; when combined with the lagging DOL salaries of existing employees, this creates a candidate recruitment challenge. In many instances, the DOL has had job offers declined because a candidate was unwilling to accept a salary that the DOL was legally required to pay, due to current salaries for comparable job classifications within the DOL. In many instances, candidates have shared that the salary offer would be a significant pay cut from a similar job in the market. To address this challenge, the Department is requesting a FY 2022-23 budget amendment.