

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



**FY 2015-16 STAFF BUDGET BRIEFING
DEPARTMENT OF LAW**

**JBC Working Document - Subject to Change
Staff Recommendation Does Not Represent Committee Decision**

**Prepared By:
Craig Harper, JBC Staff
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For Further Information Contact:

Joint Budget Committee Staff
200 E. 14th Avenue, 3rd Floor
Denver, Colorado 80203
Telephone: (303) 866-2061
TDD: (303) 866-3472

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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.

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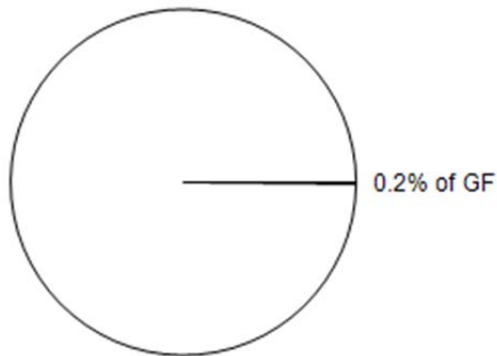
Department Budget: Recent Appropriations

Funding Source	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16 *
General Fund	\$10,452,022	\$12,168,714	\$13,534,300	\$14,915,402
Cash Funds	10,979,963	12,833,181	15,652,579	15,963,451
Reappropriated Funds	35,476,528	42,227,639	43,031,041	43,776,472
Federal Funds	<u>1,576,165</u>	<u>1,770,364</u>	<u>1,748,411</u>	<u>1,781,067</u>
Total Funds	\$58,484,678	\$68,999,898	\$73,966,331	\$76,436,392
Full Time Equiv. Staff	432.7	452.5	464.4	468.2

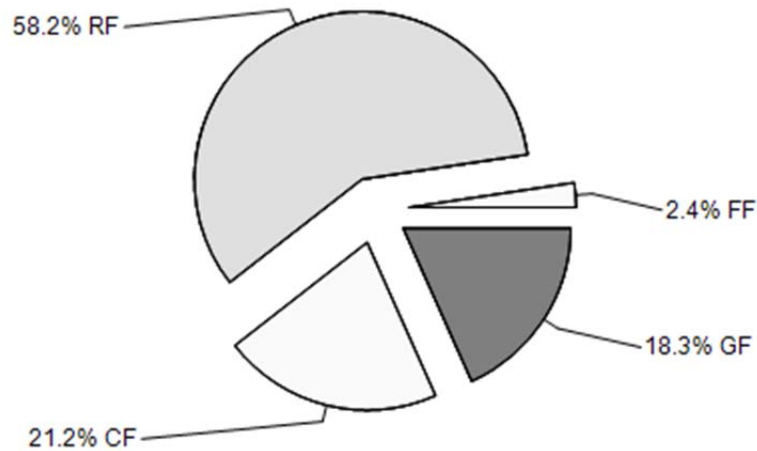
*Requested appropriation.

Department Budget: Graphic Overview

**Department's Share of Statewide
General Fund**

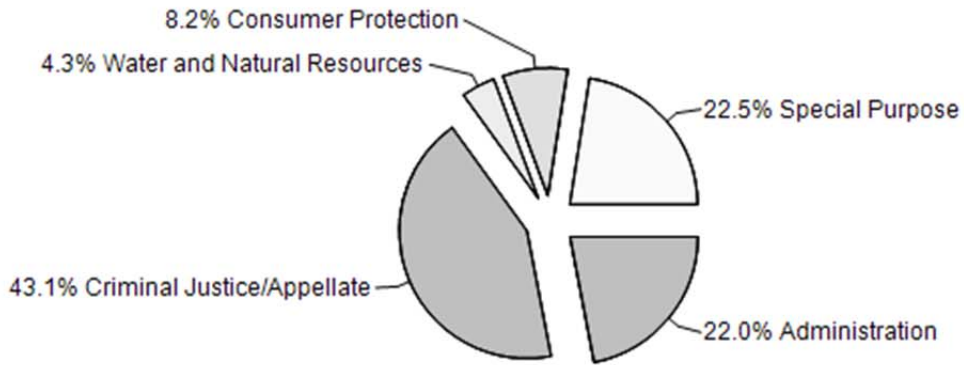


Department Funding Sources

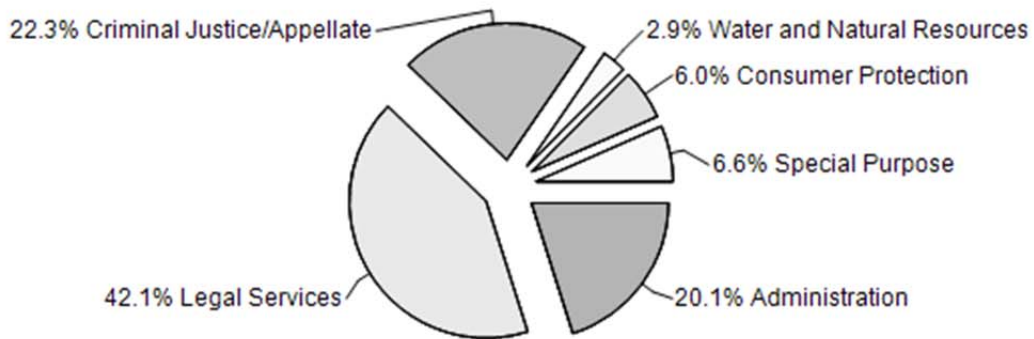


All charts are based on the FY 2014-15 appropriation.

Distribution of General Fund by Division



Distribution of Total Funds by Division



General Factors Driving the Budget

The FY 2015-16 request consists of 19.5 percent General Fund, 20.9 percent cash funds, 57.3 percent reappropriated funds, and 2.3 percent federal funds. Cash funds include: fees and fines paid by regulated entities; funds awarded to the Department; a statewide vehicle registration fee that supports peace officer training programs; tobacco settlement moneys; fees paid by applicants seeking peace officer certification; the Colorado Water Conservation Board's Litigation Fund; and the Marijuana Tax Cash Fund. Reappropriated funds primarily include: moneys transferred from other state agencies for the purchase of legal services, for the prosecution and enforcement of the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and for the prosecution of securities fraud cases; indirect cost recoveries; and grants from other state agencies. Three significant factors driving the Department's budget are described below.

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 moneys 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 Department of Law's budget includes appropriations authorizing the receipt and expenditure of moneys received from other state agencies.

For FY 2014-15, the General Assembly has authorized the Department of Law to spend up to \$39.9 million providing legal services to state agencies (including associated central appropriations). This amount represents 54.0 percent of the Department's total appropriation. As shown in the table on the following page, eight state agencies account for more than 80.0 percent of these services. The table also details the total number of hours of legal services provided and the average hourly rates charged by the Department of Law for the past four years.

Fluctuations in legal services expenditures are due to: (1) changes in the Department of Law's hourly rates; and (2) changes in the number of hours of legal services provided to state agencies by attorneys and legal assistants. The Department's hourly rates fluctuate based on the costs of employee salaries and benefits, and operating expenses.

Three appendices provide data related to the provision of legal services. Appendix F lists legislation passed from 2011 through 2014 that affected state agencies' need for legal services. Appendix G details appropriations for the purchase of legal services from the Department of Law for FY 2014-15, by state agency. Appendix H details the hours of legal services provided (or anticipated to be provided) for FY 2004-05 through FY 2014-15, by state agency.

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Legal Services to State Agencies: FY 2010-11 to FY 2014-15						
State Department	FY 10-11 Actual	FY 11-12 Actual	FY 12-13 Actual	FY 13-14 Actual	FY 14-15 Approp./ Estim.	% of Total
Regulatory Agencies	\$7,485,354	\$7,359,709	\$7,383,603	\$8,969,467	\$11,020,252	27.6%
Natural Resources	3,283,382	3,323,637	3,514,961	4,563,407	5,210,681	13.1%
Revenue	1,738,069	2,864,901	2,740,083	3,409,251	3,959,113	9.9%
Personnel	2,555,590	2,550,581	2,379,484	3,504,482	4,416,035	11.1%
Public Health and Environment	2,021,921	2,275,229	2,393,330	2,840,844	3,632,358	9.1%
Human Services	1,409,467	1,394,458	1,401,843	1,680,642	1,825,645	4.6%
Transportation	1,081,661	1,132,068	956,102	1,265,248	1,626,932	4.1%
Corrections	1,075,919	1,010,582	1,273,306	1,240,836	1,514,656	3.8%
Other agencies 1/	<u>5,158,978</u>	<u>5,198,384</u>	<u>4,446,571</u>	<u>5,674,798</u>	<u>6,715,985</u>	16.8%
Total Expenditures/ Appropriation	\$25,810,341	\$27,109,549	\$26,489,283	\$33,148,975	\$39,921,657	100.0%
<i>% change of total from prior year</i>	3.7%	5.0%	(2.3%)	25.1%	20.4%	
<i>% of total Department of Law appropriations</i>	47.9%	49.9%	45.3%	48.0%	54.0%	
<i>% of total state operating appropriations</i>	0.1%	0.1%	0.1%	0.1%	0.2%	
Blended Legal Rate	\$73.37	\$75.71	\$77.25	\$91.08	\$99.01	
<i>% change from prior year</i>	(2.7%)	3.2%	2.0%	17.9%	8.7%	
Total Hours	349,184	357,139	341,814	402,129	403,208	
<i>% change from prior year</i>	5.8%	2.3%	(4.3%)	17.6%	0.3%	

1/ Actual expenditures are provided by the Department of Law. The appropriation column includes the Department's estimates of legal services to be provided to institutions of higher education and to the Public Employees' Retirement Association (PERA).

Criminal Justice and Appellate

The largest allocation of General Fund in the Department is for the Criminal Justice and Appellate section, which accounts for more than 43.0 percent of General Fund appropriations to the Department for FY 2014-15. 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. In FY 2013-14, the General Assembly appropriated funding to add 5.5 additional attorney FTE (annualizing to 6.0 FTE in FY 2014-15) to allow the Department to address a growing backlog of criminal appeals cases.

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Appellate Unit Data: FY 2009-10 to FY 2014-15						
	FY 09-10 Actual	FY 10-11 Actual	FY 11-12 Actual	FY 12-13 Actual	FY 13-14 Actual	FY 14-15 Approp.
Expenditures/ Appropriations (excluding central appropriations)	\$2,555,197	\$2,646,858	\$2,603,619	\$2,709,335	\$3,230,248	\$3,697,461
FTE	30.7	31.6	30.9	31.3	37.0	38.9
Opening Briefs Received	1,152	1,050	1,171	1,018	911	n/a
Answer Briefs Filed	1,054	1,021	894	885	1,149	n/a
Case Backlog	434	398	608	564	272	n/a

District Attorneys’ Salaries

The Colorado Constitution requires each judicial district to elect a district attorney (DA). Similar to the Attorney General, DAs are part of the executive branch of government and their powers and duties are prescribed by the General Assembly³. Each DA is responsible for representing the legal interests of the people of the State of Colorado, and prosecuting on behalf of the people criminal cases for crimes committed within his or her judicial district. 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.

While DAs’ office budgets are primarily set and provided by boards of county commissioners within each respective judicial district, the State provides direct funding for DAs, via state agencies, for certain purposes. For example, 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 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, from \$67,000 in 2008 to \$130,000 as of January 1, 2012. 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 19.9 percent of total General Fund appropriations to the Department. The following table details recent expenditures/ appropriations for this purpose.

State Expenditures for District Attorney Salaries: FY 2007-08 to FY 2014-15			
Fiscal Year	Expenditures	Annual Increase	Cumulative Increase
2007-08	\$1,315,985	n/a	n/a
2008-09	1,654,605	\$338,620	\$338,620

³ See Article VI, Section 13 of the Colorado Constitution and Article 1 of Title 20, C.R.S

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State Expenditures for District Attorney Salaries: FY 2007-08 to FY 2014-15			
Fiscal Year	Expenditures	Annual Increase	Cumulative Increase
2009-10	2,096,027	441,422	780,042
2010-11	2,263,229	167,202	947,244
2011-12	2,479,847	216,567	1,163,811
2012-13	2,656,471	176,624	1,340,486
2013-14	2,676,960	20,489	1,360,975
2014-15 (approp.)	2,697,656	20,696	1,381,671

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Summary: FY 2014-15 Appropriation & FY 2015-16 Request

Department of Law						
	Total Funds	General Fund	Cash Funds	Reappropriated Funds	Federal Funds	FTE
FY 2014-15 Appropriation						
HB 14-1336 (Long Bill)	\$69,567,702	\$12,917,348	\$12,369,385	\$42,532,558	\$1,748,411	454.9
Other Legislation	<u>4,398,629</u>	<u>616,952</u>	<u>3,283,194</u>	<u>498,483</u>	<u>0</u>	<u>9.5</u>
TOTAL	\$73,966,331	\$13,534,300	\$15,652,579	\$43,031,041	\$1,748,411	464.4
FY 2015-16 Requested Appropriation						
FY 2014-15 Appropriation	\$73,966,331	13,534,300	\$15,652,579	\$43,031,041	\$1,748,411	464.4
R1 Violent Crimes Assistance Team						
FTE	266,520	266,520	0	0	0	1.8
R2 CORA and open meetings attorney	109,631	109,631	0	0	0	0.9
R3 Tobacco litigation legal assistant	80,389	0	80,389	0	0	1.0
R4 Contract administrator 1/2 FTE	55,114	0	0	55,114	0	0.0
R5 CP & AT operating and litigation	167,823	64,547	83,911	19,365	0	0.0
NP1 Vehicle lease payment	12,694	17,039	(9,842)	2,198	3,299	0.0
Centrally appropriated line item adjustments	2,403,286	785,317	143,891	1,430,418	43,660	0.0
Annualize prior year legislation	36,886	9,195	141,959	(114,268)	0	0.1
FTE adjustments	0	0	0	0	0	0.4
Move POST FTE to Administration	0	0	(46,935)	46,935	0	0.0
Fund source adjustments	0	229,929	(852,588)	622,659	0	0.0
Annualize prior year budget actions	(414,216)	(101,076)	(394,234)	81,249	(155)	0.1
Indirect cost assessment adjustments	(236,966)	0	1,164,321	(1,387,139)	(14,148)	0.0
Change in anticipated grant funding	<u>(11,100)</u>	<u>0</u>	<u>0</u>	<u>(11,100)</u>	<u>0</u>	<u>(0.5)</u>
TOTAL	\$76,436,392	\$14,915,402	\$15,963,451	\$43,776,472	\$1,781,067	468.2
Increase/(Decrease)	\$2,470,061	\$1,381,102	\$310,872	\$745,431	\$32,656	3.8
Percentage Change	3.3%	10.2%	2.0%	1.7%	1.9%	0.8%

Description of Requested Changes

R1 Violent Crimes Assistance Team FTE: The request includes an increase \$226,520 General Fund and 1.8 attorney FTE in FY 2015-16 (annualizing to \$264,835 and 2.0 FTE in FY 2016-17) to expand the Violent Crimes Assistance Team (VCAT) in response to increasing workload supporting local district attorneys requesting assistance with homicide prosecutions. For further discussion of this request, see the second issue paper in this document.

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R2 CORA and open meetings attorney: The request includes an increase of \$109,631 and 0.9 attorney FTE in FY 2015-16 (annualizing to \$107,520 and 1.0 FTE in FY 2016-17) to add expertise related to the Colorado Open Records Act (CORA) and the Open Meetings Law in response to increasing workload. For additional discussion of this request, see the third issue paper in this document.

R3 Tobacco litigation legal assistant: The request includes an increase of \$80,389 cash funds from the Tobacco Litigation Defense Account and 1.0 legal assistant FTE in FY 2015-16 (annualizing to \$79,159 and 1.0 FTE in FY 2016-17) to hire a legal assistant to support tobacco litigation efforts. *This item will be addressed in a separate staff briefing for the Tobacco Master Settlement Agreement scheduled for November 13, 2014.*

R4 Contract administrator ½ FTE: The request includes \$55,114 reappropriated funds from indirect cost recoveries in FY 2015-16 (annualizing to \$45,117 in FY 2016-17) to allow the Department to hire a half-time General Professional VI contract administrator within the Administration Section. The request does not require additional FTE because the Department has additional FTE within the Administration Section that it has been unable fund within existing resources. According to the Department, the increasing sophistication of contracts required to protect state information requires additional time and expertise devoted to purchase order development, contract negotiations, and vendor monitoring.

R5 CP & AT operating and litigation: The request includes an increase of \$167,823 total funds (including \$64,547 General Fund) in FY 2015-16 and subsequent years to: (1) support the litigation expenses and annual operating expenses of the Consumer Protection and Antitrust line item; and (2) to better align fund sources with anticipated costs. The Department has previously supported these expenses with either available centrally appropriated operating funds (such as Ralph L. Carr Colorado Judicial Center Leased Space) or custodial funds received by the Department. The Department is requesting the increased appropriation to both cover the costs and better align fund sources with expenditures.

NP1 Vehicle lease payment: The request includes a net increase in vehicle lease payments. *This request will be addressed in a separate staff briefing for the Department of Personnel scheduled for December 3, 2014.*

Centrally appropriated line item adjustments: The request includes an increase of \$2,403,286 total funds (including \$785,317 General Fund) related to employee benefits and other centrally appropriated line items. This total includes the following major increases:

- \$1,495,508 total funds (including \$385,130 General Fund) for proposed salary increases to be awarded in FY 2015-16. The Department's request includes the following increases for classified employees (in line with the Governor's common policies): 1.0 percent for salary survey and 1.0 percent for merit based pay. The request includes the following increases for non-classified employees (attorneys): 3.3 percent for salary survey (based on the Department's annual attorney salary survey) and 1.0 percent for merit based pay.
- \$537,191 total funds (including \$167,578 General Fund) for supplemental PERA payments.

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- \$317,443 total funds (including \$154,736 General Fund) for various types of insurance (health, life, and dental; short-term disability; workers' compensation; and risk management/property funds).
- \$53,594 total funds (including \$57,280 General Fund) for other centrally appropriated items.

Annualize prior year legislation: The request includes an increase of \$36,886 total funds to reflect the FY 2015-16 impact of legislation that was passed in 2014, including the following acts: S.B. 14-002; S.B. 14-005; S.B. 14-099; S.B. 14-123; S.B. 14-125; S.B. 14-215; H.B. 14-1199; H.B. 14-1202; H.B. 14-1227; H.B. 14-1319; H.B. 14-1328; H.B. 14-1329; H.B. 14-1331; and H.B. 14-1398. Appendix B provides a short description of each of these acts.

FTE adjustments: The request includes an increase of 0.4 FTE to align with actual FTE usage and hours, including 0.2 FTE in the Legal Services to State Agencies section to align with funds appropriated through 2014 Session legislation and 0.2 FTE for the Consumer Protection and Antitrust Unit.

Move POST FTE to administration: The request seeks to: (1) reallocate 0.4 FTE and \$46,935 cash funds from the POST Board Cash Fund (appropriated in S.B. 14-123 (POST Board Rule Authority Training Suspensions) to the Administration section and; (2) change the fund source from cash funds to reappropriated funds from indirect cost recoveries to support the position in the Administration section. The Department believes that the accounting function supported by the funds in question is more appropriate for the Administration section and that indirect cost recoveries are the preferable fund source.

Fund source adjustments: The request includes increases in General Fund and reappropriated funds offset by a decrease in cash funds.

Annualize prior year budget actions: The request includes adjustments related to prior year budget actions.

Indirect cost assessment adjustments: The request includes a net decrease in the Department's indirect cost assessments.

Change in anticipated grant funding: The request reflects an anticipated \$11,100 decrease in the total amount of grant funding available from the Department of Public Safety, including the following changes: (1) an increase of \$3,803 for victims assistance efforts supported by a grant from the Victims Assistance and Law Enforcement Fund; and (2) a decrease of \$14,903 for efforts to investigate and prosecute multi-jurisdictional auto theft. Section 24-31-108 (1) (b) (I), C.R.S., continuously appropriates grant funds to the Department of Law, and the Department does not require a decision item for changes in spending authority.

Issue: Major Litigation Pending Against the State

This issue brief provides a summary of legal cases involving the State that could have a significant financial impact.

SUMMARY:

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

Education

- *Dwyer v. State of Colorado*

Health Care Policy and Financing

- *Colorado Department of Health Care Policy and Financing v. Centers for Medicare and Medicaid Services*

Natural Resources

- *Kansas v. Nebraska and Colorado*

Revenue

- *Agilent Technologies v. Department of Revenue*

Transportation

- *TABOR Foundation v. Colorado Bridge Enterprise, Colorado Transportation Commission*

Risk Management Fund

- *American Family Insurance, et al. v. State of Colorado, et al.* [Colorado State University, Colorado State Forest Service, Department of Public Safety]
- *Justus, Gary, et al. v. State of Colorado, Gov. John Hickenlooper, Public Employees' Retirement Association (PERA), et al.*

RECOMMENDATION:

Staff recommends that the Committee ask the Department to discuss the status of the cases concerning Amendment 23 (*Dwyer*) and the Lower North Fork Fire (*American Family Insurance et al.*), as well as any other cases the Attorney General believes warrant the Committee's attention.

DISCUSSION:

The Department of Law submits an annual report to the State Controller concerning pending or threatened litigation, claims, and assessments involving significant dollar amounts, brought against the State and to which the Department has devoted substantial attention on behalf of the

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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:

- As the Department does not represent the General Assembly (except in cases under the Risk Management Fund) or the University of Colorado Board of Regents, this report excludes information about cases brought against these two entities.
- Although notices of claims in the nature of tort must be filed with the Attorney General pursuant to the Colorado Governmental Immunity Act (CGIA)⁴, 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 lawsuits⁵. All tort and federal claims alleging damages against state agencies and employees, if settled, are to be paid out of the Risk Management Fund to the limits of the CGIA. Thus, the report excludes information about claims that have not resulted in lawsuits.

Based on the most recent annual report dated September 10, 2014, as well as additional information from the Department of Law, staff has provided below 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. The cases are organized by department, in the same order as they are listed on the previous page.

Education

Dwyer v. State of Colorado

Case. On June 27, 2014, the Colorado Rural Schools Caucus, East Central Board of Cooperative Educational Services, Colorado PTA, and several school districts and individuals filed suit against the State of Colorado, the Commissioner of Education, and the Governor challenging the constitutionality of the "negative factor" (implemented as a part of the School Finance Act beginning in FY 2010-11) under Amendment 23 (Section 17 of Article IX of the Colorado Constitution).

Amendment 23 requires the General Assembly to increase *statewide base per pupil funding* (a component of the school finance formula) by at least the rate of inflation plus one percent for FY 2001-02 through FY 2010-11 and by at least the rate of inflation in FY 2011-12 and subsequent years. The Plaintiffs allege that the negative factor, which reduces school districts' total program funding by a specific percentage each year, violates Amendment 23. *Note: This case will also be addressed during a separate JBC Staff Budget Briefing on the Department of Education, scheduled for December 10, 2014.*

Status. The Plaintiffs filed suit in June 2014 and the State filed a motion to dismiss in August 2014. The Plaintiffs filed their response to the motion to dismiss in September 2014 and the

⁴ See Section 24-10-109, C.R.S.

⁵ See Section 24-30-1501, *et seq.*, C.R.S.

State filed its response in October 2014. The timing of a potential hearing and/or decision on the motion to dismiss is uncertain.

Financial Impact. The Plaintiffs seek declaratory and injunctive relief and request that the court retain continuing jurisdiction over the matter to compel the General Assembly to fund public education in a manner consistent with the Plaintiffs' interpretation of Amendment 23. If the court declares the negative factor unconstitutional, it may require state funding for school finance to increase sufficiently to eliminate the negative factor (which stands at \$894.2 million in FY 2014-15) in the following budget year.

Health Care Policy and Financing

Colorado Department of Health Care Policy and Financing v. Centers for Medicare and Medicaid Services

Case. The Department of Health Care Policy and Financing (HCPF) has appealed two disallowances issued by the Centers for Medicare and Medicaid Services (CMS) related to out stationing eligibility functions at Denver Health. The disallowances include \$10,677,539 for the period from April 1, 2005 through June 30, 2010 and \$2,692,324 for the period from April 1, 2011 through September 30, 2011. The U.S. Department of Health and Human Services Departmental Appeals Board has consolidated the disallowances into a single case. HCPF has retained outside counsel in Washington, D.C., to handle this case.

Status. HCPF filed its brief with the U.S. Department of Health and Human Services Departmental Appeals Board on October 6, 2014 and expects CMS to file its response brief in early November 2014. The timing of a decision from the Departmental Appeals Board is uncertain.

Financial Impact. The disallowances in question total \$13,359,863. If the State loses this appeal, then it will cost that amount of General Fund.

Natural Resources

Kansas v. Nebraska and Colorado

Case. In 1998, Kansas sued Nebraska and Colorado, alleging overuse of water from the Republican River, which flows from Colorado and Nebraska into Kansas. In 2003, the three states entered into a settlement decree to resolve the dispute. As a result of that decree, Colorado developed new water enforcement rules, retired thousands of acres of irrigated land, and took additional actions such as the partial draining of Bonny Reservoir.

Status. In 2008 Kansas began arbitration proceedings against Nebraska and Colorado, alleging continued overuse of river water. The U.S. Supreme Court accepted a Kansas suit against Nebraska for violating the Republican River Compact and appointed a Special Master to oversee the case. Through two years of litigation, neither Kansas nor Nebraska offered any evidence to prove that Colorado had violated the Compact. However, Nebraska previously indicated that if it lost, it might pursue a claim against Colorado for contribution.

The trial before the Special Master took place in August 2012. The Special Master released a draft report in January 2013 and a final report in November 2013. In his final report, the Special

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Master recommended that the U.S. Supreme Court award Kansas \$5.5 million for Nebraska's past violations and no damages against Colorado. The final report further recommends that the parties modify the Compact accounting to prevent Nebraska from being charged under the Republican River Compact for consuming water imported from the Platte River basin. Colorado and Nebraska take exception to the damage award, which seeks to disgorge a portion of the profits Nebraska gained by violating the Compact. Kansas seeks a larger disgorgement and is seeking to block the accounting changes. Although no claims were presented against Colorado during the trial before the Special Master, the final decisions concerning the litigation will impact Colorado. For that reason, Colorado has remained actively engaged in the case.

On October 11, 2014, the U.S. Supreme Court heard oral arguments on the parties' exceptions to the Report of the Special Master. All parties are awaiting the Court's final decision. The Department notes, however, that future litigation among Kansas, Nebraska, and Colorado is likely, as additional issues remain unresolved among the states.

Financial Impact. Kansas has not stated a specific dollar amount it seeks from Colorado; however, Kansas has sought over \$70 million from Nebraska for alleged violations of the Compact. The Department of Law indicates that the likelihood of an unfavorable outcome on liability is uncertain. The numbers accepted by all three states show that Colorado has consumed more water than is permitted under the Compact, with Colorado's amount of overuse being approximately the same as Nebraska's. The Department reports that it seems unlikely that Nebraska would seek contribution damages against Colorado. Nebraska and Colorado are working closely together to approve plans for both states to comply with the Compact. It is difficult to know whether Kansas would seek damages from Colorado in a future action. Based on the Special Master's report awarding \$5.5 million against Nebraska, the Department estimates that Colorado's liability for past over-consumption would likely be in the \$1 million to \$5 million range.

Revenue

Agilent Technologies, Inc. v. Department of Revenue

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

Status. The Department of Revenue prevailed after an administrative hearing, and Agilent appealed the Notice of Final Determination to the Denver District Court. The matter is scheduled for a three-day trial in Denver District court beginning June 15, 2015. The Department reports that the issues in this case are novel issues in Colorado and that authorities across the country are split on many of the controlling issues.

Financial Impact. The amount at issue is \$13,345,601. The taxpayer has paid this tax pending the outcome of the proceedings. In the event of a loss the State would pay interest on this amount in the form of a refund of the amount at issue plus statutory interest.

Transportation

TABOR Foundation v. Colorado Bridge Enterprise, Colorado Transportation Commission

Case. In May 2012, the TABOR Foundation sued the Colorado Bridge Enterprise, the Colorado Transportation Commission, and individual commissioners in their official capacities, claiming that the bridge safety surcharge levied by the Colorado Bridge Enterprise (pursuant to S.B. 09-108) constitutes a tax rather than a fee and thus requires a vote of the Colorado electorate. The Plaintiff also alleges that \$300 million in bonds issued by the Bridge Enterprise in December 2010 to fund designated bridge repair and reconstruction projects required voter approval. The Plaintiff seeks a declaratory judgment and permanent injunction declaring the bridge safety surcharge a tax requiring voter approval and declaring the bonds as unconstitutionally issued.

Status. A two-day bench trial was held in Denver District Court on May 13-14, 2013. On July 19, 2013, the Court issued its final order and the Colorado Bridge Enterprise won on all issues. The Plaintiff appealed and on July 8, 2014, a Colorado Court of Appeals panel heard oral arguments. On August 14, 2014, the Court of Appeals issued its decision and decided in favor of the Colorado Bridge Enterprise and the Transportation Commission on all issues. On September 25, 2014, the Plaintiff filed a petition for certification with the Colorado Supreme Court appealing the Court of Appeals' decision. Counsel for the Transportation Commission and the Colorado Bridge Enterprise filed an objection to the petition on October 20, 2014, arguing that the Supreme Court should not accept the petition and should let the Court of Appeals decision stand. The parties are awaiting a decision from the Supreme Court regarding whether to hear the case.

Financial Impact. No specific monetary damages are sought, but the Plaintiff seeks a refund of all bridge safety surcharge revenues collected since its inception in July 2009 and an order declaring the revenue bonds unconstitutional. To date, the Bridge Enterprise has collected approximately \$390 million in surcharges and issued \$300 million in revenue bonds. Claims against the Department of Transportation or the Transportation Commission should not impact the General Fund as these claims are satisfied out of the dollars made available to the Department and allocated by the Commission.

Risk Management Fund

American Family Insurance, et al. v. State of Colorado, et al. [Colorado State University, Colorado State Forest Service]

Background Information. On March 22, 2012, the Colorado State Forest Service (CSFS) conducted a prescribed burn on property owned by the Denver Water Board to mitigate wildfire potential near the town of Foxton, southeast of Conifer, in Jefferson County. The prescribed burn was done pursuant to a contract with the Denver Water Board and according to a program of forest management by the CSFS intended to thin forests and reduce fuel buildup that contributes to wildfire danger. The prescribed burn was complete by the end of the day on March 22, 2012. On March 23 and 24, 2012, the CSFS conducted mopping-up operations on the perimeter of the burn area, and by the end of the day on March 24, 2012, the only fire activity was in isolated stumps, logs, and pockets of decaying leaves and branches within the burn unit, surrounded by a 200 foot perimeter. The Burn Boss and the CSFS District Forester determined

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based on conditions within the burn area at the end of the day on March 24, 2012, that no patrol would be necessary for the next day.

On Sunday, March 25, 2012, the burn area was unstaffed. However, at 12:15 p.m. on Sunday, the National Weather Service issued a "Red Flag Warning" for wind and low relative humidity from 10:00 a.m. to 8:00 p.m. on Monday, March 26, 2012. The Weather Service warning was for sustained winds of 20 to 30 mph and gusts to 50 mph. On Monday, March 26, 2012, because of the Weather Service warning, CSFS put a three person patrol on the burn area. At the time the patrol arrived at the burn area, they observed the same basic conditions that had existed on the evening of March 24, 2012, with two isolated smokes in the interior of the burn area. By 12:45 p.m., winds had increased to approximately 10 to 15 mph and were fanning hot spots within the burn area resulting in increased smoke and embers spreading within the burn area and reigniting available fuels. The patrol called for additional assistance at 1:00 p.m., at which time the patrol was fighting two "desk-sized" burns. Winds continued to increase, and fuels within the burn area continued to reignite hot spots. The Elk creek Fire Department arrived between 2:00 p.m. and 2:15 p.m. At 2:30 p.m. the fire was declared escaped. The fire grew very rapidly in size and intensity. Homeowners in the area reportedly received conflicting information on evacuation, but evacuations were eventually declared and put into effect. Before the fire was brought under control, approximately 26 homes were damaged or destroyed, and three persons were killed when their homes burned, in what became known as the Lower North Fork wildfire.

In response to the Lower North Fork fire, the General Assembly passed a pair of bills, H.B. 12-1283 and H.B. 12-1361, which shifted fire mitigation and control functions of CSFS to the Department of Public Safety, along with all liabilities for prescribed fires accrued as of July 1, 2012, and retroactively waived the State's sovereign immunity for negligence claims arising from prescribed fires.

Case. On July 2, 2012, a group of five insurance companies brought suit in Jefferson County district court to recover amounts paid or to be paid on claims of their insureds for damage resulting from the Lower North Fork wildfire. Plaintiffs named the State of Colorado, Colorado State University (CSU), and CSFS as Defendants. The Plaintiffs asserted claims under new provisions of the Colorado Governmental Immunity Act (CGIA), as well as claims for inverse condemnation and "takings" under Article II, Section 15 of the Colorado Constitution.

Status. On July 23, 2012, the State filed an Answer, Counterclaims and Petition in Interpleader on behalf of Department of Public Safety due to legislation that shifted responsibility for the fire from CSU and CSFS to the Department of Public Safety. The State did not dispute claims of negligence under the newly-adopted waiver of the State's immunity in Section 24-10-106.1, C.R.S. However, the State has vigorously defended against claims for inverse condemnation or on "takings" theories. Upon the State's request, the Court granted a stay of proceedings to permit the notice period to expire before litigation got underway. Meanwhile, between the date of the fire and September 25, 2012, the Department received more than 100 notices of claims for property damage and wrongful death resulting from the fire.

On October 9, 2012, the original insurance company Plaintiffs filed an Amended Complaint, and the Department simultaneously responded to the Amended Complaint with an interpleader of all

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those who had filed claims within the claim notice period. On April 23, 2013, the Department filed motions to dismiss all non-CGIA claims, including claims under “inverse condemnation” theories, civil rights theories under 42 U.S.C. § 1983, and theories of willful and wanton conduct.

In early 2014, the Court granted the State’s motions to dismiss all non-CGIA claims, including claims asserted by insurers under theories of inverse condemnation. Nearly all of the involved insurers have appealed the order dismissing inverse condemnation claims. The appeals are consolidated before the Colorado Court of Appeals, and briefing before that court has begun. Insurers filed their opening briefs and the State’s response is due in early November.

Meanwhile, factual findings of damages were made by the Judicial Arbiter Group (JAG) and judgments were provided to property owners. After following the process set up in Section 24-10-114 (5) (a), C.R.S., all property owners were compensated under special appropriations passed by the General Assembly during the 2013 and 2014 Sessions.

Financial Impact. Liability under new provisions of the CGIA for negligence in conducting a controlled fire is limited to \$600,000, and is covered by the Risk Management Fund. The State has conceded this liability and \$600,000 will be paid to insurers from the fund held in the court’s registry.

In addition, the State has paid a total of \$25,032,674 General Fund in compensation to property owners from special appropriations approved during the 2013 and 2014 Sessions. With respect to insurers, there has as yet been no discovery into the insurer plaintiff claims, and the total amount of claims paid by insurers, which would represent the ceiling on the State’s potential liability, is unknown, but potentially in the low tens of millions. Finally, the Department has indicated that the State may be drawn into litigation with property owners who previously settled their claims but are seeking to reopen those claims to receive payment consistent with the General Assembly’s treatment of non-settling property owners.

Justus, Gary, et al. v. State of Colorado, Gov. Bill Ritter, Public Employees’ Retirement Association (PERA), et al.

Case. Plaintiffs are former state and local government employees who can or will receive retirement benefits under PERA. They allege violations of the Colorado and U.S. Constitutions arising from changes to PERA’s cost of living adjustment (COLA) pursuant to S.B. 10-001. Among other relief, Plaintiffs sought class action status, a permanent injunction against the continued implementation of the revised COLA formula, payment of 2010 (and future) COLA amounts, as well as costs and attorney fees.

Status. In late June, 2012, the Denver District Court granted Defendants’ motion for summary judgment and dismissed Plaintiffs’ lawsuit, finding that the modern, three part Contracts Clause analysis applied to the constitutional questions posed in the complaint. The Court applied the first prong of the Contracts Clause test and determined that Plaintiffs had no right to a specific, unalterable COLA to their retirement pension. Plaintiffs appealed. On October 11, 2012, the Court of Appeals reversed and remanded. The Court found that PERA members have a contractual right to a COLA, and remanded the case for further consideration of all three prongs

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of the Contracts Clause analysis. On remand, the District Court was asked to determine what contract was in place for each retiree, whether changes to the COLA for the retirees imposed a "substantial" impairment to members' contract rights, and whether the reduction "was reasonable and necessary to serve a significant and legitimate public purpose". All parties petitioned the Supreme Court for certiorari. In August 2013, the Colorado Supreme Court granted certiorari and asked the parties to brief how and whether the changes to the COLA for PERA retirees violated the Contracts Clause of the United States Constitution. The Court heard oral arguments on June 4, 2014. On October 20, 2014, the Court issued a ruling reversing the ruling of the Appeals Court and dismissing the case. Thus, the case is concluded at the State level. The Department does not yet know whether the plaintiffs intend to appeal the case to the US. Supreme Court.

Financial Impact. The Colorado Supreme Court has dismissed the case. If the plaintiffs elect to appeal the case to the U.S. Supreme Court and S.B. 10-001 is found to be unconstitutional and enjoined, a court order requiring prior unpaid amounts to be repaid to COLA-eligible recipients could exceed \$450 million. In addition, if successful in their 42 U.S.C. § 1983 claims, plaintiffs would be entitled to receive their attorneys' fees and costs, an amount that would likely exceed \$350,000. The Risk Management Fund would pay any attorneys' fees and costs judgment against the State defendants, if awarded under federal law.

Issue: R1 - Violent Crimes Assistance Team FTE

The Department is requesting an increase of \$266,520 General Fund and 1.8 attorney FTE in FY 2015-16 to expand the Violent Crimes Assistance Team in response to increasing workload supporting local district attorneys in the prosecution of homicides.

SUMMARY:

- Upon request by local district attorneys and approval of the Attorney General, the Violent Crimes Assistance Team (VCAT) assists local district attorneys with the investigation and prosecution of violent crimes. In response to increasing workload, the Department is requesting an increase of \$266,520 General Fund and 1.8 attorney FTE in FY 2015-16 to expand the VCAT.
- The VCAT was originally created in FY 1994-95 as the Capital Crimes Unit (CCU) to assist local district attorneys with the prosecution of capital crimes. Over time, the Department expanded the team's role to include the prosecution of non-capital violent crimes although all cases to date have been homicides. The VCAT assists district attorneys statewide, including in small rural jurisdictions, but has also devoted significant time and resources to cases in larger urban/suburban jurisdictions.
- The CCU/VCAT was created in the FY 1994-95 Long Bill and there is no statute defining the role of the VCAT. Thus, the General Assembly's intent with respect to the VCAT's mission and role is unclear.

RECOMMENDATION:

Staff recommends that the Committee discuss the VCAT request with the Department at the upcoming hearing, including the unit's increasing workload, the appropriate role of the VCAT going forward, and whether legislation defining the General Assembly's intended role for the VCAT would be beneficial.

DISCUSSION:

With R1, the Department is requesting an increase of \$266,520 General Fund and 1.8 attorney FTE in FY 2015-16 (annualizing to \$264,835 General Fund and 2.0 FTE in FY 2016-17 and beyond) to expand the VCAT in response to increasing workload. The VCAT currently includes 2.0 attorney FTE and 1.0 criminal investigator FTE. The Department's request would double the attorney staff. The table on the following page outlines the components of the request.

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Request R1 - VCAT FTE				
	FY 2015-16 Request		FY 2016-17 Impact	
	CF	FTE	CF	FTE
Criminal Justice and Appellate, Special Prosecutions Unit				
Personal Services Costs				
Salary/Personal Services	\$167,178	1.8	\$182,376	2.0
PERA (10.15%)	16,969		18,511	
Medicare (1.45%)	2,424		2,644	
AED (4.4%)	7,356		8,025	
SAED (4.25%)	7,105		7,751	
STD (0.022%)	368		401	
Estimated HLD	<u>21,995</u>		<u>21,995</u>	
Subtotal, Personal Services	\$223,394	1.8	\$241,703	2.0
Operating Expenses				
Supplies (\$500)	\$1,000		\$1,000	
Computer (\$900)	1,800		0	
Office Suite Software (\$330)	660		0	
Office Equipment (\$8,767)	17,534		0	
Telephone (\$450/FTE)	900		900	
Cell phone (\$80 per month)	1,920		1,920	
Mileage on State Vehicle (12,000 miles)	2,544		2,544	
Hotel (4 nights/month at \$75 per night)	3,600		3,600	
Per Diem (4 nights/month at \$66)	3,168		3,168	
Litigation Expenses (\$5,000)	<u>10,000</u>		<u>10,000</u>	
Subtotal, Operating Expenses	\$43,126		\$23,132	
Total, Request R1	\$266,520	1.8	\$264,835	2.0

Background

In Colorado, criminal prosecution is generally the responsibility of locally elected district attorneys. However, statute (Section 24-31-105, C.R.S.) establishes a criminal enforcement section within the Department of Law and allows the Department to prosecute criminal cases for the Attorney General. The Special Prosecutions Unit within the Department of Law directly prosecutes a variety of crimes, including multi-jurisdictional cases, gang activities, environmental crimes, and foreign prosecutions (in which a foreign national commits a crime in Colorado and is subsequently tried in another country).

The Special Prosecution Unit also includes the VCAT, formerly known as the Capital Crimes Unit (CCU). The General Assembly created the CCU through the addition of a line item to the FY 1994-95 Long Bill to provide statewide expertise within the Department to assist local district attorneys with the investigation and prosecution of capital crimes. Based on discussions with Department of Law staff and Judicial Branch staff, it appears that the General Assembly was particularly focused on assisting rural district attorneys facing limited resources and limited

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experience prosecuting capital crimes. The unit only assists with prosecutions upon the request of the local district attorney and with the approval of the Attorney General.

The Department has expanded the role and mission of the unit since its establishment in FY 1994-95.

- During the 1990's, the CCU focused largely on consultations with local district attorneys in potential death penalty cases. In some cases the CCU attorneys were sworn in as special deputy district attorneys to assist with prosecutions and motions practice but they generally did not try cases.
- About six years ago, in response to shortages of resources and homicide prosecution experience in local district attorney offices, the CCU was renamed as the Homicide Assistance Team and began to assist local district attorneys with non-capital homicide cases as well. In addition, the Unit attorneys became much more active participants in prosecutions, including actually trying cases as the lead attorneys.
- In 2012, the Department renamed the unit as the Violent Crime Assistance Team (VCAT) and further expanded the role of the team to include significant and complicated violent crimes that did not result in a homicide. However, to date, the VCAT has not assisted in any non-homicide prosecutions.

Depending on the circumstances of a particular case and district attorney request, the assistance provided by the CCU/VCAT may include: investigative assistance; consultations with local district attorneys; motions practice, including arguing motions in court with local district attorneys; and, in some cases, being sworn in as a Special Deputy District Attorney and serving as a full member of the trial team.

The Department points to three major factors that contribute to local district attorneys' requests for VCAT assistance, especially in rural areas: (1) limited prosecution experience for elected district attorneys and deputy district attorneys, particularly in terms of homicide cases; (2) resource and budgetary limitations that may affect staffing levels and the ability to recruit and retain experienced prosecutors; and (3) apparent resource and staffing discrepancies between prosecutors and defense counsel. The Department has also indicated that term limits for elected district attorneys appear to have played a role in increasing the number of requests.

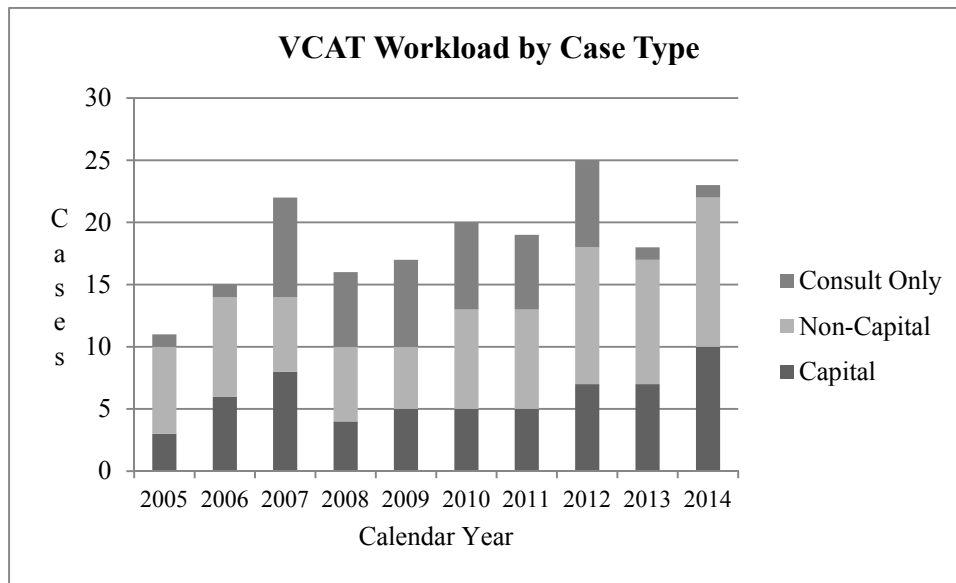
FY 2014-15 Budget Hearing

The Committee and the Department discussed local district attorneys' potential need for additional assistance during the Department's hearing last year. The Committee asked the Department to analyze expanding the VCAT (specifically the Committee asked about tripling the size of the unit from 3.0 FTE to 9.0 FTE). The Department could not rationalize tripling the size of the unit based on the current and anticipated workload but did provide data regarding a potential increase. The Committee and the General Assembly did not act on that information during the 2014 Session.

VCAT Workload

The VCAT’s workload has increased in recent years and the Department has had difficulty supporting all of the local district attorneys’ requests for assistance. According to the Department, the increase has been driven by: (1) an increasing number of cases and requests for assistance; (2) an increasing involvement and amount of work required for each case; and (3) increasing numbers of cases spread throughout the State.

- *Number of Cases:* From 1994 to 2005, the unit handled no more than 5 cases in any given year where one or both of the VCAT attorneys would have been sworn in as Special Deputy District Attorneys to serve as members of the prosecuting trial team. In FY 2013-14, the VCAT attorneys were involved in 25 different homicide cases, including 11 capital cases with varying degrees of VCAT involvement, 10 non-capital homicide cases where the VCAT attorneys were sworn in as Special Deputy District Attorneys, and 4 cases where the VCAT attorneys served as consultants. The VCAT cases, and particularly the capital cases, may take years to resolve, so the caseload accumulates over time. The following graph shows the number of VCAT cases per year from 2005 through 2014 (as of October 2014).



- *Workload per Case:* The Department also reports that the VCAT has seen an increase in workload per case. According to the Department, since the unit’s formation the number of motions filed in capital cases has grown by four fold. As a result of the increasing number of motions, the VCAT has been called upon more frequently to provide motions support, including in 11 separate cases during FY 2013-14.
- *Geography of Cases:* The Department also reports that the VCAT cases are increasingly spread throughout the State. While the original intent of the CCU/VCAT may have been to assist small/rural district attorney offices, the Department reports that as late as 2007 the majority of cases were in the Denver metropolitan area. In FY 2013-14, the team provided some kind of assistance in 13 of 22 judicial districts. Thus far in calendar year 2014, Department attorneys have been sworn in as special deputy district attorneys in cases in

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seven different judicial districts, with significant involvement in cases in six additional districts.

In addition to working directly on cases, the VCAT attorneys provided 86 consultations to prosecutors in 17 judicial districts in FY 2013-14. The attorneys and investigator also provided 25 lectures to approximately 569 prosecutors and law enforcement officers.

According to the Department, in recent years the two VCAT attorneys have been unable to accommodate all of the requests for assistance from local district attorneys. In order to provide the requested assistance, the Department has added VCAT cases to the caseloads of other attorneys within the Special Prosecutions Unit.

Points to Consider

The Department's request to expand the VCAT raises three questions about the role of the VCAT and the General Assembly's intent for the unit going forward.

- *What crimes should the VCAT prosecute?* The Department has expanded the VCAT's mission to include assisting with the prosecution of non-capital homicides and (potentially) other violent crimes. The workload data justifying the expansion of the VCAT assume that the VCAT will continue to support every request for assistance, including non-capital homicide cases, in every requesting judicial district. Is that the General Assembly's intent?
- *Should the VCAT prioritize requests from rural district attorneys?* Discussions of the need for CCU/VCAT assistance have often focused on the need for assistance in rural judicial districts. The Department's justification for the FY 2015-16 request again focuses on needs in rural districts facing resource constraints. However, a significant portion of the unit's workload continues to come from larger and/or more urban districts where resource constraints would not appear to be as acute. For example, in calendar year 2013, of 15 cases in which VCAT attorneys were sworn in as special deputy district attorneys, six cases were in the 18th Judicial District (Arapahoe, Douglas, Elbert, and Lincoln Counties) and one was in the 4th Judicial District (El Paso and Teller Counties). Within that set of cases, five of the six capital cases in which the VCAT attorneys were sworn in were in the 18th Judicial District. In that year, the VCAT assisted in two additional cases where the attorneys were not sworn in, one of which was in the 18th Judicial District and the other was in the 2nd Judicial District (Denver). Is that level of assistance to larger district attorney offices necessary?
- *Should the General Assembly consider legislation to define the role of the VCAT?* There is no statute defining the role of the VCAT or guiding the unit's operations. Legislation could clarify the General Assembly's intent for the VCAT going forward and guide the Department's potential prioritization of requests if necessary based on resource constraints.

Issue: R2 - Colorado Open Records Act Attorney

The Department is requesting \$109,631 General Fund and 0.9 FTE for FY 2015-16 to hire an attorney in response to increasing workload, both within the Department and in client agencies, associated with the Colorado Open Records Act and the Open Meetings Law.

SUMMARY:

- The Department is requesting an increase of \$109,631 General Fund and 0.9 attorney FTE in FY 2015-16 to add expertise in response to increasing workload associated with the Colorado Open Records Act (CORA).
- Increasing numbers of CORA requests, as well as broader and more complicated requests, are increasing the CORA workload within the Department as well as in client agencies. In addition, the Department seeks to improve the consistency of State agencies’ CORA policies and responses.

RECOMMENDATION:

Staff recommends that the Committee discuss legal and administrative issues surrounding CORA at the Department’s upcoming hearing.

DISCUSSION:

With R2, the Department is requesting an increase of \$109,631 General Fund and 0.9 attorney FTE in FY 2015-16 (annualizing to \$107,520 and 1.0 FTE in FY 2016-17 and beyond) to add expertise in response to an increasing workload associated with the Colorado Open Records Act (CORA) and the Open Meetings Law. The following table shows the calculations underlying the Department’s request.

Request R2 - CORA and OML Attorney				
	FY 2015-16 Request		FY 2016-17 Impact	
	CF	FTE	CF	FTE
New Line Item Requested				
Personal Services Costs				
Salary/Personal Services	\$72,600	0.9	\$79,200	1.0
PERA (10.15%)	7,369		8,039	
Medicare (1.45%)	1,053		1,148	
AED (4.4%)	3,194		3,485	
SAED (4.25%)	3,086		3,366	
STD (0.022%)	160		174	
Estimated HLD	<u>10,997</u>		<u>10,997</u>	
Subtotal, Personal Services	\$98,459	0.9	\$106,409	1.0

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Request R2 - CORA and OML Attorney				
	FY 2015-16 Request		FY 2016-17 Impact	
	CF	FTE	CF	FTE
Operating Expenses				
Supplies (\$500)	\$500		\$500	
Computer (\$900)	900		0	
Office Suite Software (\$395)*	395		0	
Office Equipment (\$8,767)	8,767		0	
Telephone (\$450/FTE)	450		450	
Cell phone (\$80 per month)*	160		160	
Subtotal, Operating Expenses	\$11,172		\$1,110	
Total, Request R1	\$109,631	0.9	\$107,519	1.0

* The request includes common policy/ calculation errors for these items.

Background

The Colorado Open Records Act (see Sections 24-72-201 through 24-72-309, C.R.S.) provides public access to public records from all levels of government in Colorado (with the exception of the federal government). Under the law, any person (natural person, corporation, limited liability company, partnership, firm, or association) may submit requests to inspect public records (Section 24-72-202 (3), C.R.S.). Unless extenuating circumstances apply, the Act allows three business days for the production of requested records; the Act allows for an extension of up to seven business days when extenuating circumstances are present (Section 24-72-203 (2) (b), C.R.S.).

Justification

The Department provides two major points to justify the request for an additional attorney FTE: (1) increasing CORA-related workload at the Department, both in responding to CORA requests submitted to the Department of Law and in advising client agencies responding to CORA requests; and (2) a need for improved consistency statewide in responding to CORA requests. Each major driver is discussed below.

CORA Workload

The Department’s CORA related workload is increasing, and the Department has indicated that three factors are driving the increase both within the Department of Law and in client agencies: (1) increasing numbers of requests; (2) increasingly complex requests; and (3) broader requests.

- **Increasing Number of Requests:** The Department of Law has received an increasing number of CORA requests, growing from 73 requests in calendar year 2012 to 95 through mid-October 2014. (The Department reports anecdotally that other agencies are also receiving more requests but does not have data on the number of CORA requests submitted to client agencies.)

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- *Increasing Complexity:* The Department is receiving and reviewing more multi-part and multi-agency CORA requests. The requests require more complicated searches, reviews, and responses.
- *Increasing Scope of Requests:* The Department is also seeing broader requests, requiring broader searches and increasingly extensive reviews of records. For example, the Department is receiving requests seeking “all communications with federal agencies” rather than with a specific federal agency. In another case, the Department recently received a request that could require detailed physical handling of approximately 5,500 documents (some of which are 200 pages in length) to review and redact necessary information. According to the Department, it appears that more requests are “fishing” for information rather seeking detail on a specific issue.

Inconsistent Responses

The Department also reports a need to improve the consistency of responses to CORA requests statewide. In July 2013, a frequent CORA requester submitted a mass request to at least eleven state agencies seeking production of the following: (1) a written copy of the agency’s requirements and procedures for CORA requests, including any associated fees; (2) any organizational charts for the agency, as well as divisions and subdivisions, if available; and (3) an employee phone directory, if available. According to the Department, although each agency received the same CORA request, the agencies’ responses differed markedly. Some of the inconsistencies highlighted by the Department included:

- one agency charged a copying fee of \$1.25 per page, \$1.00 per page more than the \$0.25 per page allowed by CORA;
- hourly charges for research and retrieval of documents ranged from \$15 per hour to \$20 per hour;
- some agencies explained why requested information was unavailable, while others denied the request because it was too voluminous; and
- some agencies only partially responded to the request without explanation, some explained the partial response, and at least one provided more information than was requested.

According to the Department, in reaction to the inconsistent CORA responses, the Governor’s Chief Legal Counsel asked the Department of Law to: (1) spearhead coordination among state agencies for mass CORA requests; (2) ensure consistency within the Department of Law regarding the interpretation and analysis of CORA issues; and (3) encourage state agencies to seek counsel from the Department of Law when dealing with particularly challenging and/or high profile CORA requests, as well as CORA requests that are likely to lead to litigation.

Finally, the Department reports that a 2014 Colorado Supreme Court decision (*Benefield v. Colorado Republican Party*) makes any CORA requester or party that obtains a court order directing production of a withheld document a prevailing party for purposes of CORA. Any such party, therefore, is entitled to an award of fees and costs associated with the requester’s attempt to obtain the wrongfully withheld document(s). The Department believes that adding

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expertise may help protect the Department and client agencies from legal exposure and related costs.

Given the increasing workload, the need for improved consistency, the increasing use of CORA requests as a political and/or litigation tool, and potentially costly legal exposure, the Department is seeking to add an attorney specifically to provide CORA (and to a lesser extent OML) expertise. The proposed position would:

- assist the Department of Law and client agencies with handling CORA requests;
- coordinate responses to mass (multi-agency) requests;
- develop office policy, including researching and analyzing complex and novel issues arising from requests;
- monitor developments in CORA/OML law, including case law and proposed and enacted legislation; and
- serve as an educational and training resource for the Department and its client agencies, including providing continuing legal education (CLE) presentations, among other functions.

Points to Consider

Staff recognizes the increasing workload associated with CORA requests and an apparent need to improve the consistency of state agencies' responses to such requests. Staff raises the following points for the Committee's consideration.

- To the extent that the additional expertise informs agencies' responses, the Department's request should improve the quality and consistency of CORA responses, and the State's potential legal exposure should decrease.
- The request is unlikely to significantly address the increasing CORA-related *workload* within either the Department of Law or client agencies. The request is unlikely to change the large amounts of time required to prepare major CORA responses (for example, it would not reduce the number of records required for a given request although additional expertise could reduce time spent on searches/records that are not actually required for such a request). If the goal is to significantly reduce the Department's or other agencies CORA workload, then staff does not believe that the request is likely to achieve that goal.

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Appendix A: Number Pages

	FY 2012-13 Actual	FY 2013-14 Actual	FY 2014-15 Appropriation	FY 2015-16 Request	Request vs. Appropriation
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DEPARTMENT OF LAW
John Suthers, Attorney General

(1) ADMINISTRATION

This section includes funding for the Attorney General, the Solicitor General, and other management staff, as well as the Department's human resources, accounting/budgeting, information technology, and legal support services units. These units are supported by General Fund and indirect cost recoveries. This section also includes central appropriations for the entire Department, including funding for employee benefits, facilities, vehicles, and information technology. Cash funds appropriations include moneys received by the Attorney General as an award of attorney fees or costs, and various other sources. Reappropriated funds derive from indirect cost recoveries and moneys transferred from a variety of other appropriations. For FY 2014-15 and FY 2015-16, federal funds are from the Medicaid Fraud Control Program. Prior years included federal funding from the Colorado Justice Review Project.

Personal Services	<u>3,046,908</u>	<u>3,074,899</u>	<u>3,408,314</u>	<u>3,594,419</u> *
FTE	39.4	38.2	43.7	44.2
General Fund	14,072	0	0	0
Cash Funds	0	0	0	0
Reappropriated Funds	3,032,836	3,074,899	3,408,314	3,594,419
Health, Life, and Dental	<u>2,597,664</u>	<u>2,817,584</u>	<u>2,878,006</u>	<u>3,249,522</u>
General Fund	712,358	742,890	791,193	916,886
Cash Funds	307,246	281,594	344,575	356,551
Reappropriated Funds	1,497,893	1,697,754	1,642,380	1,874,996
Federal Funds	80,167	95,346	99,858	101,089
Short-term Disability	<u>60,761</u>	<u>60,761</u>	<u>79,509</u>	<u>84,375</u>
General Fund	14,917	14,917	20,973	23,053
Cash Funds	6,023	6,023	9,067	8,611
Reappropriated Funds	38,675	38,675	47,051	50,245
Federal Funds	1,146	1,146	2,418	2,466

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	FY 2012-13 Actual	FY 2013-14 Actual	FY 2014-15 Appropriation	FY 2015-16 Request	Request vs. Appropriation
S.B. 04-257 Amortization Equalization Disbursement	<u>957,371</u>	<u>1,233,515</u>	<u>1,445,612</u>	<u>1,687,501</u>	
General Fund	271,731	298,320	381,335	461,067	
Cash Funds	93,597	120,194	164,849	172,221	
Reappropriated Funds	559,668	776,652	855,466	1,004,900	
Federal Funds	32,375	38,349	43,962	49,313	
S.B. 06-235 Supplemental Amortization Equalization Disbursement	<u>821,620</u>	<u>1,112,660</u>	<u>1,355,263</u>	<u>1,629,972</u>	
General Fund	232,402	268,385	357,502	445,348	
Cash Funds	80,435	108,507	154,546	166,350	
Reappropriated Funds	480,964	701,147	802,000	970,642	
Federal Funds	27,819	34,621	41,215	47,632	
Salary Survey for Classified Employees	<u>0</u>	<u>337,857</u>	<u>295,496</u>	<u>119,650</u>	
General Fund	0	73,571	91,353	40,723	
Cash Funds	0	70,627	74,976	30,754	
Reappropriated Funds	0	167,876	106,793	38,897	
Federal Funds	0	25,783	22,374	9,276	
Salary Survey for Exempt Employees	<u>0</u>	<u>4,115,142</u>	<u>358,827</u>	<u>965,318</u>	
General Fund	0	880,758	83,586	235,874	
Cash Funds	0	125,575	19,197	38,990	
Reappropriated Funds	0	3,057,736	252,482	680,763	
Federal Funds	0	51,073	3,562	9,691	

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Merit Pay for Classified Employees	<u>0</u>	<u>153,103</u>	<u>104,360</u>	<u>114,830</u>	
General Fund	0	47,536	36,984	37,379	
Cash Funds	0	27,435	22,483	29,845	
Reappropriated Funds	0	65,178	36,301	39,991	
Federal Funds	0	12,954	8,592	7,615	
Merit Pay for Exempt Employees	<u>0</u>	<u>388,765</u>	<u>263,836</u>	<u>295,260</u>	
General Fund	0	90,935	62,917	71,154	
Cash Funds	0	10,972	11,284	11,730	
Reappropriated Funds	0	282,623	186,740	209,337	
Federal Funds	0	4,235	2,895	3,039	
Workers' Compensation	<u>73,256</u>	<u>74,775</u>	<u>104,477</u>	<u>83,003</u>	
General Fund	19,388	20,002	28,278	22,990	
Cash Funds	7,666	8,804	12,196	9,696	
Reappropriated Funds	43,950	43,798	61,053	48,015	
Federal Funds	2,252	2,171	2,950	2,302	
Attorney Registration and Continuing Legal Education	<u>98,138</u>	<u>98,138</u>	<u>126,351</u>	<u>129,913</u>	
General Fund	21,769	21,769	30,524	31,041	
Cash Funds	3,000	3,000	4,698	4,275	
Reappropriated Funds	72,525	72,525	90,060	93,528	
Federal Funds	844	844	1,069	1,069	
Operating Expenses	<u>193,513</u>	<u>190,629</u>	<u>197,242</u>	<u>204,436</u> *	
General Fund	0	0	0	0	
Cash Funds	0	0	0	0	
Reappropriated Funds	193,513	190,629	197,242	204,436	

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Administrative Law Judge Services	<u>1,135</u>	<u>4,362</u>	<u>29,302</u>	<u>6,778</u>	
Cash Funds	1,135	4,362	29,302	6,778	
Purchase of Services from Computer Center	<u>107,588</u>	<u>55,762</u>	<u>0</u>	<u>0</u>	
Reappropriated Funds	107,588	55,762	0	0	
Colorado State Network	<u>0</u>	<u>166,319</u>	<u>0</u>	<u>0</u>	
Reappropriated Funds	0	166,319	0	0	
Payment to Risk Management and Property Funds	<u>128,156</u>	<u>128,371</u>	<u>153,905</u>	<u>116,440</u>	
General Fund	40,207	0	0	32,251	
Cash Funds	0	0	0	13,599	
Reappropriated Funds	87,949	128,371	153,905	67,361	
Federal Funds	0	0	0	3,229	
Vehicle Lease Payments	<u>70,285</u>	<u>62,019</u>	<u>55,970</u>	<u>71,282</u>	*
General Fund	19,980	18,377	15,012	34,669	
Cash Funds	21,501	19,889	17,097	7,255	
Reappropriated Funds	26,189	21,138	21,382	23,580	
Federal Funds	2,615	2,615	2,479	5,778	
ADP Capital Outlay	<u>154,370</u>	<u>0</u>	<u>0</u>	<u>0</u>	
Cash Funds	154,370	0	0	0	
Payments to OIT	<u>0</u>	<u>0</u>	<u>335,787</u>	<u>348,903</u>	
General Fund	0	0	91,127	96,634	
Cash Funds	0	0	39,385	40,749	
Reappropriated Funds	0	0	195,415	201,845	
Federal Funds	0	0	9,860	9,675	

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Information Technology Asset Maintenance	<u>445,807</u>	<u>445,807</u>	<u>645,206</u>	<u>645,206</u>	
General Fund	21,754	21,754	174,663	174,663	
Cash Funds	63,299	63,299	75,291	75,291	
Reappropriated Funds	359,373	359,373	377,036	377,036	
Federal Funds	1,381	1,381	18,216	18,216	
COFRS Modernization	<u>46,428</u>	<u>46,431</u>	<u>47,570</u>	<u>54,140</u>	
General Fund	0	0	0	14,996	
Cash Funds	0	0	0	6,323	
Reappropriated Funds	46,428	46,431	46,431	31,320	
Federal Funds	0	0	1,139	1,501	
Leased Space	<u>27,789</u>	<u>27,789</u>	<u>0</u>	<u>0</u>	
General Fund	4,580	4,580	0	0	
Cash Funds	3,052	3,052	0	0	
Reappropriated Funds	19,985	19,985	0	0	
Federal Funds	172	172	0	0	
Attorney General Discretionary Fund	<u>5,000</u>	<u>5,000</u>	<u>5,000</u>	<u>5,000</u>	
General Fund	5,000	5,000	5,000	5,000	
Capitol Complex Leased Space	<u>1,270,837</u>	<u>0</u>	<u>0</u>	<u>0</u>	
General Fund	332,883	0	0	0	
Cash Funds	132,620	0	0	0	
Reappropriated Funds	766,375	0	0	0	
Federal Funds	38,959	0	0	0	

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Ralph L. Carr Colorado Judicial Center Leased Space	0	<u>2,926,487</u>	<u>2,981,368</u>	<u>3,034,238</u>	
General Fund	0	760,611	804,128	840,388	
Cash Funds	0	359,753	348,331	354,368	
Reappropriated Funds	0	1,718,514	1,743,005	1,755,344	
Federal Funds	0	87,609	85,904	84,138	
Security for State Services Building	<u>140,489</u>	0	0	0	
General Fund	37,180	0	0	0	
Cash Funds	14,704	0	0	0	
Reappropriated Funds	84,287	0	0	0	
Federal Funds	4,318	0	0	0	
Communication Services Payments	<u>10,614</u>	<u>8,988</u>	0	0	
General Fund	3,765	3,598	0	0	
Cash Funds	2,868	2,019	0	0	
Reappropriated Funds	1,448	1,226	0	0	
Federal Funds	2,533	2,145	0	0	
Information Technology Security	0	<u>2,328</u>	0	0	
Reappropriated Funds	0	2,328	0	0	
TOTAL - (1) Administration	10,257,729	17,537,491	14,871,401	16,440,186	10.5%
<i>FTE</i>	<u>39.4</u>	<u>38.2</u>	<u>43.7</u>	<u>44.2</u>	<u>1.1%</u>
General Fund	1,751,986	3,273,003	2,974,575	3,484,116	17.1%
Cash Funds	891,516	1,215,105	1,327,277	1,333,386	0.5%
Reappropriated Funds	7,419,646	12,688,939	10,223,056	11,266,655	10.2%
Federal Funds	194,581	360,444	346,493	356,029	2.8%

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(2) LEGAL SERVICES TO STATE AGENCIES

The Department provides legal services on a fee-for-service basis to state agencies and enterprises. This section includes appropriations for the attorneys, legal assistants, and support personnel who provide these services. In most cases, the appropriations in this section are reflected as reappropriated funds because a duplicate appropriation for the purchase of legal services appears in the client agency's budget. Cash funds reflect payments the Department receives from state agencies that are not duplicated in appropriations elsewhere in the budget.

Personal Services	<u>19,193,773</u>	<u>19,442,071</u>	<u>26,122,010</u>	<u>26,529,258</u>	
FTE	225.1	228.5	253.6	253.3	
General Fund	0	0	0	0	
Cash Funds	839,619	0	876,816	0	
Reappropriated Funds	18,354,154	19,442,071	25,245,194	26,529,258	
Operating and Litigation	<u>598,506</u>	<u>1,089,188</u>	<u>1,840,928</u>	<u>1,826,768</u>	
General Fund	0	0	0	0	
Cash Funds	0	0	3,096	0	
Reappropriated Funds	598,506	1,089,188	1,837,832	1,826,768	
Indirect Cost Assessment	<u>2,950,911</u>	<u>3,264,492</u>	<u>3,211,050</u>	<u>3,024,158</u>	
Cash Funds	0	1,186,099	0	1,186,099	
Reappropriated Funds	2,950,911	2,078,393	3,211,050	1,838,059	
TOTAL - (2) Legal Services to State Agencies	<u>22,743,190</u>	<u>23,795,751</u>	<u>31,173,988</u>	<u>31,380,184</u>	0.7%
FTE	<u>225.1</u>	<u>228.5</u>	<u>253.6</u>	<u>253.3</u>	(0.1%)
General Fund	0	0	0	0	0.0%
Cash Funds	839,619	1,186,099	879,912	1,186,099	34.8%
Reappropriated Funds	21,903,571	22,609,652	30,294,076	30,194,085	(0.3%)

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(3) CRIMINAL JUSTICE AND APPELLATE

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

Special Prosecutions Unit	<u>3,016,950</u>	<u>3,222,813</u>	<u>4,115,956</u>	<u>4,470,538</u> *
FTE	30.2	0.0	37.8	39.6
General Fund	1,390,033	1,607,134	1,832,354	2,137,950
Cash Funds	1,072,152	1,054,122	1,619,523	1,641,126
Reappropriated Funds	554,765	561,524	664,079	691,462
Auto Theft Prevention Grant	<u>225,409</u>	<u>278,271</u>	<u>301,569</u>	<u>286,666</u>
FTE	2.3	2.3	2.5	2.0
Reappropriated Funds	225,409	278,271	301,569	286,666
Appellate Unit	<u>2,709,335</u>	<u>3,230,248</u>	<u>3,697,461</u>	<u>3,782,761</u>
FTE	31.3	37.0	38.9	39.0
General Fund	2,195,709	2,589,243	3,209,853	3,521,279
Reappropriated Funds	513,626	641,005	487,608	261,482
Medicaid Fraud Control Unit	<u>1,513,539</u>	<u>2,020,026</u>	<u>1,648,189</u>	<u>1,697,877</u>
FTE	16.2	16.6	17.0	17.0
General Fund	394,876	1,859,531	412,045	424,465
Federal Funds	1,118,663	160,495	1,236,144	1,273,412

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Peace Officers Standards and Training Board Support	<u>2,488,373</u>	<u>2,832,236</u>	<u>5,853,741</u>	<u>5,996,083</u>	
FTE	5.5	6.0	9.4	9.0	
Cash Funds	2,488,373	2,832,236	5,853,741	5,996,083	
Safe2Tell	<u>100,416</u>	<u>94,261</u>	<u>389,423</u>	<u>398,536</u>	
FTE	1.0	1.0	3.5	4.0	
General Fund	100,416	94,261	374,423	383,536	
Cash Funds	0	0	15,000	15,000	
Indirect Cost Assessment	<u>443,705</u>	<u>520,638</u>	<u>503,848</u>	<u>484,725</u>	
Cash Funds	215,830	263,029	257,145	259,077	
Reappropriated Funds	73,184	82,780	80,929	74,022	
Federal Funds	154,691	174,829	165,774	151,626	
TOTAL - (3) Criminal Justice and Appellate	10,497,727	12,198,492	16,510,187	17,117,186	3.7%
FTE	86.5	62.9	109.1	110.6	1.4%
General Fund	4,081,034	6,150,169	5,828,675	6,467,230	11.0%
Cash Funds	3,776,355	4,149,387	7,745,409	7,911,286	2.1%
Reappropriated Funds	1,366,984	1,563,580	1,534,185	1,313,632	(14.4%)
Federal Funds	1,273,354	335,324	1,401,918	1,425,038	1.6%

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(4) WATER AND NATURAL RESOURCES

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

Federal and Interstate Water Unit	<u>540,225</u>	<u>457,066</u>	<u>576,724</u>	<u>578,087</u>
FTE	5.3	5.3	5.5	5.5
General Fund	540,225	457,066	576,724	578,087
Defense of the Colorado River Basin Compact	<u>245,723</u>	<u>286,873</u>	<u>352,289</u>	<u>351,685</u>
FTE	2.6	2.8	3.0	3.0
General Fund	0	0	0	0
Cash Funds	245,723	286,873	352,289	351,685
Defense of the Republican River Compact	<u>196,138</u>	<u>221,385</u>	<u>110,000</u>	<u>110,000</u>
Cash Funds	196,138	221,385	110,000	110,000
Consultant Expenses	<u>139,581</u>	<u>80,735</u>	<u>400,000</u>	<u>400,000</u>
Cash Funds	139,581	80,735	400,000	400,000
Comprehensive Environmental Response, Compensation and Liability Act	<u>350,705</u>	<u>278,835</u>	<u>484,300</u>	<u>488,170</u>
FTE	3.2	2.8	3.5	3.5
Reappropriated Funds	350,705	278,835	484,300	488,170

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	FY 2012-13 Actual	FY 2013-14 Actual	FY 2014-15 Appropriation	FY 2015-16 Request	Request vs. Appropriation
Comprehensive Environmental Response, Compensation and Liability Act Contracts	<u>207,991</u>	<u>127,924</u>	<u>100,000</u>	<u>100,000</u>	
Reappropriated Funds	207,991	127,924	100,000	100,000	
Natural Resource Damage Claims at Rocky Mountain Arsenal	<u>0</u>	<u>0</u>	<u>50,000</u>	<u>50,000</u>	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	50,000	50,000	
Indirect Cost Assessment	<u>43,414</u>	<u>46,731</u>	<u>45,686</u>	<u>41,787</u>	
Reappropriated Funds	43,414	46,731	45,686	41,787	
Federal Funds	0	0	0	0	
TOTAL - (4) Water and Natural Resources	1,723,777	1,499,549	2,118,999	2,119,729	0.0%
<i>FTE</i>	<u>11.1</u>	<u>10.9</u>	<u>12.0</u>	<u>12.0</u>	<u>0.0%</u>
General Fund	540,225	457,066	576,724	578,087	0.2%
Cash Funds	581,442	588,993	862,289	861,685	(0.1%)
Reappropriated Funds	602,110	453,490	679,986	679,957	0.0%
Federal Funds	0	0	0	0	0.0%

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	FY 2012-13 Actual	FY 2013-14 Actual	FY 2014-15 Appropriation	FY 2015-16 Request	Request vs. Appropriation
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(5) CONSUMER PROTECTION

This section provides funding for department staff who protect Colorado consumers against fraud and enforce state and federal consumer protection, antitrust, charitable solicitation, consumer lending, and fair debt collection laws. This section also provides funding to support one attorney who is responsible for enforcing the tobacco master settlement agreements and protecting the State's interests under the settlement payment calculation provision. Cash fund sources include fees paid by regulated entities, custodial moneys awarded to the Attorney General in consumer protection lawsuits, and tobacco settlement moneys. Reappropriated funds are transferred from the Department of Regulatory Agencies for consumer protection activities related to mortgage brokers.

Consumer Protection and Antitrust	<u>2,133,117</u>	<u>1,981,645</u>	<u>2,328,660</u>	<u>2,646,731</u> *	
FTE	23.6	23.8	26.0	27.2	
General Fund	931,023	931,023	1,106,670	1,208,089	
Cash Funds	960,613	812,275	961,411	1,152,316	
Reappropriated Funds	241,481	238,347	260,579	286,326	
Consumer Credit Unit	<u>1,518,093</u>	<u>1,495,275</u>	<u>1,616,183</u>	<u>1,674,691</u>	
FTE	19.2	19.8	20.0	20.0	
Cash Funds	1,518,093	1,495,275	1,616,183	1,674,691	
Indirect Cost Assessment	<u>471,352</u>	<u>467,308</u>	<u>456,857</u>	<u>429,805</u>	
Cash Funds	434,140	427,253	417,698	393,988	
Reappropriated Funds	37,212	40,055	39,159	35,817	
Federal Funds	0	0	0	0	
TOTAL - (5) Consumer Protection	4,122,562	3,944,228	4,401,700	4,751,227	7.9%
FTE	<u>42.8</u>	<u>43.6</u>	<u>46.0</u>	<u>47.2</u>	<u>2.6%</u>
General Fund	931,023	931,023	1,106,670	1,208,089	9.2%
Cash Funds	2,912,846	2,734,803	2,995,292	3,220,995	7.5%
Reappropriated Funds	278,693	278,402	299,738	322,143	7.5%
Federal Funds	0	0	0	0	0.0%

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	FY 2012-13 Actual	FY 2013-14 Actual	FY 2014-15 Appropriation	FY 2015-16 Request	Request vs. Appropriation
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(6) SPECIAL PURPOSE

The section includes funding to cover 80 percent of the statutory minimum salary for Colorado's twenty-two district attorneys, for unanticipated legal and technology expenses, and for litigation expenses associated with significant lawsuits. Cash fund sources include tobacco settlement moneys, moneys received from State Board of Land Commissioners from its Investment and Development Fund, and moneys received by the Attorney General as an award of attorney fees or costs. Reappropriated funds are transferred from the Office of the Governor.

District Attorneys' Salaries	<u>2,656,368</u>	<u>2,676,960</u>	<u>2,697,656</u>	<u>2,718,249</u>	
General Fund	2,656,368	2,676,960	2,697,656	2,718,249	
Federal Funds	0	0	0	0	
Deputy District Attorney Training	<u>0</u>	<u>0</u>	<u>350,000</u>	<u>350,000</u>	
General Fund	0	0	350,000	350,000	
Litigation Management and Technology	<u>325,000</u>	<u>263,135</u>	<u>200,000</u>	<u>200,000</u>	
Cash Funds	325,000	263,135	200,000	200,000	
Tobacco Litigation	<u>1,239,856</u>	<u>321,831</u>	<u>1,250,000</u>	<u>1,250,000</u>	
General Fund	0	0	0	0	
Cash Funds	1,239,856	321,831	1,250,000	1,250,000	
Lowry Range Litigation Expenses	<u>238,007</u>	<u>1,361,127</u>	<u>392,400</u>	<u>0</u>	
Cash Funds	238,007	1,361,127	392,400	0	

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	FY 2012-13 Actual	FY 2013-14 Actual	FY 2014-15 Appropriation	FY 2015-16 Request	Request vs. Appropriation
CORA OML Attorney	<u>0</u>	<u>0</u>	<u>0</u>	<u>109,631</u> *	
FTE	0.0	0.0	0.0	0.9	
General Fund	0	0	0	109,631	
TOTAL - (6) Special Purpose	4,459,231	4,623,053	4,890,056	4,627,880	(5.4%)
<i>FTE</i>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.9</u>	<u>0.0%</u>
General Fund	2,656,368	2,676,960	3,047,656	3,177,880	4.3%
Cash Funds	1,802,863	1,946,093	1,842,400	1,450,000	(21.3%)
TOTAL - Department of Law	53,804,216	63,598,564	73,966,331	76,436,392	3.3%
<i>FTE</i>	<u>404.9</u>	<u>384.1</u>	<u>464.4</u>	<u>468.2</u>	<u>0.8%</u>
General Fund	9,960,636	13,488,221	13,534,300	14,915,402	10.2%
Cash Funds	10,804,641	11,820,480	15,652,579	15,963,451	2.0%
Reappropriated Funds	31,571,004	37,594,063	43,031,041	43,776,472	1.7%
Federal Funds	1,467,935	695,768	1,748,411	1,781,067	1.9%

Appendix B: Recent Legislation Affecting Department Budget⁶

2013 Session Bills

S.B. 13-014 (Use of Opiate Antagonists): Addresses liability issues related to the administration of an opiate antagonist to a person who is believed to be suffering an opiate-related overdose. For FY 2013-14, provides \$2,318 reappropriated funds to the Department of Law for the provision of legal services to DORA.

S.B. 13-026 (Update Michael Skolnik Medical Transparency Act): Modifies the Michael Skolnik Medical Transparency Act, which requires most regulated medical practitioners to disclose certain information to DORA's Division of Professions and Occupations whenever they obtain or renew a license. For FY 2013-14, provides \$7,725 reappropriated funds to the Department of Law for the provision of legal services to DORA.

S.B. 13-039 (Regulation of Audiologists): Reauthorizes DORA's Division of Professions and Occupations to regulate audiologists. For FY 2013-14, provides \$11,294 reappropriated funds to the Department of Law for the provision of legal services to DORA.

S.B. 13-083 (Creation of Prescribed Burn Program): Defines the role of the Division of Fire Prevention and Control (DFPC) in the Department of Public Safety (DPS), and specific duties related to the DFPC. For FY 2013-14, provides \$4,635 reappropriated funds to the Department of Law for the provision of legal services to DPS.

S.B. 13-094 (Supplemental): Supplemental appropriation to the Department of Law to modify FY 2012-13 appropriations included in the FY 2012-13 Long Bill (H.B. 12-1335).

S.B. 13-151 (Sunset: Regulation of Massage Therapists): Continues the regulation of massage therapists until September 1, 2022, and implements the recommendations of the sunset review on the "Massage Therapy Practice Act". For FY 2013-14, provides \$21,244 reappropriated funds to the Department of Law for the provision of legal services to DORA.

S.B. 13-162 (Sunset: Examining Board of Plumbers): Continues the regulation of plumbers until September 1, 2024, and implements the recommendations of the sunset review on the plumbers licensing program. For FY 2013-14, provides \$5,794 reappropriated funds to the Department of Law for the provision of legal services to DORA.

S.B. 13-172 (Sunset: Regulation of Acupuncturists): Continues the regulation of acupuncturists until September 1, 2022, and implements the recommendations of the sunset

⁶ Appendix F provides a complete listing of legislation that included appropriations for departments to purchase legal services from the Department of Law for the period: FY 2011-12 through FY 2014-15.

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review on the acupuncturist licensing program. For FY 2013-14, provides \$5,021 reappropriated funds to the Department of Law for the provision of legal services to DORA.

S.B. 13-180 (Sunset: Regulation of Occupational Therapists): Continues the regulation of occupational therapists in DORA's Division of Professions and Occupations until September 1, 2018. For FY 2013-14, provides \$12,746 reappropriated funds to the Department of Law for the provision of legal services to DORA.

S.B. 13-200 (Expand Medicaid Eligibility): Expands Medicaid eligibility from 100 percent of the federal poverty level (FPL) to 133 percent for parents and caretaker relatives with dependent children and adults without dependent children, and allows the state's share of costs for these eligibility groups, up to 133 percent of FPL, to be paid from the Hospital Provider Fee Cash Fund. For FY 2013-14, provides \$24,910 reappropriated funds to the Department of Law for the provision of legal services to the Department of Health Care Policy and Financing (DHCPF).

S.B. 13-207 (Auricular Acudetox): Allows mental health professionals to perform auricular acudetox under their current scope of practice if they have completed specific training. For FY 2013-14, provides \$6,180 reappropriated funds to the Department of Law for the provision of legal services to DORA.

S.B. 13-219 (Methamphetamine Laboratory Remediation): Creates a process to certify and monitor the activities of professionals involved in the remediation of property contaminated by illegal drug labs. For FY 2013-14, provides \$15,450 reappropriated funds and 0.1 FTE to the Department of Law for the provision of legal services to the Department of Public Health and Environment (DPHE).

S.B. 13-221 (Conservation Easement Tax Credit Certification Application): Requires that the Division of Real Estate in DORA to create an application and certification process for landowners seeking to claim an income tax credit for a conservation easement. For FY 2013-14, provides \$69,525 reappropriated funds and 0.5 FTE to the Department of Law for the provision of legal services to DORA.

S.B. 13-230 (Long Bill): General appropriations act for FY 2013-14. Also includes a supplemental adjustment to modify appropriations to the Department of Law included in the FY 2012-13 Long Bill (H.B. 12-1335).

S.B. 13-238 (Regulation of Hearing Aid Providers): Requires hearing aid providers to be licensed by DORA's Division of Professions and Occupations. For FY 2013-14, provides \$5,794 reappropriated funds to the Department of Law for the provision of legal services to DORA.

S.B. 13-241 (Registration of Industrial Hemp Growers): Repeals H.B. 12-1099, the Industrial Hemp Remediation Pilot Program in the DPHE, and establishes a registration program in the Department of Agriculture for people cultivating industrial hemp either commercially or for research and development purposes. For FY 2013-14, provides \$13,905 reappropriated funds to the Department of Law for the provision of legal services to the Department of Agriculture.

S.B. 13-246 (Discovery Task Force): Creates a Discovery Task Force to meet to address the issue of discovery costs in criminal cases. In addition to a non-voting technology advisor from the Office of Information Technology, the Task Force consists of the following 11 members: (1) the Attorney General (or his designee), who shall serve as the Chair of the Task Force; (2) the State Court Administrator (or his designee), who shall serve as the Vice-Chair of the Task Force; (3) the State Public Defender (or his designee); (4) a representative of the criminal defense bar; (5) three district attorneys (DAs) who represent differently sized judicial districts; (6) a county sheriff; (7) the Alternate Defense Counsel (or her designee); (8) a chief of police; and (9) a district court judge. The Task Force is required to study several topics and report back to the Joint Budget Committee and the Judiciary Committees by January 31, 2014. Topics the Task Force will study include the following:

- The ability of DAs' offices to obtain law enforcement discoverable evidence in an electronic format, and options for addressing the short-term needs of law enforcement and DAs to facilitate greater use of electronic discovery;
- The reimbursements paid to reimburse DAs' offices for the expenses for which the DA is responsible related to the discovery process; and
- An alternative funding process to reimburse the DAs for appropriate discovery costs without requiring the State Public Defender, Alternate Defense Counsel, or any indigent *pro se* defendant to pay for discovery.

S.B. 13-251 (Driver's License and Identification Documentation): Allows the State to issue a driver's license, minor's driver's license, instruction permit or state-issued identification card to a noncitizen resident of Colorado who cannot provide proof of lawful presence in the United States. For FY 2013-14, provides \$7,725 reappropriated funds and 0.1 FTE to the Department of Law for the provision of legal services to the Department of Revenue (DOR).

S.B. 13-283 (Implementation of Amendment 64 - Consensus): Implements major provisions of Amendment 64, which allows for an adult 21 years or older to consume or possess up to one ounce of marijuana. Encourages the P.O.S.T. Board to include advanced roadside impaired driving enforcement (ARIDE) training in the curriculum for persons who enroll in a training academy for basic peace officer training, and requires the P.O.S.T. Board (subject to available funding) to arrange to provide training in ARIDE to drug recognition experts who will act as trainers in ARIDE for all peace officers. For FY 2013-14, appropriates \$20,000 cash funds from the P.O.S.T. Board Cash Fund for implementation of this provision.

S.B. 13-288 (Modify Colorado Governmental Immunity Act): Modifies provisions regarding tort claims against the State brought under the "Colorado Governmental Immunity Act". In connection with a recommendation made by the State Claims Board (Board) to make a payment to one or more claimants resulting from a claim of an injury arising out of the March 2012 Lower North Fork wildfire that is received by the General Assembly while it is adjourned *sine die*, upon certification from the Department of Law that the Board process has been satisfied, authorizes the Office of the State Controller to pay one or more additional payments to such claimants from moneys previously appropriated by bill until such specifically appropriated moneys are exhausted or replenished.

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H.B. 13-1111 (Registration of Naturopathic Doctors): Creates a registration program for naturopathic doctors in DORA's Division of Professions and Occupations and creates the seven-member Naturopathic Medicine Advisory Committee. For FY 2013-14, provides \$16,995 reappropriated funds to the Department of Law for the provision of legal services to DORA.

H.B. 13-1180 (Allocation of Tobacco Litigation Settlement Moneys): Reinstates scheduled increases in the allocation of tobacco master settlement agreement (MSA) moneys to the Nurse Home Visitor Program, less amounts that are redirected to the Defense Account of the Tobacco Litigation Settlement Cash Fund. From FY 2012-13 through FY 2015-16, transfers a total of \$4,792,244 of MSA moneys to the Defense Account. Adjusts appropriations to the Department of Law for FY 2013-14, substituting \$1,433,351 cash funds from the Defense Account for \$1,433,351 General Fund that was included in S.B. 13-230. Appropriates \$803,330 cash funds from the Nurse Home Visitor Program Fund to the Department of Human Services for FY 2013-14.

H.B. 13-1230 (Compensation for Wrongful Incarceration): Creates a state compensation program for persons who are found actually innocent of felony crimes after serving time in jail, prison, or juvenile placement. To become eligible for state funds, the exonerated person must submit a petition and supporting documentation to the district court in the county that heard the original case. The Attorney General and district attorney may concur or contest the petition. If a petition is contested, the burden to prove actual innocence is upon the petitioner. Appropriates \$128,662 General Fund and 1.4 FTE to the Department of Law for FY 2013-14 to respond to petitions, and if appropriate, contest the petition in district court.

H.B. 13-1292 (Keep Jobs in Colorado Act): Makes changes to contracting requirements for state and local government agencies. For FY 2013-14, provides a total of \$46,350 reappropriated funds and 0.3 FTE to the Department of Law for the provision of legal services, including \$34,762 and 0.3 FTE for the Department of Labor and Employment (DOLE) and \$11,588 for the Department of Personnel.

H.B. 13-1317 (Implementation of Amendment 64 – Majority Recommendations): Implements major provisions of Amendment 64 by creating the Colorado Retail Marijuana Code. For FY 2013-14: appropriates \$76,000 cash funds from the Marijuana Cash Fund to the Department of Law's P.O.S.T. Board for the implementation of a provision in S.B. 13-283 that encourages the Board to include advanced roadside impaired driving enforcement (ARIDE) training in the curriculum for persons who enroll in a training academy for basic peace officer training. Also provides \$70,684 reappropriated funds and 0.5 FTE to the Department of Law for the provision of legal services to the DOR.

2014 Session Bills

S.B. 14-002 (Safe2Tell Program in Department of Law): Repeals the existing Safe2Tell program, managed by a nonprofit organization, and recreates the program within the Department of Law. Specifies the terms of the transfer to the Department of Law and adds additional duties concerning training and dissemination of educational materials for school districts and law

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enforcement. For FY 2014-15: (1) reduces the Long Bill appropriation to the Controlled Maintenance Trust Fund by \$266,952 General Fund; and (2) appropriates \$281,952 total funds (including \$266,952 General Fund and \$15,000 cash funds) and 2.5 FTE to the Department of Law.

S.B. 14-005 (Wage Protection Act): Authorizes the Department of Labor and Employment (DOLE) to establish an administrative process to handle wage claim cases received and requires the division to investigate and adjudicate all wage claim cases up to \$7,500 per employee after January 1, 2015. For FY 2014-15, provides \$23,225 reappropriated funds to the Department of Law for the provision of legal services to the DOLE.

S.B. 14-029 (Architectural Paint Stewardship Program): Creates a statewide paint stewardship program within the Department of Public Health and Environment (DPHE) for the recycling, reuse, and disposal of post-consumer architectural paint. For FY 2014-15, provides \$9,108 reappropriated funds to the Department of Law for the provision of legal services to DPHE.

S.B. 14-099 (Provisional Physical Therapy License): Provides for provisional physical therapy licensing, to be administered by the Department of Regulatory Agencies (DORA). For FY 2014-15, provides \$18,216 reappropriated funds and 0.1 FTE to the Department of Law for the provision of legal services to DORA.

S.B. 14-123 (P.O.S.T. Board Rule Authority Training Suspensions): Authorizes the Peace Officers Standards and Training (P.O.S.T.) Board to promulgate rules for: the certification of inspectors of vehicle identification numbers; annual in-service training requirements for certified peace officers; and any rules necessary for the functions of the P.O.S.T. Board. Allows the P.O.S.T. Board to increase certification fees from \$125 to \$150. Allows the P.O.S.T. Board to make grants to nonprofit organizations. Allows the P.O.S.T. Board to deny certification to any person convicted of a municipal violation that is the equivalent of a state law violation for which denial is allowed. Increases the registration fee (P.O.S.T. fee) paid by owners of Class A, B, or C vehicles from \$0.60 to \$1.00. For FY 2014-15, appropriates \$1,612,467 cash funds and 1.4 FTE to the Department of Law.

S.B. 14-125 (Transportation Network Companies Regulation): Authorizes the Public Utilities Commission (PUC), within the Department of Regulatory Agencies (DORA), to regulate transportation network companies, which are companies that match drivers and passengers through a digital network, such as a mobile phone application, for transportation from an agreed-upon point of origin to an agreed-upon destination. For FY 2014-15, provides \$9,108 reappropriated funds and 0.1 FTE to the Department of Law for the provision of legal services to the PUC.

S.B. 14-133 (Mandatory Licensure Private Investigators): Repeals the existing voluntary licensure program for private investigators managed by the Department of Regulatory Agencies (DORA) and replaces it with a mandatory licensure program. For FY 2014-15, provides \$9,057 reappropriated funds to the Department of Law for the provision of legal services to DORA.

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S.B. 14-172 (Firefighter Heart Circulatory Malfunction Benefits): Requires any municipality, special district, fire authority, or county improvement district (employer) employing one or more firefighters to provide benefits for heart and circulatory malfunctions for full-time firefighters, as long as the state provides sufficient funding to cover the cost. For FY 2014-15, provides \$182 reappropriated funds to the Department of Law for the provision of legal services to the Department of Local Affairs (DOLA).

S.B. 14-188 (Species Conservation Trust Fund Project List): Transfers \$6.5 million from the Severance Tax Operational Fund to the Species Conservation Trust Fund in FY 2014-15. Appropriates the same amount from the Species Conservation Trust Fund to the Department of Natural Resources (DNR) for programs to conserve native species that have been listed as threatened or endangered under state or federal law, or are likely to become candidate species as determined by the United States Fish and Wildlife Services. Reappropriates \$163,944 of the authorized expenditures from the Species Conservation Trust Fund and 1.0 FTE to the Department of Law For Endangered Species Act Litigation legal expenses in FY 2014-15.

S.B. 14-215 (Disposition of Legal Marijuana Related Revenue): Creates the Marijuana Tax Cash Fund (MTCF) and directs that all sales tax moneys collected by the state starting in FY 2014-15 from retail and medical marijuana be deposited in the MTCF instead of the Marijuana Cash Fund. Specifies permissible uses of moneys in the MTCF, including the following purposes relevant to the Department of Law:

- To increase the expertise and knowledge among prosecutors and law enforcement officials regarding the legal and regulatory issues surrounding the legalization of marijuana; and
- To advance roadside impaired driving enforcement training and drug recognition expert training for peace officers.

Reduces the Long Bill appropriation to the Peace Officers Standards and Training (P.O.S.T.) Board by \$76,000 cash funds from the Marijuana Cash Fund and appropriates that amount from the MTCF. Appropriates an additional \$1,624,760 cash funds from the Marijuana Tax Cash Fund and 3.0 FTE to the Department of Law for the following purposes:

- \$1,168,000 and 1.0 FTE to the P.O.S.T. Board for expanded impaired driving enforcement training and drug recognition training for peace officers; and
- \$456,760 and 2.0 FTE to the Special Prosecutions Unit to increase the expertise and knowledge among prosecutors and law enforcement officials regarding the legal and regulatory issues surrounding the legalization of marijuana.

H.B. 14-1144 (Deputy District Attorney Training): Requires the General Assembly to appropriate \$350,000 per year to the Department of Law beginning in FY 2014-15, to be transferred to the statewide organization representing district attorneys to provide prosecution training, seminars, continuing education programs, and other prosecution-related services. For FY 2014-15: (1) reduces the Long Bill appropriation to the Controlled Maintenance Trust Fund by \$350,000 General Fund; and (2) appropriates \$350,000 General Fund to the Department of Law.

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H.B. 14-1199 (Consumer Goods Service Contracts Regulatory Changes): Provides for changes to the regulation of consumer goods service contracts based on the model act of the National Association of Insurance Commissioners. For FY 2014-15, provides \$3,643 reappropriated funds to the Department of Law for the provision of legal services to the Department of Regulatory Agencies (DORA).

H.B. 14-1202 (Local Accountability Requirements for School Districts): Creates the Standards and Assessment Task Force to study how the statewide assessment system is administered, how data are used, and the impact of statewide student assessments on local testing systems, instructional time, and administrative workload for school districts and public schools. For FY 2014-15, provides \$20,000 reappropriated funds to the Department of Law for the provision of legal services to the Department of Education (DOE).

H.B. 14-1227 (Sunset Review: Continue Dental Examiners Board): Continues the State Board of Dental Examiners as the Colorado Dental Board until September 1, 2023. For FY 2014-15, provides \$56,925 reappropriated funds and 0.3 FTE to the Department of Law for the provision of legal services to the Department of Regulatory Agencies (DORA).

H.B. 14-1240 (Supplemental Bill): Supplemental appropriations to the Department of Law to modify FY 2013-14 appropriations included in the FY 2013-14 Long Bill (S.B. 13-230).

H.B. 14-1319 (Outcomes-based Funding for Higher Education): Creates a new mechanism for allocating state funds to institutions of higher education. For FY 2014-15, provides \$18,216 reappropriated funds to the Department of Law for the provision of legal services to the Department of Higher Education (DHE).

H.B. 14-1328 (Connect Colorado Broadband Act): Creates the 16-member Broadband Deployment Board (BDB) in the Department of Regulatory Agencies (DORA) and the Broadband Fund, administered by the BDB, from which grants are awarded for broadband development in unserved areas of the state. For FY 2014-15, provides \$55,471 total funds (including \$27,324 cash funds and \$28,417 reappropriated funds) and 0.4 FTE to the Department of Law for the provision of legal services to DORA.

H.B. 14-1329 (Deregulate Internet Protocol Emerging Technology Telecommunications): Deregulates certain telecommunication products, services, and providers and modifies the regulatory authority of the Colorado Public Utilities Commission (PUC) within the Department of Regulatory Agencies (DORA). For FY 2014-15, provides \$18,216 reappropriated funds and 0.1 FTE to the Department of Law for the provision of legal services to DORA.

H.B. 14-1331 (Regulate Basic Local Exchange Service): Modifies the statutory framework for the regulation of local telephone service. For FY 2014-15, provides a total of \$105,653 reappropriated funds and 0.6 FTE to the Department of Law for the provision of legal services to the Department of Regulatory Agencies (DORA).

H.B. 14-1336 (Long Bill): General appropriations act for FY 2014-15.

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H.B. 14-1380 (Colorado Coroners Standards and Training Board): Makes changes to the Colorado Coroners Standards and Training Board within the Department of Public Health and Environment (DPHE). For FY 2014-15, provides \$3,643 cash funds from the Coroners Training Fund to the Department of Law for the provision of legal services to DPHE.

H.B. 14-1398 (Authorize Marijuana Financial Service): Allows for the creation and regulation of marijuana financial services cooperatives, to be regulated by the Division of Financial Services in the Department of Regulatory Agencies (DORA). For FY 2014-15, provides a total of \$14,573 reappropriated funds to the Department of Law for the provision of legal services to DORA.

Appendix C: **Update on Long Bill Footnotes & Requests for Information**

Long Bill Footnotes

- 39 Department of Law, Legal Services to State Agencies** -- In making this appropriation, it is the intent of the General Assembly that hourly billing rates charged by the Department for legal services to state agencies not exceed \$102.79 per hour for attorneys and not exceed \$78.73 per hour for legal assistants, which equates to a blended rate of \$99.01 per hour.

Comment: As expected, the Department is billing client agencies at the stated rates.

- 40 Department of Law, Special Purpose, Litigation Management and Technology** -- It is the intent of the General Assembly to grant the Department of Law additional flexibility by allowing the Department to use moneys appropriated in this line item to address unanticipated state legal needs that arise during FY 2014-15. It is also the intent of the General Assembly that moneys spent from this line item shall not require the appropriation of additional FTE and will not be used for any type of salary increase, promotion, reclassification, or bonus related to any present or future FTE employed by the Department of Law. It is furthermore the intent of the General Assembly that moneys 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.

Background Information on the Litigation Management and Technology appropriation. This line item was added to the Long Bill in FY 1994-95 to pay for unanticipated legal costs that arise over the course of the fiscal year (especially when the General Assembly is not in session), and technology costs that would otherwise require a General Fund appropriation. This appropriation has reduced the need for legal services supplemental requests related to the Legal Services to State Agencies program (LSSA) and other unanticipated litigation.

Moneys for this appropriation come from two sources:

1. Excess revenues earned by the LSSA program during the previous fiscal year and retained in the Legal Services Cash Fund pursuant to H.B. 12-1248 (a Joint Budget Committee bill which created the Legal Services Cash Fund). This line item appropriation allows the Department to retain and roll forward a portion of any excess revenues to the next fiscal year. Please note that excess earnings fluctuate substantially from year to year and the amount is not known with certainty until after the close of the fiscal year. The following table provides a history of excess LSSA revenues, and the portion that reverted to the General Fund.

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

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

Attorney Fees and Costs Account					
Fiscal Year	Beginning Fund Balance	Revenues	Expenditures	Ending Fund Balance	
2005-06	\$208,794	\$23,276	(\$100,477)	\$131,593	
2006-07	131,593	244,420	(71,333)	304,680	
2007-08	304,680	267,118	(142,251)	429,547	
2008-09	429,547	105,671	(94,595)	440,623	
2009-10	440,623	202,185	(54,021)	588,787	
2010-11	588,787	123,861	(22,417)	690,231	
2011-12	690,231	442,207	(7,426)	1,125,012	
2012-13	1,125,012	438,169	(385,881)	1,177,299	
2013-14	1,177,299	191,126	(263,135)	1,105,290	

Any excess legal services revenues that are earned in FY 2014-15 will be retained in the Legal Services Cash Fund. In order to provide the Department flexibility to spend those revenues, the FY 2015-16 Long Bill appropriation for this line item will consist of two fund sources: excess revenues credited to the Legal Services Cash Fund in FY 2014-15 and various court awards that are deposited into the Attorneys Fees and Costs Account.

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Expenditure Update. The Department has been utilizing the spending authority provided through the Litigation Management and Technology appropriation in the manner designated in this footnote. The Department’s budget request reflects actual expenditures for this line item in FY 2012-13 and FY 2013-14. The majority of the expenditures reported for these two fiscal years were related to the purchase of information technology equipment and software and grand jury document scanning.

Requests for Information

Requests Applicable to Department of Law Only

1. Department of Law, Criminal Justice and Appellate, Appellate Unit -- The Department is requested to provide by November 1, 2014, a report concerning the Appellate Unit's progress in reducing its case backlog, including the following data for FY 2013-14: the number of opening briefs received; the number of answer briefs filed; the number of cases resolved through the expedited docket; the number of cases resolved through the experimental docket; and the case backlog as of June 30, 2014. In addition, the Department is requested to summarize the tasks completed by the inter-agency working group that was established to review the procedures, rules, and practices for handling post-conviction appeals, along with any recommended procedural, regulatory, or statutory changes.

Comment: The Department provided the report on October 28, 2014.

Case Backlog

The case backlog decreased from 564 cases at the end of FY 2012-13 to 272 at the end of FY 2013-14, a reduction of 292 cases (51.8 percent). This represents a reduction of 336 cases from the backlog’s peak of 608 cases at the end of FY 2011-12. The following table summarizes the relevant data for each year since FY 2008-09.

Appellate Unit Data: FY 2009-10 to FY 2013-14					
	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14
	Actual	Actual	Actual	Actual	Actual
Opening Briefs Received	1,152	1,050	1,171	1,018	911
Answer Briefs Filed	1,054	1,021	894	885	1,149
Cases Resolved Via Expedited Docket	59	62	64	72	62
Cases Resolved Via Experimental Docket*	**	**	1	91	87
Case Backlog	434	398	608	564	272
Change in Case Backlog	39	(36)	210	(44)	(292)

*The experimental docket started in April 2012. The Court of Appeals terminated the experimental docket as of December 31, 2013. As a result, the Department is no longer sending new cases to the experimental docket.

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The Department attributes the decrease in the backlog to a lower number of initial cases compared to the average over the past several years, the use of the expedited and experimental dockets, and the efforts of the unit's staff, including the 6.0 new appellate attorney FTE that the General Assembly approved for FY 2013-14.

The Department's response raises one concern about the prognosis for future reductions to the Appellate backlog: the FY 2014-15 budget added eleven appellate positions in the Office of the State Public Defender (OSPD). The Department anticipates additional workload generated by the new staff at OSPD that will impact the Department's ability to keep pace with current cases and/or reduce the backlog.

Interagency Working Group on Postconviction Appeals

The working group includes members from the Judicial Branch, the Attorney General's Office, the Public Defender's Office, and the Office of Alternative Defense Counsel. The Department reports that the group conducted several information-gathering meetings in FY 2013-14 and has agreed that the Judicial Branch would propose a decision item for a statewide pilot project for processing postconviction appeals in the trial courts. The working group anticipates submission of that decision item for the FY 2016-17 budget process.

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

Comment: The Department plans to include as part of its statutorily required January 2015 report the requested information about expenditures and recoveries related to the Unit's criminal investigations.

Appendix D: Indirect Cost Assessment Methodology

Description of Indirect Cost Assessment Methodology

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

- Personal Services
- Operating Expenses
- Purchase of Services from Computer Center
- Multiuse Network Payments
- Payment to Risk Management and Property Funds
- COFRS Modernization

The Department’s Indirect Cost Pool also includes portions of various centrally appropriated line item appropriations that correspond to the staff that are supported by the Administration, Personal Services line item. The Department’s Indirect Cost Pool is based on appropriated amounts for the same fiscal year (*e.g.*, the Indirect Cost Pool for FY 2014-15 was based on FY 2014-15 Long Bill appropriations). For FY 2015-16, the Department’s Indirect Cost Pool as requested is \$4,798,163. **Table 1** details the components of the Department’s Indirect Cost Pool for FY 2015-16.

The Department allocates its Indirect Cost Pool based on the fund sources that support full-time equivalent (FTE) permanent staff positions. For example, the Department’s request for FY 2015-16 indicates that 79.8 percent of FTE (excluding the administrative positions that are part of the Indirect Cost Pool) will be supported by fund sources other than General Fund which can and should cover departmental indirect costs. This percentage is then applied to the Department’s Indirect Cost Pool to determine the total amount of departmental indirect cost assessments (*e.g.*, \$3,827,967 for FY 2015-16). The Department’s share of the Statewide Indirect Cost Pool that is attributed to fund sources other than General Fund is then added to this amount, resulting in the total *Indirect Cost Assessment* (*e.g.*, \$3,980,474 for FY 2015-16). The FTE distribution is also used to allocate the total Indirect Cost Assessment among divisions and fund sources.

The last four lines of Table 1 detail the calculation of the total Indirect Cost Assessment for FY 2015-16. **Table 2** details the distribution of FTE among fund sources, which is used to allocate indirect costs among fund sources. **Table 3** summarizes the allocation of the total Indirect Cost Assessment for FY 2015-16 among divisions and specific funding sources.

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Table 1: Department of Law Indirect Cost Pool			
Division	Line Item	FY 2015-16 Request	
Administration	Personal Services	\$3,594,419	
	Health, Life, and Dental	268,076	
	Short-term Disability	6,294	
	Salary Survey, Classified	24,168	
	Salary Survey, Exempt	20,301	
	Merit Pay, Classified	21,550	
	Merit Pay, Exempt	5,201	
	S.B. 04-257 AED	125,870	
	S.B. 06-235 SAED	121,579	
	Workers' Compensation	7,889	
	Attorney Registration and Continuing Legal Education	2,375	
	Operating Expenses	204,436	
	Payment to Risk Management and Property Funds	11,067	
	Vehicle Lease Payments	2,215	
	Information Technology Asset Maintenance	56,723	
	Payments to OIT	33,160	
	Capitol Complex/ Carr Center Leased Space	287,694	
	COFRS Modernization	<u>5,146</u>	
	Departmental Indirect Cost Pool		4,798,163
	Multiplied by: Proportion of Departmental Indirect Cost Pool attributed to non-General Fund sources (see Table 2)		<u>79.78%</u>
Equals: Portion of Departmental Indirect Cost Pool recoverable from non-General Fund sources		3,827,967	
Plus: Department's share of Statewide Indirect Cost Pool attributed to non-General Fund sources (calculated by Department of Personnel)		<u>152,507</u>	
Equals: Total Indirect Cost Pool recoverable from non-General Fund sources		\$3,980,474	

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Table 2: Department of Law Calculation of Basis for Allocating Indirect Costs

		Full-time Equivalent (FTE) Employees, by Fund Source						
Division	Line Items Associated with FTE	General Fund	Other Fund Sources Which Do NOT Cover Indirect Costs	Other Fund Sources Which DO Cover Indirect Costs	Subtotal: FTE Included in Calculation	FTE NOT Included in Calculation	Total FTE	Percent Allocation
Administration	Personal Services	0.0	0.0	0.0	0.0	44.2	44.2	0.00%
Legal Services to State Agencies	Personal Services	0.0	0.0	253.3	253.3	0.0	253.3	75.97%
Criminal Justice and Appellate	Special Prosecutions Unit	18.7	0.0	18.9	37.6	0.0	37.6	
	Auto Theft Prevention Grant	0.0	0.0	0.0	0.0	2.5	2.5	
	Appellate Unit	38.0	1.0	0.0	39.0	0.0	39.0	
	Medicaid Fraud Control Unit	4.3	0.0	12.7	17.0	0.0	17.0	
	Peace Officers Standards and Training Board Support	0.0	0.0	9.0	9.0	0.0	9.0	
	Safe2Tell	<u>4.0</u>	<u>0.0</u>	<u>0.0</u>	<u>4.0</u>	<u>0.0</u>	<u>4.0</u>	
	Subtotal	65.0	1.0	40.6	106.6	2.5	109.1	
Water and Natural Resources	Federal and Interstate Water Unit	5.5	0.0	0.0	5.5	0.0	5.5	
	Defense of the Colorado River Basin Compact	0.0	3.0	0.0	3.0	0.0	3.0	
	Comprehensive Environmental Response, Compensation and Liability Act	<u>0.0</u>	<u>0.0</u>	<u>3.5</u>	<u>3.5</u>	<u>0.0</u>	<u>3.5</u>	
	Subtotal	5.5	3.0	3.5	12.0	0.0	12.0	
Consumer Protection	Consumer Protection and Antitrust	10.0	0.0	16.0	26.0	0.0	26.0	
	Consumer Credit Unit	<u>0.0</u>	<u>0.0</u>	<u>20.0</u>	<u>20.0</u>	<u>0.0</u>	<u>20.0</u>	
	Subtotal	10.0	0.0	36.0	46.0	0.0	46.0	
Total		80.5	4.0	333.4	417.9	46.7	464.6	100.00%
Percent of Total		19.26%	0.96%	79.78%	100.00%			

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Please note that two non-General Fund sources of funding do not cover their relative share of indirect costs, and thus reduce the amount of indirect cost recoveries that is available to offset General Fund expenditures. First, 3.0 FTE involved in defending the Colorado River Basin Compact are supported by the Water Conservation Board’s Litigation Fund. These moneys were allocated by the Water Conservation Board with the understanding that indirect costs would not be charged to the Fund. Second, 1.0 FTE Victims’ Services Coordinator is supported by a grant from the Victims Assistance and Law Enforcement Fund. However, this grant is not sufficient to cover the direct costs of this position, so it does not cover any indirect costs.

Table 3			
Department of Law: Allocation of Indirect Costs Among Divisions and Fund Sources			
Division	Fund Source	Percentage (from Table 2)	Dollars
Legal Services to State Agencies	Legal Services Cash Fund	75.97%	\$3,024,158
Criminal Justice and Appellate	Federal Medicaid Fraud Control Program		151,626
	Insurance Fraud Cash Fund		151,626
	P.O.S.T. Board Cash Fund		107,451
	Transfer from DORA from Division of Securities Cash Fund		74,022
	Transfer from DPS from Automobile Theft Prevention Authority line item		0
	Transfer from DPS from State Victims Assistance and Law Enforcement Program line item		0
	Subtotal		12.18%
Water and Natural Resources	Transfers from DPHE from the Hazardous Substance Response Fund		41,787
	Colorado Water Conservation Board’s Litigation Fund		0
	Subtotal		1.05%
Consumer Protection	Collection Agency Cash Fund or Uniform Consumer Credit Code Cash Fund		238,781
	Custodial moneys		155,207
	Transfers from DORA from the Mortgage Company and Loan Originator Licensing Cash Fund		35,817
	Tobacco Settlement Defense Account of the Tobacco Litigation Settlement Cash Fund		0
	Colorado No-call List annual registration fees		0
	Building Regulation Fund		0
	Subtotal		10.80%
Total (from Table 1)			\$3,980,474

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

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

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

FY 2015-16 Indirect Cost Assessment Request

For FY 2015-16 the Department has requested indirect cost assessments totaling \$3,980,475. This amount matches the Indirect Cost Pool calculated in Table 1 (with a \$1 rounding difference). **Table 4** details the FY 2015-16 Department indirect cost assessment for each division based on the November 1, 2014, budget request. The FY 2015-16 indirect cost assessment request represents a decrease of \$236,966 compared to FY 2014-15.

Table 4				
Department of Law: Indirect Cost Assessment Request				
Division	Total	Cash Funds	Reappropriated Funds	Federal Funds
Legal Services to State Agencies	\$3,024,158	\$1,186,099	\$1,838,059	\$0
Criminal Justice and Appellate	484,725	259,077	74,022	151,626
Water and Natural Resources	41,787	0	41,787	0
Consumer Protection	<u>429,805</u>	<u>393,988</u>	<u>35,817</u>	<u>0</u>
Total FY 2015-16 Request	\$3,980,475	\$1,839,164	\$1,989,685	\$151,626
FY 2014-15 Indirect Cost Assessment	<u>4,217,441</u>	<u>674,843</u>	<u>3,376,824</u>	<u>165,774</u>
Difference (FY 15-16 less FY 14-15)	(\$236,966)	\$1,164,321	(\$1,387,139)	(\$14,148)

Appendix E: SMART Act Annual Performance Report

Pursuant to Section 2-7-205 (1) (b), C.R.S., the Department of Law is required to publish an Annual Performance Report by November 1 of each year. This report is to include a summary of the Department's performance plan and most recent performance evaluation. The report dated November 1, 2014, is attached for consideration by the Joint Budget Committee in prioritizing the Department's budget requests.

Department of Law
 Strategic Plan Performance Report
 November 1, 2014

The Department of Law aims to achieve our vision and accomplish our mission through these five objectives:

- Minimize state risk through the effective representation of client agencies and protect citizens by enforcing regulatory laws and prosecuting cases referred by client agencies;
- Facilitate consumer protection and maintain financial integrity through consumer protection and antitrust enforcement efforts;
- Ensure consumer protection through licensure and registration of regulated consumer lenders, debt collectors, debt-management services providers, and credit repair companies;
- Minimize state risk through the effective representation of state prosecution when defendants challenge their felony convictions before the state appellate courts or the federal courts;
- The Attorney General’s Office has statewide jurisdiction to prosecute criminal offenses and, as such, this section handles a wide variety of criminal matters across all areas of the state including white-collar crime offenses, human trafficking cases, homicides, complex drug conspiracies, and special prosecutions in which our assistance is requested by the Governor or an elected district attorney.

The Department tracks specific workload and performance measures and strategic efforts in attempting to meet performance measures. In coordination with the objectives listed above, the Department of Law has provided specific performance measures and performance evaluations provided below.

Representation of Client Agencies. The Attorney General by statute is the legal counsel and advisor of each department, division, board, bureau, institution of higher education and agency of state government other than the legislative branch and University of Colorado (§ 24-31-101 C.R.S.). The Department represents the various clients efficiently and effectively. The key to this success is retaining quality employees by providing competitive attorney compensation and benefits package and a dynamic work environment.

Performance Measure		Actual FY 12	Actual FY 13	Actual FY 14
Provide quality legal counsel and representation to client agencies as measured by client annual survey as satisfied or very satisfied with legal counsel.	Target	95%	95%	95%
	Actual	96.61%	97.78%	95.36%

Evaluation of Prior Year Performance: The department witnessed a slight decrease in overall satisfaction compared to FY 13, which had the highest overall satisfaction rating since implementing this performance measure. The department will continue to hire and do its best to retain quality attorneys through the valuable work attorneys are exposed to and within available resources be “an employer of choice” for the legal field.

Criminal Enforcement and Prosecution. The Attorney General’s trial prosecution efforts (in addition to the litigation that is conducted by our dedicated Financial Fraud and Medicaid Fraud Units) are focused in multiple areas: 1) Complex Crimes, 2) Environmental Crimes, 3) Gang Prosecution, 4) Prosecution Assistance, 5) Auto Theft and 6) the Violent Crime Assistance Team (VCAT).

Complex and/or multi-jurisdictional Securities fraud investigations and prosecutions

Performance Measure		Actual FY 12	Actual FY 13	Actual FY 14
Restitution Ordered	Target	\$5,000,000	\$5,000,000	\$5,000,000
	Actual	\$11,023,182	\$4,283,094	\$7,113,232

Evaluation of Prior Year Performance: The unit’s numbers were fairly similar for the past two years; while the case numbers are low, the sentences and restitution figures reflect the complexity and size of the cases prosecuted. However, the Unit has seen a significant number of criminal investigations opened. This is a reflection on greater cooperation with partner law enforcement and regulatory agencies. Additionally, Colorado victims across the Front Range are well represented in that cases prosecuted this year involve Denver, Broomfield, Douglas, Elbert, Jefferson, and Mesa counties.

Complex and/or multi-jurisdictional Insurance fraud investigations and prosecutions

Performance Measure		Actual FY 12	Actual FY 13	Actual FY 14
Restitution Collected pursuant to court order	Target	\$450,000	\$450,000	\$450,000
	Actual	\$648,347	\$3,162,077	\$3,204,781

Evaluation of Prior Year Performance: The significant increase in restitution ordered helps illustrate that the Unit is meeting the goal of prosecuting more serious cases.

Medicaid Fraud Unit

The Medicaid Fraud Control Unit (“MFCU”), authorized for 17 FTE positions, defends the financial integrity of the state’s Medicaid program and the safety of patients in Medicaid-funded facilities. The MFCU investigates and prosecutes fraud by providers against the Medicaid program and patient abuse in Medicaid-funded facilities throughout the state. It also pursues civil recoveries and damages against providers under the Colorado Medicaid False Claims Act, which became law on May 26, 2010.

Performance Measure		Actual FY 12	Actual FY 13	Actual FY 14
Medicaid Fraud Total fines/costs/restitution recovered	Target	\$450,000	\$3,500,000	\$3,500,000
	Actual	\$8,469,092	\$16,250,429	\$9,441,306

Evaluation of Prior Year Performance: The MFCU obtained almost as many convictions in FY14 as projected for this year.

Consumer Protection

Given the fact that the AG’s Consumer Protection Section is small but has very broad jurisdiction (Consumer Protection Act, Antitrust Act, Charitable Solicitation Act and approximately a dozen other statutes) the section does a very good job of selecting appropriate cases for investigation and enforcement, as well as providing consumer outreach to vulnerable groups, most notable the elderly.

Department of Law
 Strategic Plan Performance Report
 November 1, 2014

Performance Measure		Actual FY 12	Actual FY 13	Actual FY 14
Investigate and either sue or settle with individuals or entities that are engaged in deceptive trade practices	Target	70	70	70
	Actual	55	27	55

Performance Evaluation: The number of investigations opened and lawsuits filed increased from last year while the number of judgments/settlements/assurances was lower. Significant time and resources were spent this past year on collection of judgments reached last year including the Patterson and Dalbey collections. Enforcement of injunctions obtained in prior years was also a priority with much of Libby DeBlasio's time this past year spent on monitoring and enforcing the Westwood Consent Judgment. In the charitable fraud arena, our default judgment against Adam Shyroch and his breast cancer fraudulent charity was overturned resulting in ongoing prosecution of that matter.

Performance Measure		Actual FY 12	Actual FY 13	Actual FY 14
Investigate and either sue or settle with individuals or entities that are engaged in anticompetitive conduct such as price fixing, agreeing to restrain trade or entering into mergers that unreasonably restrict competition	Target	10	10	10
	Actual	9	12	8

Evaluation of Prior Year Performance: As a result of this strategy we were able to fulfill our goal of providing protecting for Colorado consumers by leveraging limited resources. The e-books lawsuit provides a good example as to the effectiveness of this strategy. In April 2012 Colorado, along with 32 state Attorney General Offices, filed suit against five publishers and Apple for price fixing on best-selling books that are distributed electronically and read by consumers on tablets or other electronic devices. This is a nationwide practice that Colorado could not handle on its own with just one attorney. This strategy has resulted in \$166.0 million in settlements with five publishers, and resulted in a finding that Apple participated in this price-fixing conspiracy and a pending \$400.0 million settlement with Apple.

The figure reported for FY12-13 reports the number of cases investigated, litigated or brought to resolution through settlement or judgment. They include traditional investigations of anticompetitive conduct, such as price fixing and agreements to restrain competition. They also include reviews of mergers that threatened to reduce competition. These activities are broken down as follows:

- The trial and finding entered against Apple in which the court concluded that Apple conspired with eBook publishers to raise the price of eBooks.
- 3 investigations opened to conduct that may be anticompetitive
- 8 settlements reached, including 5 with the publishing companies that conspired with Apple to raise the price of eBooks. These settlements resulted in \$166.0 million to consumers nationwide.

Consumer Credit:

Performance Measure		Actual FY 12	Actual FY 13	Actual FY 14
Require Consumer Refunds	Target	\$1,500,000	\$1,500,000	\$1,500,000
	Actual	\$5,287,437	\$1,170,574	\$833,051

Evaluation of Prior Year Performance: Consumer refund total amounts were consistent with previous years prior to the institution of the exam authority of retail sales finance. Additionally, the examinations are resulting in more compliance with the statutes; as a result refunds have decreased.

Appellate:

Objective: Produce quality briefs appropriately tailored to the seriousness of the offense/appellate challenge while maintaining or improving success rate. As

Performance Measure		Actual FY 12	Actual FY 13	Actual FY 14
Percentage of cases with a successful outcome on appeal	Target	90%	90%	90%
	Actual	91.2%	91.0%	91.3%

Evaluation of Prior Year Performance: Over the past two years, the Division has met its goal of preserving at least 90% of the convictions challenged on appeal.

The addition of six attorney positions in FY 2014, hard work on the part of Division staff, the use of the experimental docket, and lower incoming numbers combined to produce a significant decrease in the backlog of cases awaiting answer briefs. At the end of FY 2013, the backlog stood at 564 cases; the Division reduced that number to 272 cases at the end of FY 2014, a reduction of over 50% (292 cases).

http://www.coloradoattorneygeneral.gov/departments/administration/budgeting_accounting

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Appendix F: Recent Legislation Impacting Legal Services to State Agencies (FY 2011-12 to FY 2014-15)

Department Bill (Description)	FY 2011-12		FY 2012-13		FY 2013-14		FY 2014-15	
	Approp. to LSSA /1	Original Funding Source	Approp. to LSSA /1	Original Funding Source	Approp. to LSSA /1	Original Funding Source	Approp. to LSSA /1	Original Funding Source
APPROPRIATION/ BUDGET BILLS: Long Bill Appropriation for Legal Services to State Agencies' section (excludes central appropriations) Supplemental Bill(s) S.B. 11-076 (PERA contribution rates)	23,762,512		25,131,930	477,711	26,129,383	982,777	30,644,538	
SUBTOTAL: Appropriation/ Budget Bills	23,311,209		25,609,641		27,112,160		30,644,538	
SEPARATE LEGISLATION:								
Agriculture S.B. 13-241 (Registration of Industrial Hemp Growers)					13,905	GF		
Corrections None								
Education H.B. 11-1121 (Safer Schools Act of 2011) H.B. 14-1202 (Local Accountability Requirements for School Districts)	11,005	CF					20,000	GF
Governor-Lt. Governor-State Planning and Budgeting None								
Health Care Policy and Financing S.B. 13-200 (Expand Medicaid Eligibility)					24,910	CF		
Higher Education H.B. 14-1319 (Outcomes-based Funding for Higher Education)							18,216	GF
Human Services None								
Judicial Branch None								
Labor and Employment H.B. 13-1292 (Keep Jobs in Colorado Act) S.B. 14-005 (Wage Protection Act)					34,762	GF	23,225	GF
Law None								

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Appendix F: Recent Legislation Impacting Legal Services to State Agencies (FY 2011-12 to FY 2014-15)

Department Bill (Description)	FY 2011-12		FY 2012-13		FY 2013-14		FY 2014-15	
	Approp. to LSSA /1	Original Funding Source	Approp. to LSSA /1	Original Funding Source	Approp. to LSSA /1	Original Funding Source	Approp. to LSSA /1	Original Funding Source
Legislative Branch								
None								
Local Affairs								
S.B. 14-172 (Firefighter Heart Circulatory Malfunction Benefits)							182	CF
Military and Veterans Affairs								
None								
Natural Resources								
H.B. 12-1330 (Hunting/Fishing License Suspension)			3,028	CF				
S.B. 14-188 (Species Conservation Trust Fund Project List)							163,944	CF
Personnel and Administration								
H.B. 13-1292 (Keep Jobs in Colorado Act)					11,588	GF		
Public Health and Environment								
S.B. 13-219 (Methamphetamine Laboratory Remediation)					15,450	CF		
S.B. 14-029 (Architectural Paint Stewardship Program)							9,108	CF
H.B. 14-1380 (Coroners Standards and Training Board)							<u>3,643</u>	CF
Subtotal					15,450		12,751	
Public Safety								
S.B. 11-251 (Division of Fire Safety Duties)	7,337	CF						
S.B. 13-083 (Creation of Prescribed Burn Program)					4,635	FF		
Regulatory Agencies								
S.B. 11-088 (Sunset: Direct-entry Midwives)	4,109	CF						
S.B. 11-091 (Sunset: Board Veterinary Medicine)	4,402	CF						
S.B. 11-094 (Sunset: Optometric Board)	4,402	CF						
S.B. 11-128 (Child-only Health Insurance Plans)	2,935	FF						
S.B. 11-169 (Sunset: Physical Therapy Board)	38,886	CF						
S.B. 11-187 (Sunset: Mental Health Professionals)	176,088	CF						
H.B. 11-1100 (Military Experience License Certificate)	34,484	CF						
H.B. 11-1195 (Private Investigators Voluntary Licensing)	7,337	CF						
H.B. 11-1300 (Conservation Easement Tax Credit Dispute Resolution)	2,352	CF						
H.B. 12-1300 (Sunset: Professional Review Committee)			2,271	CF				
H.B. 12-1303 (Certify Speech-language Pathologists)			16,656	CF				

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Appendix F: Recent Legislation Impacting Legal Services to State Agencies (FY 2011-12 to FY 2014-15)

Department Bill (Description)	FY 2011-12		FY 2012-13		FY 2013-14		FY 2014-15	
	Approp. to LSSA /1	Original Funding Source	Approp. to LSSA /1	Original Funding Source	Approp. to LSSA /1	Original Funding Source	Approp. to LSSA /1	Original Funding Source
H.B. 12-1311 (Sunset: Pharmacy Board)			23,092	CF				
S.B. 13-014 (Use of Opiate Antagonists)					2,318	CF		
S.B. 13-026 (Update Michael Skolnik Medical Transparency Act)					7,725	CF		
S.B. 13-039 (Regulation of Audiologists)					11,294	CF		
S.B. 13-151 (Sunset: Regulation of Massage Therapists)					21,244	CF		
S.B. 13-162 (Sunset: Examining Board of Plumbers)					5,794	CF		
S.B. 13-172 (Sunset: Regulation of Acupuncturists)					5,021	CF		
S.B. 13-180 (Sunset: Regulation of Occupational Therapists)					12,746	CF		
S.B. 13-207 (Auricular Acudetox)					6,180	CF		
S.B. 13-221 (Conservation Easement Tax Credit Certification Application)					69,525	CF		
S.B. 13-238 (Regulation of Hearing Aid Providers)					5,794	CF		
H.B. 13-1111 (Regulation of Naturopathic Doctors)					16,995	CF		
S.B. 14-099 (Provisional Physical Therapy License)							18,216	CF
S.B. 14-125 (Transportation Network Companies Regulation)							9,108	CF
S.B. 14-133 (Mandatory Licensure Private Investigators)							9,057	CF
H.B. 14-1199 (Consumer Goods Service Contracts Regulation Changes)							3,643	CF
H.B. 14-1227 (Sunset: Dental Examiners Board)							56,925	CF
H.B. 14-1328 (Connect Colorado Broadband Act)							55,741	CF
H.B. 14-1329 (Deregulate Internet Protocol Emerging Technology Telecommunications)							18,216	CF
H.B. 14-1331 (Regulate Basic Local Exchange Service)							105,653	CF
H.B. 14-1398 (Authorize Marijuana Financial Service)							14,573	GF
Subtotal	274,995		42,019		164,636		291,132	
Revenue								
H.B. 11-1300 (Conservation Easement Tax Credit Dispute Resolution)	1,349,581	GF						
S.B. 13-251 (Driver's License and Identification Documentation)					7,725	GF		

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Appendix F: Recent Legislation Impacting Legal Services to State Agencies (FY 2011-12 to FY 2014-15)

Department Bill (Description)	FY 2011-12		FY 2012-13		FY 2013-14		FY 2014-15	
	Approp. to LSSA /1	Original Funding Source	Approp. to LSSA /1	Original Funding Source	Approp. to LSSA /1	Original Funding Source	Approp. to LSSA /1	Original Funding Source
H.B. 13-1317 (Implementation of Amendment 64 - Majority Recommendations)					70,684	CF		
Subtotal	1,349,581				78,409			
State								
None								
Transportation								
None								
Treasury								
None								
SUBTOTAL: Separate legislation	1,642,918		45,047		348,295		529,450	
Number of Bills	12		4		19		16	
TOTAL	24,954,127		25,654,688		27,460,455		31,173,988	
Total FTE Appropriated	237.8		241.5		252.0		253.6	

1/ This table lists appropriations to the Department of Law for the Legal Services to State Agencies section (which excludes centrally appropriated line items such as employee benefits and leased space), as well as appropriations to other state agencies in separate legislation for the purchase of legal services from the Department of Law. The fiscal impacts of the above bills on each department's need for legal services in subsequent fiscal years are reflected in the annual Long Bill appropriations at the top of the table. This table excludes acts that included appropriations impacting other divisions within the Department of Law.

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Appendix G: FY 2014-15 Appropriations for the Purchase of Legal Services from the Department of Law, by Agency

Department/ Line Item	Hours Per Appropriation/ Fiscal Note	General Fund	Cash Funds	Reapprop. Funds	Federal Funds	Non- appropriated Sources	Total Client Agency Funds
Agriculture							
Commissioner's Office and Administrative Services, Legal Services	4,653.0	\$148,412	\$297,282		\$15,000		\$460,694
Colorado State Fair, Program Costs	<u>180.0</u>		<u>17,822</u>				<u>17,822</u>
Agriculture - Total	4,833.0	148,412	315,104		15,000		478,516
Corrections							
Management, Executive Director's Office Subprogram, Legal Services	15,298.0	1,463,170	51,486				1,514,656
Education							
Management and Administration, Administration and Centrally- Appropriated Line Items, Legal Services	4,900.0	275,446	189,901	19,802			485,149
H.B. 14-1202	<u>220.0</u>	<u>20,000</u>					<u>20,000</u>
Education - Total	5,120.0	295,446	189,901	19,802			505,149
Governor							
Office of the Governor, Special Purpose, Legal Services (general)	5,051.0	500,100					500,100
Colorado Energy Office, Legal Services	1,100.0		73,088		35,823		108,911
Office of Information Technology, Management and Administration of OIT, Legal Services	<u>489.0</u>			<u>48,416</u>			<u>48,416</u>
Governor - Total	6,640.0	500,100	73,088	48,416	35,823		657,427
Health Care Policy and Financing							
Executive Director's Office, General Administration, Legal Services	14,406.0	461,512	251,658		713,168		1,426,338
Health Care Policy and Financing - Total	14,406.0	461,512	251,658		713,168		1,426,338
Higher Education							
Department Administrative Office, Legal Services	448.0		12,240	32,116			44,356
Estimated legal services purchased by institutions	<i>10,900.0</i>					1,079,209	1,079,209
H.B. 14-1319	<u>200.0</u>	<u>18,216</u>					<u>18,216</u>
Higher Education - Total	11,548.0	18,216	12,240	32,116		1,079,209	1,141,781
Human Services							
Executive Director's Office, General Administration, Legal Services	18,439.0	1,672,032	153,613				1,825,645
Judicial Branch							
Courts Administration, Central Appropriations, Legal Services	2,204.0	218,218					218,218
Independent Ethics Commission, Legal Services	<u>1,080.0</u>	<u>106,931</u>					<u>106,931</u>
Judicial - Total	3,284.0	325,149					325,149

Department/ Line Item	Hours Per Appropriation/ Fiscal Note						Non-appropriated Sources	Total Client Agency Funds
		General Fund	Cash Funds	Reapprop. Funds	Federal Funds			
Labor and Employment								
Executive Director's Office, Legal Services	7,905.0	35,553	177,017		570,104		782,674	
Division of Workers' Compensation, Major Medical Insurance and Subsequent Injury Funds, Major Medical Legal Services	100.0		9,901				9,901	
Division of Workers' Compensation, Major Medical Insurance and Subsequent Injury Funds, Subsequent Injury Legal Services	350.0		34,653				34,653	
S.B. 14-005	<u>510.0</u>	<u>23,225</u>					<u>23,225</u>	
Labor - Total	8,865.0	58,778	221,571		570,104		850,453	
Law								
Law - Total	0.0	0	0	0	0		0	
Legislative Branch								
General Assembly, Legal Services	188.0	18,614					18,614	
Local Affairs								
Executive Director's Office, Legal Services	1,790.0	161,153	8,194	2,140	5,740		177,227	
S.B. 14-172	<u>2.0</u>		<u>182</u>				<u>182</u>	
Local Affairs - Total	1,792.0	161,153	8,376	2,140	5,740	0	177,409	
Military and Veterans Affairs								
Executive Director and Army National Guard	110.0	10,891					10,891	
Natural Resources								
Executive Director's Office, Legal Services	50,972.0	1,294,457	3,634,397	51,683	66,200		5,046,737	
S.B. 14-188	<u>1,800.0</u>		<u>163,944</u>				<u>163,944</u>	
Natural Resources - Total	50,972.0	1,294,457	3,798,341	51,683	66,200	0	5,210,681	
Personnel								
Executive Director's Office, Department Administration, Legal Services	2,563.0	181,450	15,845	56,468			253,763	
Division of Human Resources, Risk Management Services, Liability Legal Services	30,750.0			3,044,510			3,044,510	
Division of Human Resources, Risk Management Services, Workers' Compensation Legal Services	10,959.0			1,085,089			1,085,089	
Constitutionally Independent Entities, Personnel Board, Legal Services	<u>330.0</u>	<u>32,673</u>					<u>32,673</u>	
Personnel and Administration - Total	44,602.0	214,123	15,845	4,186,067	0	0	4,416,035	
PERA								
Estimated legal services purchased by PERA	29.0					2,871	2,871	
Public Health and Environment								
Administration and Support, Administration, Legal Services	28,427.0			2,814,557			2,814,557	
Toxicology Unit Legal Services	2,624.0	259,802					259,802	
Hazardous Materials and Waste Management Division, Administration, Legal Services	5,232.0		349,006	455	168,559		518,020	

Department/ Line Item	Hours Per Appropriation/ Fiscal Note						Non-appropriated Sources	Total Client Agency Funds
		General Fund	Cash Funds	Reapprop. Funds	Federal Funds			
Hazardous Materials and Waste Management Division, Contaminated Site Cleanups and Remediation Programs, Rocky Flats Legal Services	275.0					27,228	27,228	
S.B. 14-029	100.0		9,108				9,108	
H.B. 14-1380	<u>40.0</u>		<u>3,643</u>				<u>3,643</u>	
Public Health and Environment - Total	36,698.0	259,802	361,757	2,815,012	195,787		3,632,358	
Public Safety								
Executive Director's Office, Administration, Legal Services	<u>3,633.0</u>		<u>202,532</u>	<u>155,626</u>	<u>1,545</u>		<u>359,703</u>	
Public Safety - Total	3,633.0		202,532	155,626	1,545		359,703	
Regulatory Agencies								
Executive Director's Office and Administrative Services, Legal Services	108,364.0	216,752	10,217,463	106,439	188,466		10,729,120	
S.B. 14-099	200.0		18,216				18,216	
S.B. 14-125	100.0		9,108				9,108	
S.B. 14-133	99.0		9,057				9,057	
H.B. 14-1199	40.0		3,643				3,643	
H.B. 14-1227	625.0		56,925				56,925	
H.B. 14-1328	612.0		55,741				55,741	
H.B. 14-1329	200.0		18,216				18,216	
H.B. 14-1331	1,160.0		105,653				105,653	
H.B. 14-1398	<u>160.0</u>		<u>14,573</u>				<u>14,573</u>	
Regulatory Agencies - Total	111,560.0	216,752	10,508,595	106,439	188,466		11,020,252	
Revenue								
Executive Director's Office, Legal Services (includes Gaming and Lottery)	39,987.0	2,471,288	1,487,825				3,959,113	
State								
Administration, Legal Services	7,118.0		704,753				704,753	
Transportation								
Administration	6,580.0		651,486				651,486	
Construction, Maintenance, and Operations	<u>9,852.0</u>		<u>975,446</u>				<u>975,446</u>	
Transportation - Total	16,432.0		1,626,932				1,626,932	
Treasury								
Administration, Legal Services	575.0	28,466	28,465				56,931	
GRAND TOTAL	402,129.0	9,618,361	20,012,082	7,417,301	1,791,833	1,082,080	39,921,657	
		24.1%	50.1%	18.6%	4.5%	2.7%	100.0%	
Legislation Other Than Long Bill	6,068.0	61,441	468,009	0	0	0	529,450	
LONG BILL ONLY	396,061.0	9,556,920	19,544,073	7,417,301	1,791,833	1,082,080	39,392,207	
		24.3%	49.6%	18.8%	4.5%	2.7%	100.0%	

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Appendix H: Hours of Legal Services Provided, by Agency (FY 2004-05 to FY 2014-15)

Hours of Legal Services Provided to State Agencies, by Agency											
DEPARTMENT	FY 04-05	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15 (Approp./ Estim.)
Regulatory Agencies	82,080	81,361	84,589	90,369	98,008	99,427	100,781	95,895	94,212	96,755	111,560
Natural Resources	35,944	38,521	37,763	40,010	41,237	43,305	44,614	43,856	45,423	50,353	50,972
Revenue	10,079	8,943	11,133	12,630	12,789	12,836	23,227	37,466	35,215	36,795	39,987
Personnel and Administration	37,923	39,831	38,261	41,171	34,711	31,710	35,295	34,336	31,354	39,410	44,602
Public Health and Environment	21,794	24,462	23,608	26,495	28,816	28,245	27,475	29,745	31,103	30,845	36,698
Human Services	19,477	20,663	20,416	19,849	21,072	21,015	19,639	18,862	18,471	18,982	18,439
Transportation	16,002	17,159	16,467	16,902	18,242	15,846	14,894	15,143	12,392	13,875	16,432
Corrections	17,875	15,508	13,830	11,748	14,619	18,647	14,619	13,337	16,451	13,800	15,298
Health Care Policy and Financing	12,300	11,642	11,132	10,249	11,682	10,147	10,982	11,885	11,198	10,152	14,406
Higher Education	10,747	11,549	11,475	10,142	13,402	13,114	12,879	13,002	11,875	11,794	11,548
Labor and Employment	7,086	7,144	7,125	7,926	8,338	8,169	8,881	9,406	7,498	7,007	8,865
State	2,490	3,034	4,963	4,125	3,066	4,187	5,058	6,645	3,700	3,179	7,118
Governor	3,326	1,509	1,718	1,268	2,653	6,442	15,003	9,292	5,552	10,113	6,640
Education	3,147	4,792	4,827	4,786	5,712	4,610	4,080	3,685	3,142	4,799	5,120
Agriculture	3,365	3,079	3,460	4,315	4,501	4,129	3,841	4,712	4,325	5,508	4,833
Judicial Branch	3,588	3,990	2,838	2,698	2,949	2,458	1,700	2,145	2,309	3,025	3,284
Public Safety	1,966	1,971	2,040	1,953	2,146	1,682	2,161	3,856	4,156	4,375	3,633
Local Affairs	2,248	1,427	1,671	2,462	980	1,917	1,657	1,493	1,588	1,613	1,792
Treasury	1,190	576	599	756	1,220	1,675	1,635	2,186	1,697	1,051	575
Legislative Branch	179	225	55	264	152	106	98	66	70	19	188
Military and Veterans Affairs	100	107	24	15	43	131	510	124	78	17	110
PERA	38	27	10	5	13	29	2	2	7	7	29
Law	<u>17</u>	<u>521</u>	<u>289</u>	<u>249</u>	<u>227</u>	<u>77</u>	<u>154</u>	<u>0</u>	<u>0</u>	<u>129</u>	<u>0</u>
GRAND TOTAL	292,959	298,041	298,291	310,387	326,576	329,907	349,184	357,139	341,814	363,602	402,129
Annual change	3,430	5,082	250	12,096	16,189	3,331	19,277	7,955	(15,325)	21,788	38,527
Annual % change	1.2%	1.7%	0.1%	4.1%	5.2%	1.0%	5.8%	2.3%	-4.3%	6.4%	11.3%