

**COLORADO GENERAL ASSEMBLY  
JOINT BUDGET COMMITTEE**



**FY 2014-15 STAFF BUDGET BRIEFING**

**DEPARTMENT OF LAW**

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

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## **DEPARTMENT OF LAW**

### **Department Overview**

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The Attorney General is one of five independently elected constitutional officers of the State, whose powers and duties are prescribed by the General Assembly<sup>1</sup>. 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 branch<sup>2</sup>, 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.

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

<sup>2</sup> 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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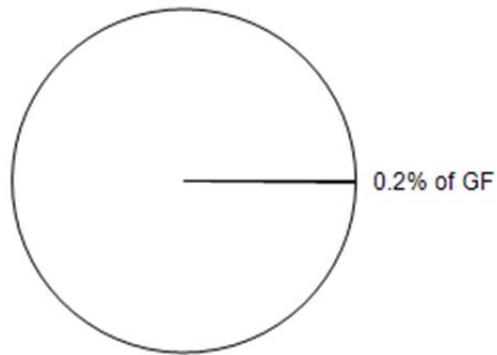
## Department Budget: Recent Appropriations

<b>Funding Source</b>	<b>FY 2011-12</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>	<b>FY 2014-15 *</b>
General Fund	\$9,422,208	\$10,452,022	\$12,168,714	\$13,053,697
Cash Funds	10,389,960	10,979,963	12,330,132	12,363,711
Reappropriated Funds	33,059,968	35,476,528	41,294,862	42,674,891
Federal Funds	<u>1,500,064</u>	<u>1,576,165</u>	<u>1,770,364</u>	<u>1,746,521</u>
<b>Total Funds</b>	<b>\$54,372,200</b>	<b>\$58,484,678</b>	<b>\$67,564,072</b>	<b>\$69,838,820</b>
Full Time Equiv. Staff	419.0	432.7	446.5	451.9

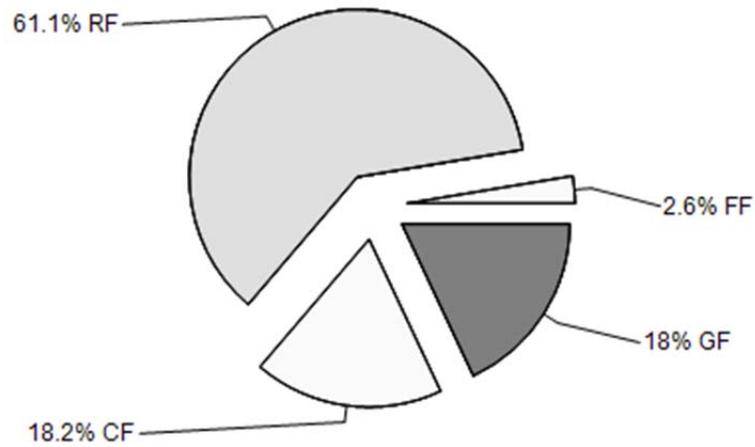
\*Requested appropriation.

## Department Budget: Graphic Overview

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

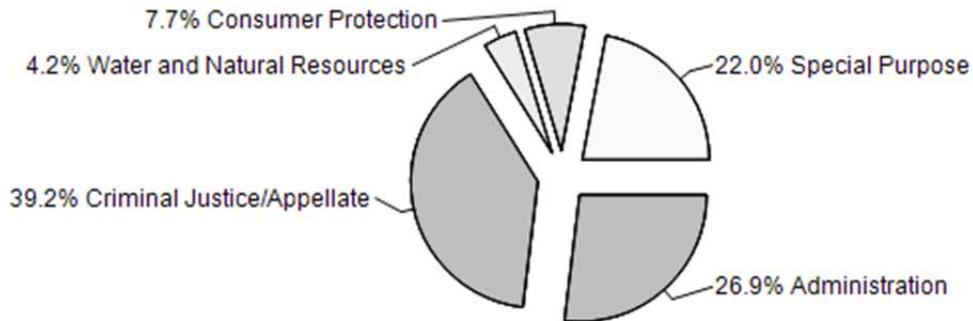


**Department Funding Sources**

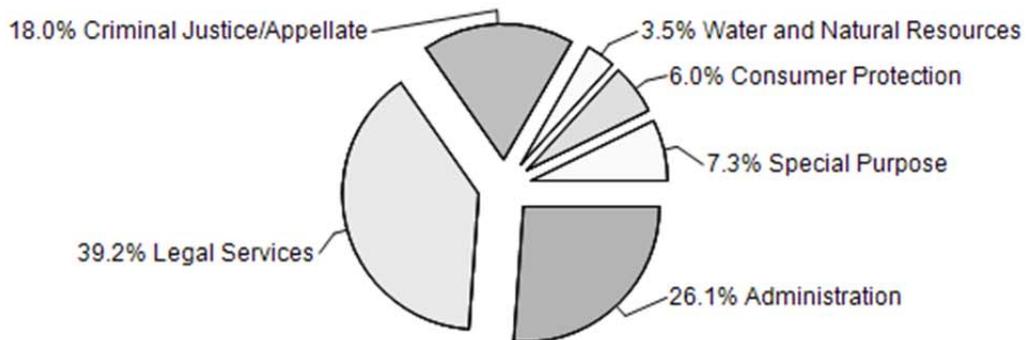


All charts are based on the FY 2013-14 appropriation.

**Distribution of General Fund by Division**



**Distribution of Total Funds by Division**



## **General Factors Driving the Budget**

The FY 2014-15 request consists of 18.7 percent General Fund, 17.7 percent cash funds, 61.1 percent reappropriated funds, and 2.5 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; and the Colorado Water Conservation Board's Litigation 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 2013-14, the General Assembly has authorized the Department of Law to spend up to \$35.1 million providing legal services to state agencies (including associated central appropriations). This amount represents more than half of the Department's total appropriation. As shown in the table on the following page, eight state agencies account for more than 80 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 2010 through 2013 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 2013-14, by state agency. Appendix H details the hours of legal services provided (or anticipated to be provided) for FY 2003-04 through FY 2013-14, by state agency.

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<b>Legal Services to State Agencies: FY 2010-11 to FY 2013-14</b>					
<b>State Department</b>	<b>FY 10-11 Actual</b>	<b>FY 11-12 Actual</b>	<b>FY 12-13 Actual</b>	<b>FY 13-14 Approp./ Estim.</b>	<b>% of Total</b>
Regulatory Agencies	\$7,485,354	\$7,359,709	\$7,383,603	\$9,767,656	27.8%
Natural Resources	3,283,382	3,323,637	3,514,961	4,607,919	13.1%
Revenue	1,738,069	2,864,901	2,740,083	3,616,138	10.3%
Personnel	2,555,590	2,550,581	2,379,484	3,340,835	9.5%
Public Health and Environment	2,021,921	2,275,229	2,393,330	3,093,772	8.8%
Human Services	1,409,467	1,394,458	1,401,843	1,679,424	4.8%
Transportation	1,081,661	1,132,068	956,102	1,496,626	4.3%
Corrections	1,075,919	1,010,582	1,273,306	1,393,342	4.0%
Other agencies 1/	<u>5,158,978</u>	<u>5,198,384</u>	<u>4,446,571</u>	<u>6,107,524</u>	17.4%
<b>Total Expenditures/ Appropriation</b>	<b>\$25,810,341</b>	<b>\$27,109,549</b>	<b>\$26,489,283</b>	<b>\$35,103,236</b>	100.0%
<i>% change of total from prior year</i>	3.7%	5.0%	(2.3%)	32.5%	
<i>% of total Department of Law appropriations</i>	47.9%	49.9%	45.3%	52.0%	
<i>% of total state operating appropriations</i>	0.1%	0.1%	0.1%	0.2%	
<b>Blended Legal Rate</b>	<b>\$73.37</b>	<b>\$75.71</b>	<b>\$77.25</b>	<b>\$91.08</b>	
<i>% change from prior year</i>	(2.7%)	3.2%	2.0%	17.9%	
<b>Total Hours</b>	349,184	357,139	341,814	386,096	
<i>% change from prior year</i>	5.8%	2.3%	(4.3%)	13.0%	

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 nearly 40 percent of General Fund appropriations to the Department for FY 2013-14. 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.

<b>Appellate Unit Data: FY 2008-09 to FY 2012-13</b>						
	<b>FY 08-09 Actual</b>	<b>FY 09-10 Actual</b>	<b>FY 10-11 Actual</b>	<b>FY 11-12 Actual</b>	<b>FY 12-13 Actual</b>	<b>FY 13-14 Approp.</b>
Expenditures/ Appropriations (excluding central appropriations)	\$2,360,972	\$2,555,197	\$2,646,858	\$2,603,619	\$2,709,335	\$3,240,771
FTE	28.3	30.7	31.6	30.9	31.3	37.5
Opening Briefs Received	1,240	1,152	1,050	1,171	1,018	n/a

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<b>Appellate Unit Data: FY 2008-09 to FY 2012-13</b>						
	<b>FY 08-09 Actual</b>	<b>FY 09-10 Actual</b>	<b>FY 10-11 Actual</b>	<b>FY 11-12 Actual</b>	<b>FY 12-13 Actual</b>	<b>FY 13-14 Approp.</b>
Answer Briefs Filed	1,029	1,054	1,021	894	885	n/a
Case Backlog	395	434	398	608	564	n/a

In 2006 and 2007, the General Assembly increased the number of judges, including adding a total of six judges to the Court of Appeals. Prior to FY 2013-14, the Department had received funding to add four of the six attorneys anticipated to be required as a result of the 2006 and 2007 legislation. In FY 2013-14, the General Assembly appropriated funding to add 5.5 additional attorney FTE to allow the Department to address the case backlog.

### **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 Assembly<sup>3</sup>. 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. 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 22.0 percent of total General Fund appropriations to the Department. The following table details recent expenditures/ appropriations for this purpose.

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

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<b>State Expenditures for District Attorney Salaries: FY 2007-08 to FY 2013-14</b>			
<b>Fiscal Year</b>	<b>Expenditures</b>	<b>Annual Increase</b>	<b>Cumulative Increase</b>
2007-08	\$1,315,985	n/a	n/a
2008-09	1,654,605	\$338,620	\$338,620
2009-10	2,096,027	441,422	780,042
2010-11	2,263,229	167,202	947,244
2011-12	2,479,847	216,567	1,163,811
2012-13	2,656,471	176,624	1,340,486
2013-14 (approp.)	2,676,960	20,489	1,360,975

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**Summary: FY 2013-14 Appropriation & FY 2014-15 Request**

<b>Department of Law</b>						
	<b>Total Funds</b>	<b>General Fund</b>	<b>Cash Funds</b>	<b>Reappropriated Funds</b>	<b>Federal Funds</b>	<b>FTE</b>
<b>FY 2013-14 Appropriation</b>						
SB 13-230 (Long Bill)	\$67,000,881	\$13,473,403	\$10,810,547	\$40,946,567	\$1,770,364	444
Other legislation	<u>563,191</u>	<u>(1,304,689)</u>	<u>1,519,585</u>	<u>348,295</u>	<u>0</u>	<u>2.9</u>
<b>TOTAL</b>	<b>\$67,564,072</b>	<b>\$12,168,714</b>	<b>\$12,330,132</b>	<b>\$41,294,862</b>	<b>\$1,770,364</b>	<b>446.5</b>
<b>FY 2014-15 Requested Appropriation</b>						
FY 2013-14 Appropriation	\$67,564,072	12,168,714	\$12,330,132	\$41,294,862	\$1,770,364	446.5
R1 Asset maintenance	116,484	162,097	(107,493)	43,591	18,289	0.0
R2 Consumer protection complaint intake	56,123	0	56,123	0	0	1.0
R3 Database administrator	105,651	0	0	105,651	0	1.0
R4 Appellate administrative assistant	48,170	48,170	0	0	0	0.9
R5 Lowry Range litigation	392,400	0	392,400	0	0	0.0
R6 Attorney registration and CLE	27,088	8,755	1,698	17,535	(900)	0.0
NP1 Legal services for DNR R2	327,888	0	0	327,888	0	2.0
Non-prioritized requested changes	70,555	723	406	68,995	431	0.0
Centrally appropriated line item adjustments	1,809,890	610,267	289,900	909,543	180	0.0
Indirect cost assessment adjustments	78,753	0	9,398	67,047	2,308	0.0
Annualize prior year legislation	28,974	(3,703)	0	32,677	0	0.0
Statewide IT common policy adjustments	23,618	237	133	23,107	141	0.0
Change in anticipated grant funding	22,743	0	0	22,743	0	0.0
Fund source adjustments	0	317,256	0	(317,256)	0	0.0
Annualize prior year budget actions	<u>(833,589)</u>	<u>(258,819)</u>	<u>(608,986)</u>	<u>78,508</u>	<u>(44,292)</u>	<u>0.5</u>
<b>TOTAL</b>	<b>\$69,838,820</b>	<b>\$13,053,697</b>	<b>\$12,363,711</b>	<b>\$42,674,891</b>	<b>\$1,746,521</b>	<b>451.9</b>
<b>Increase/(Decrease)</b>	\$2,274,748	\$884,983	\$33,579	\$1,380,029	(\$23,843)	5.4
Percentage Change	3.4%	7.3%	0.3%	3.3%	(1.3%)	1.2%

**Description of Requested Changes**

**R1 Asset maintenance:** The request includes a net increase of \$116,484 total funds (including an increase of \$162,097 General Fund) to provide additional resources to support the Department’s planned replacement schedule for IT infrastructure. The Department seeks to: (1) provide additional resources for the planned replacement of IT infrastructure; (2) consolidate the budget for IT resources within a single line item by moving \$125,000 cash funds spending

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authority from the Litigation Management and Technology line item to the Information Technology Asset Maintenance line item; and (3) adjust the fund sources for IT infrastructure costs to better reflect the Department's need by fund source based on the distribution of FTE. The Department reports growth in FTE and associated IT costs, including both infrastructure and software licensing, as the primary drivers for the increase. The General Assembly last increased the Department's Information Technology Asset Maintenance line item in FY 2008-09, and the Department has gained 57.5 FTE since that time (from 389 FTE in FY 2008-09 to 446.5 FTE in FY 2013-14, an increase of 14.8 percent) without adjusting the information technology budget.

**R2 Consumer protection complaint intake:** The request includes \$56,123 cash funds (from custodial funds collected by the Department) and 1.0 FTE for FY 2014-15 to support the efforts and workload expansion of the Consumer Fraud Unit and the Antitrust Tobacco and Consumer Protection Unit. The request would allow the Department to add a Complaint Intake General Professional II to support both units in response to increasing workload.

**R3 Database administrator:** The request includes an increase of \$106,651 reappropriated funds (from departmental indirect cost recoveries) and 1.0 FTE to allow the Department to hire a database administrator. The department is seeking the new position to focus on database administration associated with the new CORE system (COFRS replacement), data growth associated with the Department's new case management system (approved through an FY 2012-13 decision item), and the implementation of other database related projects.

**R4 Appellate administrative assistant:** The request includes an increase of \$48,170 General Fund and 0.9 FTE to support an additional administrative assistant for the Appellate Unit in response to administrative support needs associated with the addition of 6.0 new attorney FTE to in FY 2013-14. According to the Department, the addition of 6.0 new attorneys has strained existing administrative resources and diverting attorneys' attention from legal work.

**R5 Lowry Range litigation:** The request includes \$392,400 cash funds (from the State Land Board's Investment and Development Fund) to support legal services provided to the Department of Natural Resources regarding litigation at the Lowry Range. The Department was appropriated more than \$600,000 in FY 2012-13 and in FY 2013-14. The Department spent \$238,007 in FY 2012-13. The Department had not anticipated a need for resources in FY 2014-15. However, as a result of delays in the case, the trial is now scheduled for July, 2014, requiring funding in FY 2014-15. The requested funds would primarily support preparation for a three week trial and expert witness costs.

**R6 Attorney registration and CLE:** The request includes an increase of \$27,088 total funds (including \$8,755 General Fund) to pay for increased attorney registration fees in FY 2014-15. Using the Attorney Registration and Continuing Legal Education line item, the Department: (1) pays for annual attorney registration fees for all of the Department's attorneys and (2) provides an average of \$150 per attorney for Continuing Legal Education (CLE) credits. The Judicial Department is increasing the annual attorney registration fee by \$100 per attorney (from \$225 to \$325) in FY 2014-15. The Department is requesting the additional funds to cover the fee increase and to allow the Department to continue to both pay the registration fees and provide \$150 per attorney for CLE costs.

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**NP1 Legal services for DNR R2:** The request includes a \$327,888 increase in reappropriated funds to support additional legal services requested by the Department of Natural Resources in FY 2014-15 (DNR request R2). *This request item will be addressed in a separate staff briefing concerning the Department of Natural Resources scheduled for Tuesday, December 17, 2013.*

**Non-prioritized requested changes:** The request includes the annual fleet vehicle change from the Department of Personnel, and the following changes from the Office of Information Technology: secure Colorado phase II, Capitol Complex network resiliency, and DTRS operations increase.

**Centrally appropriated line item adjustments:** The request includes adjustments to centrally appropriated line items for the following: state contributions for health, life, and dental benefits; merit pay; salary survey; short-term disability; supplemental state contributions to the Public Employees' Retirement Association (PERA) pension fund; workers' compensation; administrative law judges; payment to risk management and property funds; and Ralph L. Carr Judicial Center leased space.

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

**Annualize prior year legislation:** The request includes an increase of \$28,974 total funds to reflect the FY 2014-15 impact of legislation that was passed in 2013, including the following acts: S.B. 13-014; S.B. 13-026; S.B. 13-039; S.B. 13-083; S.B. 13-151; S.B. 13-162; S.B. 13-172; S.B. 13-180; S.B. 13-219; S.B. 13-221; H.B. 13-1111; H.B. 13-1230; and H.B. 13-1317. Appendix B provides a short description of each of these acts.

**Statewide IT common policy adjustments:** The request includes adjustments to line items appropriated for: purchase of services from the computer center; Colorado state network; communication services payments; information technology security; and COFRS modernization. *This request item will be addressed in a separate staff briefing for the Governor's Office of Information Technology scheduled for December 18, 2013.*

**Change in anticipated grant funding:** The request reflects an anticipated \$22,743 increase in the amount of grant funding available from the Department of Public Safety, including \$19,335 for efforts to investigate and prosecute multi-jurisdictional auto theft and \$3,408 for victims assistance efforts supported by a grant from the Victims Assistance and Law Enforcement Fund. Grant funds are continuously appropriated to the Department of Law through FY 2014-15 (see the issue brief beginning on page 29 for a short discussion) and therefore do not require a decision item for increased spending authority.

**Fund source adjustments:** The request includes an increase in General Fund offset by a decrease in reappropriated funds.

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

## **Issue: Legal Services to State Agencies Overexpenditure**

The Department of Law overexpended the funds available for legal services for state agencies (LSSA) by approximately \$2.0 million in FY 2012-13.

### **SUMMARY:**

- The Department of overexpended the funds available for legal services provided to state agencies by approximately \$2.0 million in FY 2012-13. The overexpenditure was the result of two factors: (1) the creation of a new cash fund to support legal services in FY 2012-13 required a \$1.6 million reserve to support unfunded liabilities, while the Department and JBC Staff were unaware of such a requirement when setting the legal rate; and (2) the Department's move to the Ralph L. Carr Judicial Center in FY 2012-13 reduced the Department's billable hours and required additional one-time costs for the move.
- The Department covered the revenue loss and additional costs associated with the move using roughly \$400,000 General Fund from centrally appropriated line items. However, the State Controller is restricting the Department's spending authority for LSSA by \$1.6 million in FY 2013-14 because of the unfulfilled reserve requirement in FY 2012-13.
- Staff anticipates that the Department will submit a supplemental to relieve the restriction on spending authority in FY 2013-14.

### **RECOMMENDATION:**

Staff recommends that the Committee discuss the overexpenditure with the Department at the Department's hearing, including how to: (1) manage the restriction on spending authority in FY 2013-14 and (2) adjust for the reserve requirement in setting the legal rate for FY 2014-15.

### **DISCUSSION:**

#### ***Background: Legal Services for State Agencies***

The Legal Services to State Agencies (LSSA) section of the Long Bill provides appropriations to the Department to allow it to spend moneys received from other state agencies for the provision of legal services as required by Section 24-31-101, C.R.S. Since 1973, the General Assembly has appropriated moneys for legal services to the various state agencies, which in turn purchase services from the Department of Law at hourly rates. The Department of Law collects payments from these agencies when it provides legal services. In order to spend the money it receives to pay salaries and related expenses, the Department of Law also requires an appropriation. Thus, whenever the General Assembly makes an appropriation to a state agency for legal services, an equal appropriation must be made to the Department of Law so it can spend the money it receives. For FY 2013-14, the General Assembly has authorized the Department of Law to spend up to \$35.1 million on LSSA (including associated centrally appropriated items) based on an estimated statewide need for 386,096 hours of legal services.

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In most cases, the appropriation to the Department of Law is classified as reappropriated funds because a duplicate appropriation for the purchase of legal services appears in the client agency's budget. In some instances, however, the Department receives payments from state agencies that are not duplicated in appropriations elsewhere in the budget (*e.g.*, payments from PERA). When received, these payments are classified as cash funds.

The appropriation in the Long Bill for personal services in the LSSA section is a reflection of the State's estimated need for legal services. The LSSA section has two types of employees who bill client agencies: attorneys and legal assistants. Each "billing" attorney and legal assistant provides 1,800 hours of legal services annually<sup>4</sup>. All attorneys bill at a uniform hourly attorney rate, and all legal assistants bill at a uniform hourly legal assistant rate. The "blended" legal rate is a weighted average of these two rates, which is used to compute the appropriations to other state agencies for the purchase of legal services.

The Committee sets the hourly rates for legal services as part of the common policy process each year based on state agencies' estimated need for legal services in the upcoming year and the estimated costs for the Department of Law to provide those services. The appropriation to the Department of Law thus serves as a cap for expenditures (barring supplemental appropriations). The actual revenues collected may vary from the appropriation based on changes in demand for services. Unlike some common policies, the Department of Law only collects payment for actual hours of legal services provided. Thus, if a given agency needs fewer hours of services than anticipated in the Long Bill, the Department of Law will collect less revenue than anticipated in the appropriation. As a result, the Department must manage staffing and expenses based on actual hours and revenues over the course of the year.

***FY 2012-13 Overexpenditure***

In FY 2012-13, the Department overexpended the revenues available for LSSA by approximately \$2.0 million. The overexpenditure resulted from two factors: (1) a new reserve requirement associated with the creation and use of a cash fund for LSSA in FY 2012-13 created a \$1.6 million shortfall below the fund balance required by the State Controller; and (2) the Department spent \$403,018 more on LSSA than it collected because of a shortfall in hours billed to client agencies and additional one-time costs associated with relocating to the Carr Center. Thus, although expenditures were nearly \$2.0 million below the appropriated spending authority, the Department exceeded the available revenues.

***Cash Fund Reserve Requirement***

House Bill 12-1248, a JBC bill, created the Legal Services Cash Fund to receive payments from client state agencies for legal services beginning in FY 2012-13. The use of a cash fund allows the Department to retain excess revenue collections for appropriation the following year.

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<sup>4</sup> When annual leave and state holidays are taken into account, an individual needs to bill 7.5 hours/day to bill a total of 1,800 hours per year. The Department's personnel evaluations are based, in part, on the number of hours billed. The Department indicates that most attorneys work more than eight hours per day or periodically work on weekends or holidays to achieve this billing objective.

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However, the State Controller has reported that because the Legal Services Cash Fund is an “internal service fund” (accounting for a government entity accepting payments for services provided to other governmental entities), the fund is subject to reserve requirements associated with “compensated absences” (payouts for sick leave and annual leave upon departure from the Department). Based on calculations of the amounts necessary for compensated absences, the use of the cash fund requires a \$1.6 million reserve. Neither the JBC Staff nor Department staff were aware of the reserve requirement associated with the new cash fund. As a result, staff did not include the additional revenue requirement in calculations of the legal services rate in FY 2012-13. The cash fund ended FY 2012-13 with a fund balance of \$15.51, resulting in a \$1.6 million shortfall below fund balance required by the State Controller.

*One Time Costs and Shortfall in Billed Hours*

In addition to the unfunded reserve requirement, the Department spent \$403,018 more on LSSA than it received in revenues in FY 2012-13. Using flexibility provided within the appropriation, the Department covered the shortfall with centrally appropriated General Fund moneys, primarily from Health, Life, and Dental insurance and Capital Complex Leased Space. The Department attributes this overexpenditure to two basic causes, both of which are one time in nature and relate to the FY 2012-13 relocation to the Carr Judicial Center.

- First, according to the Department, the LSSA staff lost 4,269 hours of billable time because of the time required for the move (packing and unpacking offices, etc.), resulting in a loss of \$313,084 in revenues which the Department covered with General Fund.
- Second, the Department experienced one-time costs associated with the move, particularly information technology expenses as the Department worked to avoid interruptions in information technology services as a result of the move. The Department reported a total of \$531,626 in additional information technology costs for the move and charged \$195,275 of that amount to LSSA. However, available LSSA revenues fell short of that amount by \$81,435, requiring further supplementation with centrally appropriated General Fund.

The following table summarizes the Department’s overexpenditure for LSSA in FY 2012-13.

<b>FY 2012-13 LSSA Revenues and Expenditures</b>			
	<b>FY 2012-13 Appropriation</b>	<b>FY 2012-13 Actual</b>	<b>Change From Appropriation</b>
<i>LSSA Hours</i>	374,478	341,814	(32,664)
LSSA Revenues from Other Agencies	\$28,927,518	\$26,526,082	(\$2,401,436)
General Fund (from POTs)	0	403,018	403,018
Total Available	\$28,927,518	\$26,929,100	(\$1,998,418)
Appropriation/Expenditure	(28,927,518)	(26,929,084)	1,998,434
New Reserve Requirement	0	(1,620,696)	(1,620,696)
Surplus/(Deficit) After Reserve	\$0	(\$1,620,680)	(1,620,680)

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***FY 2013-14 Impact/Restriction***

As discussed above, the Department covered the \$403,018 shortfall in revenues associated with the relocation through the use of General Fund appropriated to centrally appropriated line items. However, the State Controller is restricting the Department's FY 2013-14 appropriation for legal services by \$1.6 million because of the unmet reserve requirement. The Department is still exploring options to manage the restriction in FY 2013-14 but staff anticipates a supplemental request to relieve some or all of the restriction. **Staff recommends that the Committee discuss the Department's plans for FY 2013-14 at the upcoming hearing.**

Because staff was still not aware of the reserve requirement associated with the cash fund, the legal services rate for FY 2013-14 also does not account for that revenue requirement. As a result, another shortfall appears likely in FY 2013-14.

***FY 2014-15 Impact – Legal Services Rate***

The costs associated with the move to the Carr Judicial Center were one time in nature and should not require any further adjustment in FY 2013-14 or FY 2014-15. However, covering the compensated absences reserve requirement going forward will require an increase in the statewide legal services rate. Based on the 386,096 hours of legal services assumed in the FY 2013-14 appropriation for LSSA, collecting an additional \$1.6 million for the reserve requirement would have required an increase of approximately \$4.20 per hour in the statewide blended legal rate of \$91.08.

A rate increase for the reserve requirement could be temporary if the Department holds that amount in reserve from year to year. Still, staff and the Department will need to account for the reserve requirement in calculations of the statewide legal rate on an annual basis. Staff expects to recommend that the Committee build the necessary increase into the FY 2014-15 appropriation during figure setting for the statewide legal rate. **Staff recommends that the Committee discuss the Department's preferences for FY 2014-15 at the upcoming hearing.**

**RELEVANCE OF BRIEFING ISSUE TO THE DEPARTMENT'S PERFORMANCE PLAN:**

This briefing issue discusses the basics of the LSSA appropriation and the Department's overexpenditure in FY 2012-13. As a discussion of LSSA in general, the issue relates to the Department's first objective: "Minimize state risk through the effective representation of client agencies and protect citizens by enforcing regulatory laws and prosecuting cases referred by client agencies." However, the specifics of the issue do not appear to relate directly to the Department's performance plan.

## **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:

#### 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*
- *Pure Cycle Corporation and Rangeview Metropolitan District v. State of Colorado, by and through its State Board of Land Commissioners*

#### Revenue

- Conservation Easement Tax Credit Denial Cases
- *Public Service Company of Colorado v. Colorado 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 the Colorado Bridge Enterprise (*TABOR Foundation*), PERA (*Justus*), conservation easement tax credit denials, and the Lower North Fork Wildfire (*American Family Insurance*), 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)<sup>5</sup>, the Department of Personnel's State Risk Management Office and the State Claims Board have the responsibility to investigate, adjust, and settle such claims before they become lawsuits<sup>6</sup>. All tort and federal claims alleging damages against state agencies and employees, if settled, are to be paid out of the Risk Management Fund 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 7, 2013, 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.

**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). CMS alleges that HCPF began paying claims on expanded Child Health Plan (CHP) eligibility (205 to 250 percent of federal poverty level) prior to CMS approval of the demonstration amendment for that expansion. The consolidated disallowances are for payments made on the expanded prenatal population from May 1, 2010, through September 30, 2012.

*Status.* HCPF filed its brief with the U.S. Department of Health and Human Services Departmental Appeals Board on August 7, 2013. CMS filed its response brief on October 2, 2013. The timing of a decision from the Departmental Appeals Board is uncertain.

*Financial Impact.* The disallowances in question total \$7,351,037. If the State loses this appeal, then it will cost that amount of General Fund.

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<sup>5</sup> See Section 24-10-109, C.R.S.

<sup>6</sup> See Section 24-30-1501, *et seq.*, C.R.S.

**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. The trial took place in August, 2012, and final closing briefs were due August 30, 2013. In his draft report, the Special Master tentatively awarded Kansas \$5 million for Nebraska's past violations, and the states expect the Special Master to issue his final report during fall 2013. Through two years of litigation, neither Kansas nor Nebraska offered any evidence to prove that Colorado had violated the Compact. However, if Nebraska loses the litigation, it has indicated it may pursue a claim against Colorado for contribution. Although Kansas has not yet asserted specific claims against Colorado, Kansas has reserved the right to seek relief at a later time against Colorado for its violations of the Compact.

The State has worked to reach a resolution with Kansas and/or Nebraska prior to any suit being filed against Colorado. To date, such negotiations have been unsuccessful. Accordingly, the State has invoked the non-binding arbitration process pursuant to the Final Settlement Stipulation. The states arbitrated Colorado's plan in August 2013, and the Department anticipates a decision at the end of November 2013. If the arbitration effort is not successful, the State will vigorously defend the case.

*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 draft report tentatively awarding \$5 million against Nebraska, the Department estimates that Colorado's liability for past over-consumption will likely be in the \$1 million to \$5 million range.

***Pure Cycle Corporation and Rangeview Metropolitan District v. State of Colorado, by and through its State Board of Land Commissioners***

*Case.* The State Land Board entered into a water lease with Rangeview Metropolitan District (RMD) in 1986 for the right to use all the water on and under the Lowry Range. RMD retained Pure Cycle Corporation to act as service provider of water developed at the Lowry Range. With oil and gas development moving forward on the Lowry Range, RMD asserts that it has exclusive

right to provide water to all users at Lowry Range, including oil and gas lessees. The Land Board disagrees with this assertion. Pure Cycle and RMD filed a lawsuit against the Land Board alleging breach of contract, promissory estoppel, contract reformation, and unjust enrichment claims.

On March 2, 2012, the Land Board approved leasing the Lowry Range to ConocoPhillips, with a one-time "bonus" payment for the lease totaling approximately \$137 million to be spread over four years. The approved lease also includes a 20 percent royalty payment on all production from the Lowry Range, which the Land Board estimates could provide several hundred million dollars of royalty payments over the life of the wells.

*Status.* The Land Board filed a Motion to Dismiss which was partially granted, dismissing two of four claims. The promissory estoppel and reformation of contract and breach of contract as reformed remain at issue. Discovery is beginning and the Court has set a three week trial starting July 7, 2014.

The Land Board and the Department intend to contest the case vigorously and have hired Hogan Lovells as outside counsel to assist in the litigation. [The case has been consolidated with *High Plains A&M LLC v. Pure Cycle Corporation*, in which High Plains seeks rescission of its acquisition of an ownership position in Pure Cycle in exchange for certain Arkansas River water rights. High Plains claims Pure Cycle misrepresented Pure Cycle's rights under the lease. The Land Board is not party to this case.]

*Financial Impact.* In their disclosures, Pure Cycle and Rangeview stated that their damages may be \$128 million. However, Pure Cycle's vague articulation of damages to date, from what the Department of Law understands now, seems inflated and improbable.

## **Revenue**

### ***Conservation Easement Tax Credit Denial Cases***

*Case.* The taxpayers in the H.B. 11-1300 cases seek to challenge the Department of Revenue's (DOR's) determinations regarding the validity and value of conservation easement tax credits and seek to reverse the DOR's denial of their tax credit claims. Taxpayers initially filed approximately 600 conservation easement tax credit denial cases<sup>7</sup> at the Department of Revenue (DOR). Among other things, H.B. 11-1300 created a process by which taxpayers may elect to waive their administrative hearing on the disallowance of the conservation easement tax credits and proceed with an appeal and *de novo* trial to a district court, presided over by a specially appointed judge.

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<sup>7</sup> Please note that the DOR counts "cases" are based on donations. A single piece of land may involve multiple donations, and a single donation may involve multiple "transferees" (taxpayers who purchase a tax credit or a portion of a tax credit). For example, one of the largest cases involves one family that divided up their property into multiple parcels, thereby maximizing the number of donations and thus the total value of the tax credits. Individual donations involve multiple transferees, so this piece of land involves 477 individuals. The cases related to this property have been consolidated down to 28 cases for the Department of Law's purposes.

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*Status.* The taxpayers were required to elect one of several procedural tracks by September 30, 2011. It appears that the incentives established by the General Assembly to encourage taxpayers to elect the district court option were successful.

- The representatives of approximately 450 donations elected to proceed in state district court. After the consolidation of cases based on the land and individuals involved, a total of 194 cases had been filed in the district courts by September 2013. Of that total, 171 cases were actually served on the Department and litigated by the conservation easement unit. According to the Department, 131 of those cases have been either closed or settled, leaving a total of 40 remaining cases as of October 29, 2013.
- Four cases in which representatives elected to have an administrative hearing have had the hearing pursuant to Section 39-21-103, C.R.S. The Executive Director's designee ruled in favor of the DOR. These four cases are currently on appeal in district court.
- Another 29 cases in which representatives elected to have an administrative hearing remain in the administrative process, with hearings to be completed by July 1, 2014.
- Representatives of the final 41 donations made no election and, by default, their administrative hearings must be completed by July 30, 2016.

House Bill 11-1300 established special venue provisions and divided the judicial districts into three regions. District court appeals pursuant to H.B. 11-1300 must be filed in the region in which the encumbered land is located. Chief Justice Bender appointed three judges to hear these cases:

- Region 1 (Northeast): Includes the following judicial districts: 1<sup>st</sup>, 2<sup>nd</sup>, 8<sup>th</sup>, 13<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, and 20<sup>th</sup>. Cases are being heard by James F. Hartmann, Jr., Chief Judge for the 19<sup>th</sup> judicial district (Weld county).
- Region 2 (Southeast): Includes the following judicial districts: 3<sup>rd</sup>, 4<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 15<sup>th</sup>, and 16<sup>th</sup>. Cases are being heard by M. Jon Kolomitz, Chief Judge for the 16<sup>th</sup> judicial district (comprised of Bent, Crowley, and Otero counties). Due to the number of properties involved in these disputes that are located in the southeast part of the state, about three-quarters of the cases are in Region 2.
- Region 3 (West): Includes the following judicial districts: 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup>, 14<sup>th</sup>, 21<sup>st</sup>, and 22<sup>nd</sup>. Cases are being heard by Michael A. O'Hara III, Chief Judge for the 14<sup>th</sup> judicial district (comprised of Grand, Moffat, and Routt counties).

Funding has been provided to the Judicial Branch to add staff to support these judges and to pay for retired judges to hear other district court cases in the interim. The table on the following page displays the number and status of cases by district, as reported by the Department of Law.<sup>8</sup>

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<sup>8</sup> Please note that the table tracks cases in terms of the Department of Law's involvement. The various agencies involved in aspects of these cases track the status differently, so data from the Department of Law may not align with reports from other agencies.

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<b>Status of Conservation Easement Cases as of October 29, 2013</b>				
	<b>Region 1</b>	<b>Region 2</b>	<b>Region 3</b>	<b>Total</b>
Total Cases	38	121	12	171
Cases Closed or Settled	(18)	(104)	(9)	(131)
Remaining Cases	20	17	3	40

The cases pending in district court include three stages. In the preliminary stage, the court must determine the validity of the conservation easement tax credit claimed, as well as any other claims or defenses touching the regularity of the proceedings. If the credit is determined to be valid, the first phase is limited to the determination of the value of the easement. The second phase is limited to the determination of the tax, interest, and penalties due, and the apportionment of the tax liability among persons who claimed a credit in relation to the easement. The third and final phase will address all other claims related to the conservation easement tax credit, including those between and among third parties. DOR is not a party to this final phase.

*Financial Impact.* The total amount of income tax liability at issue estimated for fiscal note purposes under H.B. 11-1300 was \$222.8 million, including \$154.9 million from conservation easement tax credit claims; \$18.6 million in penalties assessed on denied credit claims; and \$49.3 million in interest on those denied credit claims. However, H.B. 11-1300 contains strong language encouraging DOR to waive penalties and interest. As a result, penalty and interest recovered by the Department will be reduced. If the State does not prevail in these matters, much of these funds will be lost in the form of taxes not collectable. However, an unknown amount represents claims for refund plus statutory interest, payable by the DOR.

***Public Service Company of Colorado v. Colorado Department of Revenue***

*Case.* Public Service Company of Colorado (PSCo) claims a refund of sales and use taxes paid on equipment used to generate electricity, in the amount of approximately \$12 million. PSCo claims the purchases were exempt from sales or use tax under the “manufacturing machinery” exemption. In addition to the refund, PSCo seeks declaratory relief that future generation of electricity qualifies for the exemption.

*Status.* The Executive Director of the Department of Revenue (DOR) ruled against PSCo in a hearing, but PSCo appealed to the Denver district court and prevailed. The Denver district court entered a \$9.9 million judgment, plus interest. The DOR appealed the decision, and the Court of Appeals issued a decision in favor of PSCo. The DOR filed a petition for certiorari in the Colorado Supreme Court in March 2012, which was granted on January 7, 2013. Briefing before the Court is now complete, and the parties are awaiting the scheduling of oral argument.

*Financial Impact.* The amount of refund claimed is approximately \$12 million. Interest will be ordered if the Department loses, which could result in up to \$20 million.

**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 Plaintiffs filed a notice of appeal to the Colorado Court of Appeals on September 6, 2013, and the parties are in the process of designating the record on appeal. As of early October, no briefing schedule had been set.

*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 over \$300 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 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

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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 assert 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 has generally denied all allegations of negligence, but has conceded liability for negligence claims asserted under new provisions of the CGIA. The State is vigorously defending 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 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. Plaintiffs then filed responses to the motions to dismiss, and the Department is preparing replies in support of the motions to dismiss.

Meanwhile, damages determinations have been referred to a panel of special masters from Judicial Arbiter Group (JAG). Plaintiffs presented damages claims to JAG in September and October 2013, although some continue to file supplements to their claims. The Department currently has until November 23, 2013 to respond to the claims, and JAG has set aside time in December for potential hearings.

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*Financial Impact.* Liability under new provisions of the CGIA for negligence in conducting a controlled fire are limited to \$600,000, and is covered by the Risk Management Fund. The State has conceded this liability and \$600,000 has been reserved in the Fund. Estimates of damage to homes and property in the Lower North Fork wildfire exceed \$68 million. In addition, three persons died in fires that engulfed their homes. Not all insurers with policies in effect in the Lower North Fork burn area have joined in this lawsuit, however all insurers affected by the fire are believed to be contemplating joining this lawsuit or initiating their own lawsuits to assert inverse condemnation claims. Claims have been asserted for the full amount of damages suffered in the fire. While damages under the CGIA are limited to \$600,000 per occurrence, if insurance companies and individual home and business owners in the area successfully plead claims for inverse condemnation and "takings," or if they successfully plead claims under 42 U.S.C. § 1983, liability on their claims will be unlimited. In addition, if inverse condemnation claims are successful, awards could include attorneys' fees and costs of litigation. Fees awarded in inverse condemnation cases are not covered by Risk Management or any insurance policy.

The minimum exposure in this case is \$600,000, and the maximum is in excess of \$68 million. We estimate that damages mediated through the Claims Board could come to around \$30 million.

During the 2013 Session, the General Assembly appropriated \$2.8 million to cover claims then being adjusted through the Claims Board in the process established in Section 24-10-114 (5) (b), C.R.S. Payments to property owners in excess of \$2.8 million was approved by the Claims Board, and the full amount of the appropriation has been distributed to eleven property owners as of the date of this report. Additional appropriations will be sought when the General Assembly convenes in January.

***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 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. On August 5, 2013, the 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. Plaintiffs filed opening briefs on October 24, 2013, and the Defendants' response is currently due in late November.

*Financial Impact.* If S.B. 10-001 is found unconstitutional and enjoined, and the court orders that prior unpaid amounts be repaid to COLA-eligible recipients, the outstanding unpaid COLA amount for 2010 through 2012 could exceed \$250 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.

**RELEVANCE OF BRIEFING ISSUE TO THE DEPARTMENT'S  
PERFORMANCE PLAN:**

This briefing issue, which is included annually, provides a summary of legal cases involving the State that could have a significant financial impact. The Department's first stated objective in its strategic plan is to "minimize risk through the effective representation of client agencies and protect citizens by enforcing regulatory laws and prosecuting cases referred by client agencies".

## **Informational Issue: Implementation of FY 2013-14 Attorney Salary Increases**

The General Assembly appropriated \$4.1 million for salary increases for the Department of Law’s attorneys in FY 2013-14. The Department’s annual salary survey indicates that the Department is competitive with the market for the first time since 2009.

### **SUMMARY:**

- The FY 2013-14 appropriation provided \$4.1 million for salary increases for attorneys at the Department of Law. The Department increased attorney base salaries and adjusted pay ranges upward.
- The Department’s annual salary survey indicates that the Department’s salaries for attorneys are competitive with the market (of Front Range public sector attorneys) for the first time since 2009, and Department managers report that the salary increases have improved morale among the Department’s attorneys and improved the Department’s recruiting and retention.
- The Department’s FY 2014-15 request includes \$358,827 total funds for attorney salary survey increases in order to remain competitive with the market.

### **DISCUSSION:**

#### *Background – FY 2013-14 Salary Increases*

The Department contracts for an annual salary survey to compare attorney salaries at the Department of Law with the comparable market (generally Front Range public sector attorneys). According to this year’s salary survey, conducted by Fox Lawson and Associates, the Department’s salary structure was largely competitive with the market until 2009. However, with Department salaries remaining largely static from FY 2009-10 through FY 2012-13, the Department became less competitive over that period.

In 2012, the Department and the Office of the State Public Defender (OSPD) contracted for a joint salary survey, which again indicated that both agencies were becoming less competitive with the market. In response, OSPD submitted, and the Committee approved, a decision item (OSPD R1) seeking significant salary increases for OSPD attorneys in FY 2013-14. In an effort to maintain parity between OSPD and the Department, the Committee approved a Department of Law “comeback” request to provide \$4.1 million for salary survey increases for the Department’s attorneys in FY 2013-14.<sup>9</sup>

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<sup>9</sup> The FY 2013-14 appropriation also provides \$388,765 total funds for merit pay awards for the Department’s attorneys, to be allocated by Department management based on performance. However, this issue paper focuses on salary survey funding.

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*Implementation*

The Department used the FY 2013-14 funds to both increase base salaries and adjust the pay ranges of each classification of attorney. Base salary increases range from 10 percent for staff level attorneys to 21 percent for some management level staff, in an effort to better align the Department’s salaries with the market. The following table shows the average percentage increases for each classification of attorney.

<b>Attorney Base Salary Increases in FY 2013-14</b>				
<b>Job Title</b>	<b>Placement in Pay Range</b>			
	<b>1st Quartile</b>	<b>2nd Quartile</b>	<b>3rd Quartile</b>	<b>4th Quartile</b>
Assistant AG	11%	10%	10%	10%
Senior Assistant AG	18%	18%	17%	17%
First Assistant AG	21%	21%	20%	20%
Deputy AG	15%	15%	15%	15%

In addition to base salary increases, the Department also adjusted salary ranges upward to align with the comparable market. The following table shows the Department’s percentage adjustment for each title’s salary range as well as the minimum and maximum salaries for each range in FY 2012-13 (before the increase) and in FY 2013-14 (after the increase).

<b>Attorney Salary Range Increases in FY 2013-14</b>					
<b>Job Title</b>	<b>FY 2012-13</b>		<b>Range Adjustment</b>	<b>FY 2013-14</b>	
	<b>Minimum Annual Salary</b>	<b>Maximum Annual Salary</b>		<b>Minimum Annual Salary</b>	<b>Maximum Annual Salary</b>
Assistant AG	\$63,922	\$93,326	4.5%	\$66,798	\$97,526
Senior Assistant AG	75,427	110,124	14.9%	86,666	126,533
First Assistant AG	89,005	129,947	12.7%	100,308	146,450
Deputy AG	105,025	153,337	8.1%	113,531	165,756

*2013 Salary Survey Results*

The Department’s 2013 salary survey found that the FY 2013-14 salary increases reversed a multi-year trend of decreasing competitiveness with the market. According to the report, with the exception of the Attorney I position (a relatively new classification for recent law school graduates who will remain in that classification for less than two years), the Department’s salaries are now highly competitive with the market. The following table shows the Department’s position relative to the market (excluding Attorney I positions) for each year since 2010, as shown in the Draft 2013 Salary Survey Report provided by the Department. Negative percentages indicate a position below the market, while the positive percentages in 2013 indicate that the Department’s salaries are now slightly above the market, although the survey is comparing current year Department salaries to prior year market data.

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<b>Department of Law Position Relative to the Market</b>				
<b>Salary Comparison</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Actual Salaries	-12.6%	-13.3%	-16.8%	6.5%
Range Minimums	-4.6%	-3.2%	-10.1%	2.4%
Range Midpoints	-6.1%	-3.7%	-10.2%	2.4%
Range Maximums	-6.1%	-4.1%	-9.9%	3.1%

Department management has indicated that the salary increases have improved morale among the Department’s attorneys and improved recruiting efforts as indicated by increased numbers of highly qualified applicants for open positions. The Department also expects the salary increases to help retain attorneys and reduce turnover.

*FY 2014-15 Request*

The Department’s FY 2014-15 request includes \$358,827 total funds for salary survey for attorneys as the Department seeks to remain competitive with the market. Based on an option identified in the salary survey report, the request proposes the following salary increases in FY 2014-15: 1.5 percent for assistant AGs, 1.27 percent for senior assistant AGs, and 1.0 percent for first assistant and deputy AGs.

The request also includes \$401,026 total funds for merit pay for attorneys in FY 2014-15. The Department is requesting sufficient merit pay funding to provide 1.5 percent merit pay awards for attorneys, although the funds would actually be allocated by managers based on performance.

**RELEVANCE OF BRIEFING ISSUE TO THE DEPARTMENT'S PERFORMANCE PLAN:**

One of the objectives in the Department’s 2013 strategic plan is to “provide quality legal counsel and representation and provide effort that is satisfactory or greater to client agencies.” The strategic plan states that the “key to this success is retaining quality employees by providing a competitive attorney compensation and benefits packages and a dynamic work environment.” The FY 2013-14 salary increase for attorneys relates directly to that strategy.

## Issue: Continuous Spending Authority for Grant Funds

House Bill 12-1248, sponsored by the Joint Budget Committee, continuously appropriated gifts grants and donations revenues to the Department of Law from FY 2012-13 through FY 2014-15. Without further legislation, the continuous spending authority will end July 1, 2015.

### RECOMMENDATION:

Staff recommends that the Committee consider sponsoring legislation to extend the Department’s continuous spending authority for gifts, grants, and donations beyond FY 2014-15. Staff recommends that the Committee discuss the issue with the Department at the upcoming hearing and consider sponsoring legislation during the 2014 Session.

### DISCUSSION:

In addition to creating a cash fund to support the Legal Services to State Agencies division (discussed in the issue paper beginning on page 12 of this document), H.B. 12-1248 continuously appropriated revenues from gifts, grants, and donations to the Department of Law for FY 2012-13 through FY 2014-15. Without further legislation, the authorization for continuous spending authority will end July 1, 2015.

The continuous spending authority has allowed the Department to accept and spend additional grant amounts above the Long Bill appropriations in FY 2012-13 and FY 2013-14 without requiring legislative action to increase spending authority. The following tables show the original Long Bill appropriations and updated grant amounts for each fiscal year. Without continuous spending authority, the Department would have required supplemental appropriations to spend grant funds above the appropriated amount, delaying utilization of the funds.

<b>FY 2012-13 Department of Law Grant Funding</b>				
Program	Source of Grant	FY 2012-13 Appropriation	FY 2012-13 Actual	Change
Auto Theft Prevention Grant	Department of Public Safety	\$239,075	\$255,694	\$16,619
Appellate Unit - Victims' Assistance	Department of Public Safety	72,651	72,651	0
Defense of Republican River Compact	Department of Natural Resources	<u>110,000</u>	<u>196,138</u>	<u>86,138</u>
Total		\$421,726	\$524,483	\$102,757

<b>FY 2013-14 Department of Law Grant Funding</b>				
Program	Source of Grant	FY 2013-14 Appropriation	FY 2013-14 Estimate	Change
Auto Theft Prevention Grant	Department of Public Safety	\$282,234	\$291,569	\$9,335
Appellate Unit - Victims' Assistance	Department of Public Safety	72,651	76,059	3,408
Defense of Republican River Compact	Department of Natural Resources	<u>110,000</u>	<u>469,265</u>	<u>359,265</u>
Total		\$464,885	\$836,893	\$372,008

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House Bill 12-1248 requires the Department to include a report in its annual budget request describing the receipt and expenditure of moneys under the continuous spending authority created by the bill. The Department has done so.

Staff recommends that the Committee consider sponsoring legislation during the 2014 Session to extend the Department's continuous spending authority for gifts, grants, and donations and that the Committee discuss the issue with the Department at the upcoming hearing. Based on experience from the prior two years, the continuous spending authority has allowed the Department to respond quickly to partner and client agency needs without requiring additional delays awaiting supplemental appropriations.

**RELEVANCE OF BRIEFING ISSUE TO THE DEPARTMENT'S  
PERFORMANCE PLAN:**

This briefing issue discusses the Department's current continuous spending authority for gifts, grants, and donations. It does not relate directly to the Department's performance plan.

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**Appendix A: Number Pages**

	FY 2011-12 Actual	FY 2012-13 Actual	FY 2013-14 Appropriation	FY 2014-15 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. Federal funds are from the Medicaid Fraud Control Program and the Colorado Justice Review Project.

Personal Services	<u>2,937,442</u>	<u>3,046,908</u>	<u>3,139,121</u>	<u>3,408,314</u> *
FTE	39.1	39.4	42.7	43.7
General Fund	0	14,072	0	0
Cash Funds	0	0	0	0
Reappropriated Funds	2,937,442	3,032,836	3,139,121	3,408,314
Health, Life, and Dental	<u>2,261,494</u>	<u>2,597,664</u>	<u>2,850,112</u>	<u>2,945,040</u>
General Fund	577,900	712,358	742,890	808,633
Cash Funds	237,546	307,246	281,594	351,411
Reappropriated Funds	1,385,970	1,497,893	1,697,754	1,682,932
Federal Funds	60,078	80,167	127,874	102,064
Short-term Disability	<u>49,028</u>	<u>60,761</u>	<u>62,042</u>	<u>79,674</u>
General Fund	13,008	14,917	14,917	21,013
Cash Funds	4,457	6,023	6,023	9,039
Reappropriated Funds	30,127	38,675	38,675	47,211
Federal Funds	1,436	1,146	2,427	2,411

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	<b>FY 2011-12 Actual</b>	<b>FY 2012-13 Actual</b>	<b>FY 2013-14 Appropriation</b>	<b>FY 2014-15 Request</b>	<b>Request vs. Appropriation</b>
S.B. 04-257 Amortization Equalization Disbursement	<u>773,099</u>	<u>957,371</u>	<u>1,243,606</u>	<u>1,448,638</u>	
General Fund	203,279	271,731	298,320	382,063	
Cash Funds	70,505	93,597	120,194	164,344	
Reappropriated Funds	476,591	559,668	776,652	858,386	
Federal Funds	22,724	32,375	48,440	43,845	
S.B. 06-235 Supplemental Amortization Equalization Disbursement	<u>620,125</u>	<u>821,620</u>	<u>1,121,769</u>	<u>1,358,099</u>	
General Fund	162,234	232,402	268,385	358,184	
Cash Funds	56,656	80,435	108,507	154,073	
Reappropriated Funds	382,975	480,964	701,147	804,737	
Federal Funds	18,260	27,819	43,730	41,105	
Salary Survey for Classified Employees	<u>0</u>	<u>0</u>	<u>339,441</u>	<u>178,579</u>	
General Fund	0	0	73,571	55,515	
Cash Funds	0	0	70,627	45,002	
Reappropriated Funds	0	0	167,876	64,549	
Federal Funds	0	0	27,367	13,513	
Salary Survey for Exempt Employees	<u>0</u>	<u>0</u>	<u>4,115,142</u>	<u>358,827</u>	
General Fund	0	0	880,758	83,586	
Cash Funds	0	0	125,575	19,198	
Reappropriated Funds	0	0	3,057,736	252,481	
Federal Funds	0	0	51,073	3,562	

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	FY 2011-12 Actual	FY 2012-13 Actual	FY 2013-14 Appropriation	FY 2014-15 Request	Request vs. Appropriation
Merit Pay for Classified Employees	<u>0</u>	<u>0</u>	<u>153,103</u>	<u>168,086</u>	
General Fund	0	0	47,536	60,297	
Cash Funds	0	0	27,435	32,509	
Reappropriated Funds	0	0	65,178	62,611	
Federal Funds	0	0	12,954	12,669	
Merit Pay for Exempt Employees	<u>0</u>	<u>0</u>	<u>388,765</u>	<u>401,426</u>	
General Fund	0	0	90,935	95,729	
Cash Funds	0	0	10,972	17,168	
Reappropriated Funds	0	0	282,623	284,124	
Federal Funds	0	0	4,235	4,405	
Workers' Compensation	<u>66,843</u>	<u>73,256</u>	<u>74,945</u>	<u>107,187</u>	
General Fund	18,378	19,388	20,002	28,911	
Cash Funds	6,919	7,666	8,974	12,523	
Reappropriated Funds	39,449	43,950	43,798	62,664	
Federal Funds	2,097	2,252	2,171	3,089	
Attorney Registration and Continuing Legal Education	<u>92,626</u>	<u>98,138</u>	<u>99,263</u>	<u>126,351</u> *	
General Fund	22,238	21,769	21,769	30,524	
Cash Funds	4,538	3,000	3,000	4,698	
Reappropriated Funds	65,287	72,525	72,525	90,060	
Federal Funds	563	844	1,969	1,069	
Operating Expenses	<u>169,196</u>	<u>193,513</u>	<u>190,629</u>	<u>202,536</u> *	
General Fund	0	0	0	0	
Cash Funds	0	0	0	0	
Reappropriated Funds	169,196	193,513	190,629	202,536	

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	<b>FY 2011-12 Actual</b>	<b>FY 2012-13 Actual</b>	<b>FY 2013-14 Appropriation</b>	<b>FY 2014-15 Request</b>	<b>Request vs. Appropriation</b>
Administrative Law Judge Services	<u>0</u>	<u>1,135</u>	<u>4,362</u>	<u>28,500</u>	
Cash Funds	0	1,135	4,362	28,500	
Purchase of Services from Computer Center	<u>73,188</u>	<u>107,588</u>	<u>55,762</u>	<u>25,348</u>	
Reappropriated Funds	73,188	107,588	55,762	25,348	
Colorado State Network	<u>0</u>	<u>0</u>	<u>166,319</u>	<u>216,084</u> *	
Reappropriated Funds	0	0	166,319	216,084	
Payment to Risk Management and Property Funds	<u>92,047</u>	<u>128,156</u>	<u>128,371</u>	<u>151,505</u>	
General Fund	0	40,207	0	0	
Reappropriated Funds	92,047	87,949	128,371	151,505	
Vehicle Lease Payments	<u>65,989</u>	<u>70,285</u>	<u>62,019</u>	<u>55,970</u>	
General Fund	18,277	19,980	18,377	15,012	
Cash Funds	22,153	21,501	19,889	17,097	
Reappropriated Funds	22,896	26,189	21,138	21,382	
Federal Funds	2,663	2,615	2,615	2,479	
ADP Capital Outlay	<u>0</u>	<u>154,370</u>	<u>0</u>	<u>0</u>	
Cash Funds	0	154,370	0	0	
Information Technology Asset Maintenance	<u>407,667</u>	<u>445,807</u>	<u>445,807</u>	<u>687,291</u> *	
General Fund	15,291	21,754	21,754	183,851	
Cash Funds	59,588	63,299	63,299	80,806	
Reappropriated Funds	331,407	359,373	359,373	402,964	
Federal Funds	1,381	1,381	1,381	19,670	

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	FY 2011-12 Actual	FY 2012-13 Actual	FY 2013-14 Appropriation	FY 2014-15 Request	Request vs. Appropriation
Leased Space	<u>26,220</u>	<u>27,789</u>	<u>27,789</u>	<u>0</u>	
General Fund	4,321	4,580	4,580	0	
Cash Funds	2,880	3,052	3,052	0	
Reappropriated Funds	18,857	19,985	19,985	0	
Federal Funds	162	172	172	0	
Capitol Complex Leased Space	<u>1,284,061</u>	<u>1,270,837</u>	<u>0</u>	<u>0</u>	
General Fund	352,895	332,883	0	0	
Cash Funds	132,910	132,620	0	0	
Reappropriated Funds	757,812	766,375	0	0	
Federal Funds	40,444	38,959	0	0	
Ralph L. Carr Colorado Judicial Center Leased Space	<u>0</u>	<u>0</u>	<u>2,926,487</u>	<u>2,981,376</u>	
General Fund	0	0	760,611	804,130	
Cash Funds	0	0	359,753	348,332	
Reappropriated Funds	0	0	1,718,514	1,743,010	
Federal Funds	0	0	87,609	85,904	
Security for State Services Building	<u>125,430</u>	<u>140,489</u>	<u>0</u>	<u>0</u>	
General Fund	34,472	37,180	0	0	
Cash Funds	12,983	14,704	0	0	
Reappropriated Funds	74,024	84,287	0	0	
Federal Funds	3,951	4,318	0	0	
Communication Services Payments	<u>8,365</u>	<u>10,614</u>	<u>8,988</u>	<u>11,385</u> *	
General Fund	2,946	3,765	3,598	4,558	
Cash Funds	2,269	2,868	2,019	2,558	
Reappropriated Funds	1,146	1,448	1,226	1,552	
Federal Funds	2,004	2,533	2,145	2,717	

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	FY 2011-12 Actual	FY 2012-13 Actual	FY 2013-14 Appropriation	FY 2014-15 Request	Request vs. Appropriation
COFRS Modernization	<u>0</u>	<u>46,428</u>	<u>46,431</u>	<u>46,431</u>	
Reappropriated Funds	0	46,428	46,431	46,431	
Information Technology Security	<u>0</u>	<u>0</u>	<u>2,328</u>	<u>74,753</u> *	
Reappropriated Funds	0	0	2,328	74,753	
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	
<b>TOTAL - (1) Administration</b>	9,057,820	10,257,729	17,657,601	15,066,400	(14.7%)
<i>FTE</i>	<u>39.1</u>	<u>39.4</u>	<u>42.7</u>	<u>43.7</u>	<u>2.3%</u>
General Fund	1,430,239	1,751,986	3,273,003	2,937,006	(10.3%)
Cash Funds	613,404	891,516	1,215,275	1,287,258	5.9%
Reappropriated Funds	6,858,414	7,419,646	12,753,161	10,503,634	(17.6%)
Federal Funds	155,763	194,581	416,162	338,502	(18.7%)

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	FY 2011-12 Actual	FY 2012-13 Actual	FY 2013-14 Appropriation	FY 2014-15 Request	Request vs. Appropriation
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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>19,247,465</u>	<u>19,193,773</u>	<u>21,481,694</u>	<u>25,242,272</u> *
FTE	226.3	225.1	246.0	248.0
General Fund	0	0	0	0
Cash Funds	1,560,550	839,619	821,689	848,945
Reappropriated Funds	17,686,915	18,354,154	20,660,005	24,393,327
Federal Funds	0	0	0	0
Operating and Litigation	<u>1,533,916</u>	<u>598,506</u>	<u>1,731,492</u>	<u>1,767,549</u> *
General Fund	0	0	0	0
Cash Funds	0	0	27,256	0
Reappropriated Funds	1,533,916	598,506	1,704,236	1,767,549
Indirect Cost Assessment	<u>2,809,499</u>	<u>2,950,911</u>	<u>3,264,492</u>	<u>3,329,231</u>
Reappropriated Funds	2,809,499	2,950,911	3,264,492	3,329,231

<b>TOTAL - (2) Legal Services to State Agencies</b>	23,590,880	22,743,190	26,477,678	30,339,052	14.6%
FTE	<u>226.3</u>	<u>225.1</u>	<u>246.0</u>	<u>248.0</u>	<u>0.8%</u>
General Fund	0	0	0	0	0.0%
Cash Funds	1,560,550	839,619	848,945	848,945	0.0%
Reappropriated Funds	22,030,330	21,903,571	25,628,733	29,490,107	15.1%
Federal Funds	0	0	0	0	0.0%

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	FY 2011-12 Actual	FY 2012-13 Actual	FY 2013-14 Appropriation	FY 2014-15 Request	Request vs. Appropriation
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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>2,795,921</u>	<u>3,016,950</u>	<u>3,361,996</u>	<u>3,659,196</u>	
FTE	29.6	30.2	35.8	35.8	
General Fund	1,359,303	1,390,033	1,675,109	1,832,354	
Cash Funds	883,377	1,072,152	1,090,426	1,162,763	
Reappropriated Funds	553,241	554,765	596,461	664,079	
Auto Theft Prevention Grant	<u>196,952</u>	<u>225,409</u>	<u>282,234</u>	<u>301,569</u>	
FTE	2.0	2.3	2.5	2.5	
Reappropriated Funds	196,952	225,409	282,234	301,569	
Appellate Unit	<u>2,603,619</u>	<u>2,709,335</u>	<u>3,240,771</u>	<u>3,707,520</u>	
FTE	30.9	31.3	37.5	38.9	
General Fund	2,219,720	2,195,709	2,603,174	3,383,771	
Reappropriated Funds	383,899	513,626	637,597	323,749	
Medicaid Fraud Control Unit	<u>1,535,692</u>	<u>1,513,539</u>	<u>1,579,511</u>	<u>1,648,189</u>	
FTE	16.6	16.2	17.0	17.0	
General Fund	383,914	394,876	394,876	412,045	
Federal Funds	1,151,778	1,118,663	1,184,635	1,236,144	

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	<b>FY 2011-12 Actual</b>	<b>FY 2012-13 Actual</b>	<b>FY 2013-14 Appropriation</b>	<b>FY 2014-15 Request</b>	<b>Request vs. Appropriation</b>
Peace Officers Standards and Training Board Support	<u>2,529,852</u>	<u>2,488,373</u>	<u>3,062,320</u>	<u>3,073,274</u>	
FTE	4.6	5.5	7.0	7.0	
Cash Funds	2,529,852	2,488,373	3,062,320	3,073,274	
Safe2Tell	<u>100,615</u>	<u>100,416</u>	<u>100,686</u>	<u>107,471</u>	
FTE	1.0	1.0	1.0	1.0	
General Fund	100,615	100,416	100,686	107,471	
Indirect Cost Assessment	<u>440,209</u>	<u>443,705</u>	<u>515,376</u>	<u>522,391</u>	
Cash Funds	222,031	215,830	263,029	266,609	
Reappropriated Funds	71,943	73,184	82,780	83,907	
Federal Funds	146,235	154,691	169,567	171,875	
<b>TOTAL - (3) Criminal Justice and Appellate</b>	10,202,860	10,497,727	12,142,894	13,019,610	7.2%
FTE	<u>84.7</u>	<u>86.5</u>	<u>100.8</u>	<u>102.2</u>	<u>1.4%</u>
General Fund	4,063,552	4,081,034	4,773,845	5,735,641	20.1%
Cash Funds	3,635,260	3,776,355	4,415,775	4,502,646	2.0%
Reappropriated Funds	1,206,035	1,366,984	1,599,072	1,373,304	(14.1%)
Federal Funds	1,298,013	1,273,354	1,354,202	1,408,019	4.0%

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	<b>FY 2011-12 Actual</b>	<b>FY 2012-13 Actual</b>	<b>FY 2013-14 Appropriation</b>	<b>FY 2014-15 Request</b>	<b>Request vs. Appropriation</b>
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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>486,995</u>	<u>540,225</u>	<u>513,883</u>	<u>576,724</u>
FTE	5.3	5.3	5.5	5.5
General Fund	486,995	540,225	513,883	576,724
Defense of the Colorado River Basin Compact	<u>300,355</u>	<u>245,723</u>	<u>335,198</u>	<u>352,289</u>
FTE	3.0	2.6	3.0	3.0
Cash Funds	300,355	245,723	335,198	352,289
Defense of the Republican River Compact	<u>64,156</u>	<u>196,138</u>	<u>110,000</u>	<u>110,000</u>
Cash Funds	64,156	196,138	110,000	110,000
Consultant Expenses	<u>106,426</u>	<u>139,581</u>	<u>400,000</u>	<u>400,000</u>
Cash Funds	106,426	139,581	400,000	400,000
Comprehensive Environmental Response, Compensation and Liability Act	<u>348,625</u>	<u>350,705</u>	<u>460,629</u>	<u>484,300</u>
FTE	3.8	3.2	3.5	3.5
Reappropriated Funds	348,625	350,705	460,629	484,300
Comprehensive Environmental Response, Compensation and Liability Act Contracts	<u>300,440</u>	<u>207,991</u>	<u>425,000</u>	<u>425,000</u>
Reappropriated Funds	300,440	207,991	425,000	425,000

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	FY 2011-12 Actual	FY 2012-13 Actual	FY 2013-14 Appropriation	FY 2014-15 Request	Request vs. Appropriation
Natural Resource Damage Claims at Rocky Mountain Arsenal					
Cash Funds	<u>0</u>	<u>0</u>	<u>50,000</u>	<u>50,000</u>	
Reappropriated Funds	0	0	50,000	50,000	
Indirect Cost Assessment	<u>43,414</u>	<u>43,414</u>	<u>46,731</u>	<u>47,367</u>	
Reappropriated Funds	43,414	43,414	46,731	47,367	
Federal Funds	0	0	0	0	
<b>TOTAL - (4) Water and Natural Resources</b>	1,650,411	1,723,777	2,341,441	2,445,680	4.5%
<i>FTE</i>	<u>12.1</u>	<u>11.1</u>	<u>12.0</u>	<u>12.0</u>	<u>0.0%</u>
General Fund	486,995	540,225	513,883	576,724	12.2%
Cash Funds	470,937	581,442	845,198	862,289	2.0%
Reappropriated Funds	692,479	602,110	982,360	1,006,667	2.5%
Federal Funds	0	0	0	0	0.0%

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	FY 2011-12 Actual	FY 2012-13 Actual	FY 2013-14 Appropriation	FY 2014-15 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>1,691,441</u>	<u>2,133,117</u>	<u>2,046,520</u>	<u>2,338,168</u> *	
FTE	19.3	23.6	25.0	26.0	
General Fund	865,872	931,023	931,023	1,106,670	
Cash Funds	586,642	960,613	874,016	970,919	
Reappropriated Funds	238,927	241,481	241,481	260,579	
Consumer Credit Unit	<u>1,320,369</u>	<u>1,518,093</u>	<u>1,512,150</u>	<u>1,616,183</u>	
FTE	17.9	19.2	20.0	20.0	
Cash Funds	1,320,369	1,518,093	1,512,150	1,616,183	
Indirect Cost Assessment	<u>334,907</u>	<u>471,352</u>	<u>467,308</u>	<u>473,671</u>	
Cash Funds	297,695	434,140	427,253	433,071	
Reappropriated Funds	37,212	37,212	40,055	40,600	
Federal Funds	0	0	0	0	
<b>TOTAL - (5) Consumer Protection</b>	3,346,717	4,122,562	4,025,978	4,428,022	10.0%
<b>FTE</b>	<u>37.2</u>	<u>42.8</u>	<u>45.0</u>	<u>46.0</u>	<u>2.2%</u>
General Fund	865,872	931,023	931,023	1,106,670	18.9%
Cash Funds	2,204,706	2,912,846	2,813,419	3,020,173	7.3%
Reappropriated Funds	276,139	278,693	281,536	301,179	7.0%
Federal Funds	0	0	0	0	0.0%

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	FY 2011-12 Actual	FY 2012-13 Actual	FY 2013-14 Appropriation	FY 2014-15 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>2,479,795</u>	<u>2,656,368</u>	<u>2,676,960</u>	<u>2,697,656</u>	
General Fund	2,479,795	2,656,368	2,676,960	2,697,656	
Federal Funds	0	0	0	0	
Litigation Management and Technology	<u>250,894</u>	<u>325,000</u>	<u>325,000</u>	<u>200,000</u>	*
Cash Funds	250,894	325,000	325,000	200,000	
Tobacco Litigation	<u>745,624</u>	<u>1,239,856</u>	<u>1,250,000</u>	<u>1,250,000</u>	
General Fund	0	0	0	0	
Cash Funds	745,624	1,239,856	1,250,000	1,250,000	
Lobato Litigation Expenses	<u>242,037</u>	<u>0</u>	<u>50,000</u>	<u>0</u>	
Reappropriated Funds	242,037	0	50,000	0	
Lowry Range Litigation Expenses	<u>0</u>	<u>238,007</u>	<u>616,520</u>	<u>392,400</u>	*
Cash Funds	0	238,007	616,520	392,400	

<b>TOTAL - (6) Special Purpose</b>	3,718,350	4,459,231	4,918,480	4,540,056	(7.7%)
FTE	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0%</u>
General Fund	2,479,795	2,656,368	2,676,960	2,697,656	0.8%
Cash Funds	996,518	1,802,863	2,191,520	1,842,400	(15.9%)
Reappropriated Funds	242,037	0	50,000	0	(100.0%)
Federal Funds	0	0	0	0	0.0%

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	<b>FY 2011-12 Actual</b>	<b>FY 2012-13 Actual</b>	<b>FY 2013-14 Appropriation</b>	<b>FY 2014-15 Request</b>	<b>Request vs. Appropriation</b>
<b>TOTAL - Department of Law</b>	51,567,038	53,804,216	67,564,072	69,838,820	3.4%
<i>FTE</i>	<u>399.4</u>	<u>404.9</u>	<u>446.5</u>	<u>451.9</u>	<u>1.2%</u>
General Fund	9,326,453	9,960,636	12,168,714	13,053,697	7.3%
Cash Funds	9,481,375	10,804,641	12,330,132	12,363,711	0.3%
Reappropriated Funds	31,305,434	31,571,004	41,294,862	42,674,891	3.3%
Federal Funds	1,453,776	1,467,935	1,770,364	1,746,521	(1.3%)

## **Appendix B: Recent Legislation Affecting Department Budget<sup>10</sup>**

### **2012 Session Bills**

**S.B. 12-110 (Funding for Insurance Fraud Investigations):** Replaces the existing fee paid by insurance companies to support the Department of Law's efforts to investigate and prosecute allegations of insurance fraud with a tiered fee schedule. Under the tiered fee schedule, regulated insurance entities that receive more than \$1.0 million income in Colorado will pay one fee, and those receiving less than \$1.0 million income will pay a lesser fee. Subjects Pinnacle Assurance to the same tiered fee schedule as other insurance companies. Appropriates \$196,677 cash funds from the Insurance Fraud Cash Fund and 2.0 FTE to the Department of Law for FY 2012-13.

**H.B. 12-1110 (Regulation of Appraisal Management Companies):** Establishes within DORA's Division of Real Estate a licensure program for appraisal management companies. Although the act included an appropriation for FY 2012-13, the act is not effective until July 1, 2013. Thus, the appropriation did not go into effect.

**H.B. 12-1189 (Supplemental):** Supplemental appropriation to the Department of Law to modify FY 2011-12 appropriations included in the FY 2011-12 Long Bill (S.B. 11-209).

**H.B. 12-1246 (Reverse Paydate Shift for Biweekly Employees):** Reverses the annual pay date shift as it applies to state employees paid on a biweekly basis. Appropriates \$8,799 General Fund to the Department of Law for FY 2012-13.

**H.B. 12-1248 (Receipt of Certain Moneys by Law):** For three fiscal years (through June 30, 2015), authorizes the Department of Law to spend gifts, grants, and donations without an appropriation. Requires the Department to include with its annual budget request a report describing the receipt and expenditure of any such moneys. Also creates the Legal Services Cash Fund for purposes of accounting for moneys received from other state agencies for the provision of legal services. Moneys in the Fund are subject to annual appropriation to the Department for the direct and indirect costs associated with providing legal services to state agencies and for any litigation expenses.

**H.B. 12-1300 (Sunset: Professional Review Committee):** Implements the recommendations from DORA 2011 Sunset Review concerning professional review committees under the Colorado Professional Review Act, and extends the functions of the committees until 2019. For FY 2012-13, provides \$2,271 reappropriated funds to the Department of Law for the provision of legal services to DORA.

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<sup>10</sup> 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 2010-11 through FY 2013-14.

**H.B. 12-1303 (Certify Speech-language Pathologists):** Creates within DORA's Division of Registrations a certification program for speech-language pathologists. For FY 2012-13, provides \$16,656 reappropriated funds and 0.1 FTE to the Department of Law for the provision of legal services to DORA.

**H.B. 12-1311 (Sunset: Pharmacy Board):** Modifies and recodifies laws regulating the practice of pharmacy and continues until 2021 the Colorado State Board of Pharmacy, which is located in DORA. For FY 2012-13, provides \$23,092 reappropriated funds to the Department of Law for the provision of legal services to DORA.

**H.B. 12-1330 (Hunting/Fishing License Suspension):** Creates a hearing process to end a suspension of hunting and fishing licenses. For FY 2012-13, provides \$3,028 reappropriated funds to the Department of Law for the provision of legal services to the Department of Natural Resources (DNR).

**H.B. 12-1335 (Long Bill):** General appropriations act for FY 2012-13. Also includes a supplemental adjustment to modify appropriations to the Department of Law included in the FY 2011-12 Long Bill (S.B. 11-209).

## **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).

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**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 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.

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**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

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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.

**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.

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**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.

## **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 \$94.95 per hour for attorneys and not exceed \$70.86 per hour for legal assistants, which equates to a blended rate of \$91.08 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 2013-14, as well as information technology asset maintenance needs that would otherwise require General Fund appropriations during FY 2013-14. 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. The Department is requested to include with its annual budget request information detailing the purpose of line item expenditures. Such information is also requested with any supplemental requests for additional legal services funding within or outside of the Legal Services to State Agencies program.

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. 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

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substantially from year to year and the amount is not known with certainty until after the close of the fiscal year. For example, the excess earnings for FY 2011-12 were not known until July 2012, the first month of the fiscal year in which such earnings could be expended for this line item. As discussed in the issue paper beginning on page 12, the Department did not collect any excess revenues in FY 2012-13. The following table provides a history of excess LSSA revenues, and the portion that reverted to the General Fund.

<b>Excess Legal Services to State Agencies (LSSA) Revenues</b>						
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

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.

<b>Attorney Fees and Costs Account</b>				
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

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Finally, please note that H.B. 12-1248 (which was sponsored by the Joint Budget Committee) requires the Department to credit all moneys received from state agencies as payment for legal services to the newly created Legal Services Cash Fund, beginning in FY 2012-13. Moneys in the Fund are subject to annual appropriation to the Department for the direct and indirect costs associated with providing legal services to state agencies and for any of the Department's litigation expenses.

Because the Department did not collect any excess LSSA revenues in FY 2012-13 (and in fact overexpended available LSSA revenues as discussed in the issue beginning on page 12), there are no excess LSSA revenues available for this line item in FY 2013-14. As a result, any FY 2013-14 expenditures for this line item will consist entirely of the various court awards that are deposited into the Attorneys Fees and Costs Account. Any excess legal services revenues that are earned in FY 2013-14 will be retained in the Legal Services Cash Fund. In order to provide the Department flexibility to spend those revenues, the FY 2014-15 Long Bill appropriation for this line item will consist of two fund sources: excess revenues credited to the Legal Services Cash Fund in FY 2013-14 and various court awards that are deposited into the Attorneys Fees and Costs Account.

*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 2011-12 and FY 2012-13. The majority of the expenditures reported for these two fiscal years were related to the purchase of information technology equipment and software and accounting and taxation expertise associated with litigation efforts.

## **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, 2013, a report concerning the Appellate Unit's progress in reducing its case backlog, including the following data for FY 2012-13: 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, 2013. 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, 2013.

### ***Case Backlog***

The case backlog decreased from 608 cases at the end of FY 2011-12 to 564 at the end of FY 2012-13, a reduction of 44 cases (7.2 percent). At the end of the first quarter of FY 2013-14,

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the backlog had declined to 509 cases. The following table summarizes the relevant data for each year since FY 2008-09.

<b>Appellate Unit Data: FY 2008-09 to FY 2012-13</b>					
	<b>FY 09-10 Actual</b>	<b>FY 10-11 Actual</b>	<b>FY 11-12 Actual</b>	<b>FY 12-13 Actual</b>	<b>FY 13-14 Q1</b>
Opening Briefs Received	1,152	1,050	1,171	1,018	247
Answer Briefs Filed	1,054	1,021	894	885	250
Cases Resolved Via Expedited Docket	59	62	64	72	14
Cases Resolved Via Experimental Docket*	**	**	1	91	36
Case Backlog	434	398	608	564	509
Change in Case Backlog	39	(36)	210	(44)	(55)

\*The Department reports that the Court of Appeals is terminating the experimental docket as of December 31, 2013. The Department is no longer sending new cases to the experimental docket.

\*\* The experimental docket started in April 2012.

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 has now filled all six positions and reports that the new staff filed 21 briefs during the first quarter of FY 2013-14.

***Interagency Working Group on Postconviction Appeals***

The Department reports that there were some delays in establishing the working group because of the logistics of moving various parties involved the working group to the Carr Judicial Center but that the group is now established. The members of the working group include:

*From the Courts:*

Colorado Court of Appeals Chief Judge Alan Loeb  
Court of Appeals Judge Steven Bernard  
Clerk of the Combined Courts Christopher Ryan  
Deputy Clerk of the Courts Polly Brock  
Laurie McKager, District Court Administrator, 18<sup>th</sup> Judicial District

*From the Defense Bar*

Chief Appellate Deputy Public Defender Karen Taylor  
Deputy Public Defender Scott Evans (trial court)  
Alternate Defense Counsel (ADC) Director Lindy Froelich  
Deputy ADC Director Bert Nieslanik  
ADC Paralegal Bonnie Stewart

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*From the Prosecution*

Deputy Solicitor General Catherine P. Adkisson, Appellate Division, Attorney General's Office

The working group has had two meetings thus far, with more to follow as necessary. The Committee has agreed that they need to better understand the statistics regarding postconviction appeals before considering and recommending changes. Committee members are compiling data and reports to better understand the situation and beginning to brainstorm potential ideas.

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 2013 report the requested information about expenditures and recoveries related to the Unit's criminal investigations.

## **Appendix D: Indirect Cost Assessment Methodology**

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### **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 2013-14 was based on FY 2013-14 Long Bill appropriations). For FY 2014-15, the Department's Indirect Cost Pool as requested is \$5,022,029. **Table 1** details the components of the Department's Indirect Cost Pool for FY 2014-15.

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 2014-15 indicates that 80.4 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.*, \$4,038,371 for FY 2014-15). 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.*, \$4,372,661 for FY 2014-15). 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 2014-15. **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 2014-15 among divisions and specific funding sources.

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<b>Table 1: Department of Law Indirect Cost Pool</b>		
<b>Division</b>	<b>Line Item</b>	<b>FY 2014-15 Request</b>
Administration	Personal Services	\$3,408,314
	Health, Life, and Dental	275,555
	Short-term Disability	6,340
	Salary Survey, Classified	34,883
	Salary Survey, Exempt	6,024
	Merit Pay, Classified	39,750
	Merit Pay, Exempt	8,653
	S.B. 04-257 AED	115,280
	S.B. 06-235 SAED	108,075
	Workers' Compensation	10,343
	Attorney Registration and Continuing Legal Education	1,875
	Operating Expenses	202,536
	Vehicle Lease Payments	2,586
	Purchase of Services from Computer Center	25,348
	Colorado State Network	216,084
	Payment to Risk Management and Property Funds	151,505
	Information Technology Security	74,753
	Capitol Complex/ Carr Center Leased Space	287,694
	COFRS Modernization	<u>46,431</u>
	<b>Departmental Indirect Cost Pool</b>	
Multiplied by: Proportion of Departmental Indirect Cost Pool attributed to non-General Fund sources (see Table 2)		<u>80.41%</u>
Equals: Portion of Departmental Indirect Cost Pool recoverable from non-General Fund sources		4,038,371
Plus: Department's share of Statewide Indirect Cost Pool attributed to non-General Fund sources (calculated by Department of Personnel)		<u>334,290</u>
<b>Equals: Total Indirect Cost Pool recoverable from non-General Fund sources</b>		<b>\$4,372,661</b>

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

Division	Line Items Associated with FTE	Full-time Equivalent (FTE) Employees, by Fund Source			Subtotal: FTE Included in Calculation	FTE NOT Included in Calculation	Total FTE	Percent Allocation
		General Fund	Other Fund Sources Which Do NOT Cover Indirect Costs	Other Fund Sources Which DO Cover Indirect Costs				
Administration	Personal Services	0.0	0.0	0.0	0.0	42.7	42.7	0.00%
Legal Services to State Agencies	Personal Services	0.0	0.0	246.0	246.0	0.0	246.0	76.14%
Criminal Justice and Appellate	Special Prosecutions Unit	16.9	0.0	18.9	35.8	0.0	35.8	11.95%
	Auto Theft Prevention Grant	0.0	0.0	0.0	0.0	2.5	2.5	
	Appellate Unit	37.0	1.0	0.0	38.0	0.0	38.0	
	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	7.0	7.0	0.0	7.0	
	Safe2Tell	<u>1.0</u>	<u>0.0</u>	<u>0.0</u>	<u>1.0</u>	<u>0.0</u>	<u>1.0</u>	
	Subtotal	59.2	1.0	38.6	98.8	2.5	101.3	
	Water and Natural Resources	Federal and Interstate Water Unit	5.5	0.0	0.0	5.5	0.0	
	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	15.0	25.0	0.0	25.0	10.83%
	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	35.0	45.0	0.0	45.0	
Total		74.7	4.0	323.1	401.8	45.2	447.0	100.00%
Percent of Total		18.59%	1.00%	80.41%	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.

<b>Table 3</b>			
<b>Department of Law: Allocation of Indirect Costs Among Divisions and Fund Sources</b>			
<b>Division</b>	<b>Fund Source</b>	<b>Percentage (from Table 2)</b>	<b>Dollars</b>
Legal Services to State Agencies	Legal Services Cash Fund	76.14%	\$3,329,231
Criminal Justice and Appellate	Federal Medicaid Fraud Control Program		173,081
	Insurance Fraud Cash Fund		141,735
	P.O.S.T. Board Cash Fund		95,399
	Transfer from DORA from Division of Securities Cash Fund		80,407
	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		11.95%
Water and Natural Resources	Transfers from DPHE from the Hazardous Substance Response Fund		47,699
	Colorado Water Conservation Board’s Litigation Fund		0
	Subtotal		1.08%
Consumer Protection	Collection Agency Cash Fund or Uniform Consumer Credit Code Cash Fund		272,568
	Custodial moneys		190,798
	Transfers from DORA from the Mortgage Company and Loan Originator Licensing Cash Fund		40,885
	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		10.83%
Total (from Table 1)			\$4,372,661

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 2014-15 Indirect Cost Assessment Request**

For FY 2014-15 the Department has requested indirect cost assessments totaling \$4,372,660. This amount matches the Indirect Cost Pool calculated in Table 1 (with a \$1 rounding difference). **Table 4** details the FY 2014-15 Department indirect cost assessment for each division based on the November 1, 2013, budget request. The FY 2014-15 indirect cost assessment request represents an increase of \$78,753 compared to FY 2013-14.

<b>Table 4</b>				
<b>Department of Law: Indirect Cost Assessment Request</b>				
<b>Division</b>	<b>Total</b>	<b>Cash Funds</b>	<b>Reappropriated Funds</b>	<b>Federal Funds</b>
Legal Services to State Agencies	\$3,329,231	\$0	\$3,329,231	\$0
Criminal Justice and Appellate	522,391	266,609	83,907	171,875
Water and Natural Resources	47,367	0	47,367	0
Consumer Protection	<u>473,671</u>	<u>433,071</u>	<u>40,600</u>	<u>0</u>
<b>Total FY 2014-15 Request</b>	<b>\$4,372,660</b>	<b>\$699,680</b>	<b>\$3,501,105</b>	<b>\$171,875</b>
FY 2013-14 Indirect Cost Assessment	<u>4,293,907</u>	<u>690,282</u>	<u>3,434,058</u>	<u>169,567</u>
<b>Difference (FY 13-14 less FY 12-13)</b>	<b>\$78,753</b>	<b>\$9,398</b>	<b>\$67,047</b>	<b>\$2,308</b>

## Appendix E: Change Requests' Relationship to Measures

This appendix will show how the Department of Law indicates each change request ranks in relation to the Department's top priorities and what measures the Department is using to measure success of the request.

<b>Change Requests' Relationship to Performance Measures</b>			
<b>R</b>	<b>Change Request Description</b>	<b>Goals / Objectives</b>	<b>Performance Measures</b>
1	Asset maintenance	In attempting to improve the Department's efficiency and information security, this request supports a variety of the Department's goals. However, it does not link directly to any of the goals or objectives in the Department's 2013 performance plan.	This request does not appear to relate to the performance measures in the Department's 2013 performance plan.
2	Consumer protection complaint intake	The Department has broad jurisdiction over consumer protection cases. This request is designed to improve the efficiency of complaint intake, processing, and review, and accelerate the consumer protection unit's handling of complaints. As such, it relates to the following objective:  <i>"Facilitate consumer protection and maintain integrity through consumer protection and antitrust enforcement efforts."</i>	<i>Consumer Protection:</i> The Department targets a specific number of suits and/or settlements with individuals and entities engaged in deceptive trade practices each year (the Department's annual target is 60). If the requested position increase the efficiency of the consumer protection unit in responding to and investigating complaints, then the added position <i>could</i> impact that measure. The Department has not indicated that it anticipates an impact on the performance measure.
3	Database administrator	In attempting to improve the Department's efficiency and information security, this request supports a variety of the Department's goals. However, it does not link directly to any of the goals or objectives in the Department's 2013 performance plan.	This request does not appear to relate to the performance measures in the Department's 2013 performance plan.
4	Appellate administrative assistant	The request would add an additional administrative assistant to the appellate unit in an effort to achieve an attorney/administrative assistant ratio comparable to the Department's other units. To the extent that an additional administrative position could increase the efficiency of the appellate unit, the request could relate to the unit's objective:  <i>"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."</i>	<i>Cases Resolved/ Case Backlog:</i> The Department measures the unit's success rate (the percentage of cases with a successful outcome on appeal) with a goal of at least 90 percent. To the extent that the additional administrative assistant allows attorneys to focus on and improve legal work, the requested position <i>could</i> impact that measure. The Department has not indicated that it anticipates an impact on the performance measure.
5	Lowry Range litigation	This request seeks additional funding to support ongoing litigation regarding the State Land Board's Lowry Range property. It would augment LSSA funding for the litigation and as such could relate to the following objective:  <i>"To provide legal counsel and representation and provide effort that is satisfactory or greater to client agencies."</i>	<i>Representation of Client Agencies:</i> The Department annually surveys client agencies to measure satisfaction with the Department's legal services. By allowing additional resources for the Lowry Range litigation, this request <i>could</i> increase the client agency's satisfaction with the Department's services.
6	Attorney registration and CLE	This request seeks additional funding to cover increased annual attorney registration costs in FY 2014-15. It does not appear to relate directly to the objectives in the Department's performance plan.	This request does not appear to relate to the performance measures in the Department's 2013 performance plan.

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**Appendix F: Recent Legislation Impacting Legal Services to State Agencies (FY 2010-11 to FY 2013-14)**

Department Bill (Description)	FY 2010-11		FY 2011-12		FY 2012-13		FY 2013-14	
	Approp. to LSSA /1	Original Funding Source						
<b>APPROPRIATION/ BUDGET BILLS:</b>								
Long Bill Appropriation for Legal Services to State Agencies' section (excludes central appropriations)	22,741,379		23,762,512		25,131,930		26,129,383	
Supplemental Bill(s)	910,498				477,711			
S.B. 11-076 (PERA contribution rates)			(451,303)					
<b>SUBTOTAL: Appropriation/ Budget Bills</b>	<b>23,651,877</b>		<b>23,311,209</b>		<b>25,609,641</b>		<b>26,129,383</b>	
<b>SEPARATE LEGISLATION:</b>								
<b>Agriculture</b>								
S.B. 10-072 (Colorado Seed Potato Act)	905	CF						
S.B. 13-241 (Registration of Industrial Hemp Growers)							13,905	GF
<b>Corrections</b>								
None								
<b>Education</b>								
H.B. 11-1121 (Safer Schools Act of 2011)			11,005	CF				
Subtotal			11,005					
<b>Governor-Lt. Governor-State Planning and Budgeting</b>								
None								
<b>Health Care Policy and Financing</b>								
S.B. 13-200 (Expand Medicaid Eligibility)							24,910	CF
<b>Higher Education</b>								
None								
<b>Human Services</b>								
None								
<b>Judicial Branch</b>								
None								
<b>Labor and Employment</b>								
H.B. 13-1292 (Keep Jobs in Colorado Act)							34,762	GF
<b>Law</b>								
None								

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**Appendix F: Recent Legislation Impacting Legal Services to State Agencies (FY 2010-11 to FY 2013-14)**

Department Bill (Description)	FY 2010-11		FY 2011-12		FY 2012-13		FY 2013-14	
	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
<b>Legislative Branch</b> None								
<b>Local Affairs</b> None								
<b>Military and Veterans Affairs</b> None								
<b>Natural Resources</b> H.B. 12-1330 (Hunting/Fishing License Suspension)					3,028	CF		
<b>Personnel and Administration</b> H.B. 10-1176 (Require Government Recovery Audits) H.B. 13-1292 (Keep Jobs in Colorado Act)	2,000	GF					11,588	GF
<b>Public Health and Environment</b> H.B. 10-1018 (Reduce Waste Tire Stockpile Risks) H.B. 10-1125 (Regulate Grease Collection and Disposal) S.B. 13-219 (Methamphetamine Laboratory Remediation)	15,076 7,538	CF CF					<u>15,450</u>	CF
Subtotal	22,614		0				15,450	
<b>Public Safety</b> S.B. 11-251 (Division of Fire Safety Duties) S.B. 13-083 (Creation of Prescribed Burn Program)			7,337	CF			4,635	FF
<b>Regulatory Agencies</b> S.B. 10-109 (Medical Marijuana Dr Patient Relations) S.B. 10-124 (Michael Skolnik Medical Transparency) H.B. 10-1128 (Registrations Regulatory Efficiency) H.B. 10-1141 (Mortgage Company Registration) H.B. 10-1148 (Architect License Renewal Professional Competency) H.B. 10-1224 (Sunset: Podiatry Board) H.B. 10-1260 (Sunset: Board Medical Examiners) H.B. 10-1278 (Create HOA Ombudsman) H.B. 10-1365 (Incent Utility Convert Coal to Natural Gas) H.B. 10-1415 (Sunrise: Surgical Technologist Registration)	612,463 7,538 (9,799) 6,407 (11,307) 2,261 17,262 15,679 13,041 3,769	CF CF (from CF CF CF CF CF CF CF CF						

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**Appendix F: Recent Legislation Impacting Legal Services to State Agencies (FY 2010-11 to FY 2013-14)**

Department Bill (Description)	FY 2010-11		FY 2011-12		FY 2012-13		FY 2013-14	
	Approp. to LSSA /1	Original Funding Source						
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		
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)							<u>16,995</u>	CF
Subtotal	657,314		274,995		42,019		164,636	
<b>Revenue</b>								
H.B. 10-1193 (Sales Tax Out-of-state Retailers)	40,000	GF						
H.B. 10-1284 (Medical Marijuana Regulation)	271,368	CF						

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**Appendix F: Recent Legislation Impacting Legal Services to State Agencies (FY 2010-11 to FY 2013-14)**

Department Bill (Description)	FY 2010-11		FY 2011-12		FY 2012-13		FY 2013-14	
	Approp. to LSSA /1	Original Funding Source						
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
H.B. 13-1317 (Implementation of Amendment 64 - Majority Recommendations)							70,684	CF
Subtotal	311,368		1,349,581				78,409	
<b>State</b>								
S.B. 10-203 (Independent Expenditures After Citizens United)	4,522	CF						
<b>Transportation</b>								
None								
<b>Treasury</b>								
None								
<b>SUBTOTAL: Separate legislation</b>	<b>995,818</b>		<b>1,635,581</b>		<b>45,047</b>		<b>348,295</b>	
<b>Number of Bills</b>	<b>17</b>		<b>12</b>		<b>4</b>		<b>4</b>	
<b>TOTAL</b>	<b>24,647,695</b>		<b>24,946,790</b>		<b>25,654,688</b>		<b>26,477,678</b>	
<b>Total FTE Appropriated</b>	<b>237.5</b>		<b>237.8</b>		<b>241.5</b>		<b>246.0</b>	

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 2013-14 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
<b>Agriculture</b>							
Commissioner's Office and Administrative Services, Legal Services	4,653.0	\$136,125	\$272,670		\$15,000		\$423,795
Colorado State Fair, Program Costs	180.0		16,394				16,394
S.B. 13-241	<u>180.0</u>	<u>13,905</u>					<u>13,905</u>
Agriculture - Total	5,013.0	150,030	289,064	0	15,000		454,094
<b>Corrections</b>							
Management, Executive Director's Office Subprogram, Legal Services	15,298.0	1,345,981	47,362				1,393,343
<b>Education</b>							
Management and Administration, Administration and Centrally-Appropriated	4,900.0	253,385	174,691	18,216	0		446,292
<b>Governor</b>							
Office of the Governor, Special Purpose, Legal Services (general)	5,051.0	460,045					460,045
Colorado Energy Office, Legal Services	1,100.0		73,088		27,100		100,188
Office of Information Technology, Management and Administration of OIT, Legal Services	<u>489.0</u>			<u>44,538</u>			<u>44,538</u>
Governor - Total	6,640.0	460,045	73,088	44,538	27,100		604,771
<b>Health Care Policy and Financing</b>							
Executive Director's Office, General Administration, Legal Services	13,592.0	420,907	198,073		618,979		1,237,959
S.B. 13-200	<u>322.5</u>		<u>12,455</u>		<u>12,455</u>		<u>24,910</u>
Health Care Policy and Financing - Total	13,914.5	420,907	210,528		631,434		1,262,869
<b>Higher Education</b>							
Department Administrative Office, Legal Services	448.0		11,260	29,544			40,804
Estimated legal services purchased by institutions	<u>10,900.0</u>					<u>992,772</u>	<u>992,772</u>
Higher Education - Total	11,348.0	0	11,260	29,544	0	992,772	1,033,576
<b>Human Services</b>							
Executive Director's Office, General Administration, Legal Services	18,439.0	1,417,160	189,885	14,802	57,577		1,679,424
<b>Judicial Branch</b>							
Courts Administration, Central Appropriations, Legal Services	2,204.0	200,740					200,740
Independent Ethics Commission, Legal Services	<u>900.0</u>	<u>81,972</u>					<u>81,972</u>
Judicial - Total	3,104.0	282,712	0	0	0		282,712
<b>Labor and Employment</b>							
Executive Director's Office, Legal Services	7,905.0		191,676		528,311		719,987

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**Appendix G: FY 2013-14 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
Division of Workers' Compensation, Major Medical Insurance and Subsequent Injury Funds, Major Medical Legal Services	100.0		9,108				9,108
Division of Workers' Compensation, Major Medical Insurance and Subsequent Injury Funds, Subsequent Injury Legal Services	350.0		31,878				31,878
H.B. 13-1292	<u>450.0</u>	<u>34,762</u>					<u>34,762</u>
Labor - Total	8,805.0	34,762	232,662	0	528,311		795,735
<b>Law</b>							
Law - Total	0.0	0	0	0	0		0
<b>Legislative Branch</b>							
General Assembly, Legal Services	188.0	17,123					17,123
<b>Local Affairs</b>							
Executive Director's Office, Legal Services	1,790.0	148,246	7,538	1,968	5,281		163,033
<b>Military and Veterans Affairs</b>							
Executive Director and Army National Guard	110.0	10,019					10,019
<b>Natural Resources</b>							
Executive Director's Office, Legal Services	46,992.0	1,003,109	3,172,117	43,853	60,951		4,280,030
State Board of Land Commissioners - Lowry Range Lawsuit	<u>3,600.0</u>					<u>327,888</u>	<u>327,888</u>
Natural Resources - Total	50,592.0	1,003,109	3,172,117	43,853	60,951	327,888	4,607,918
<b>Personnel and Administration</b>							
Executive Director's Office, Department Administration, Legal Services	2,563.0	163,615	11,158	58,665			233,438
Division of Human Resources, Risk Management Services, Legal Services	31,860.0			2,901,809			2,901,809
Division of Human Resources, Risk Management Services, Workers' Compensation Legal Services	1,800.0			163,944			163,944
Constitutionally Independent Entities, Personnel Board, Legal Services	330.0	30,056					30,056
H.B. 13-1292	<u>150.0</u>	<u>11,588</u>					<u>11,588</u>
Personnel and Administration - Total	36,703.0	205,259	11,158	3,124,418	0	0	3,340,835
<b>PERA</b>							
Estimated legal services purchased by PERA	29.0					2,641	2,641
<b>Public Health and Environment</b>							
Administration and Support, Administration, Legal Services	28,427.0			2,589,131			2,589,131
Hazardous Materials and Waste Management Division, Administration, Legal Services	5,232.0		319,783	455	156,293		476,531

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**Appendix G: FY 2013-14 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
Hazardous Materials and Waste Management Division, Contaminated Site Cleanups and Remediation Programs, Rocky Flats Legal Services	139.0				12,660		12,660
S.B. 13-219	<u>200.0</u>		<u>15,450</u>				<u>15,450</u>
Public Health and Environment - Total	33,998.0	0	335,233	2,589,586	168,953		3,093,772
<b>Public Safety</b>							
Executive Director's Office, Administration, Legal Services	3,616.0	107,094	202,532	19,719			329,345
S.B. 13-083	<u>60.0</u>				<u>4,635</u>		<u>4,635</u>
Public Safety - Total	3,676.0	107,094	202,532	19,719	4,635		333,980
<b>Regulatory Agencies</b>							
Executive Director's Office and Administrative Services, Legal Services	105,435.0	186,557	9,137,364	106,439	172,660		9,603,020
S.B. 13-014	30.0		2,318				2,318
S.B. 13-026	100.0		7,725				7,725
S.B. 13-039	146.0		11,294				11,294
S.B. 13-151	275.0		21,244				21,244
S.B. 13-162	75.0		5,794				5,794
S.B. 13-172	65.0		5,021				5,021
S.B. 13-180	165.0		12,746				12,746
S.B. 13-207	80.0		6,180				6,180
S.B. 13-221	900.0		69,525				69,525
S.B. 13-238	75.0		5,794				5,794
H.B. 13-1111	<u>220.0</u>		<u>16,995</u>				<u>16,995</u>
Regulatory Agencies - Total	107,566.0	186,557	9,302,000	106,439	172,660		9,767,656
<b>Revenue</b>							
Executive Director's Office, Legal Services (includes Gaming and Lottery)	38,842.0	2,374,091	1,163,638				3,537,729
S.B. 13-251	100.0	7,725					7,725
H.B. 13-1317	<u>915.0</u>		<u>70,684</u>				<u>70,684</u>
Revenue - Total	39,857.0	2,381,816	1,234,322				3,616,138
<b>State</b>							
Administration, Legal Services	7,118.0		648,307				648,307
<b>Transportation</b>							
Administration	6,580.0		599,306				599,306
Construction, Maintenance, and Operations	<u>9,852.0</u>		<u>897,320</u>				<u>897,320</u>
Transportation - Total	16,432.0		1,496,626				1,496,626

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**Appendix G: FY 2013-14 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
Treasury Administration, Legal Services	575.0	26,186	26,185				52,371
<b>GRAND TOTAL</b>	<b>386,095.5</b>	<b>8,450,391</b> 24.1%	<b>17,664,558</b> 50.3%	<b>5,993,083</b> 17.1%	<b>1,671,902</b> 4.8%	<b>1,323,301</b> 3.8%	<b>35,103,235</b> 100.0%
Legislation Other Than Long Bill	4,508.5	67,980	263,225		17,090		348,295
<b>LONG BILL ONLY</b>	<b>381,587.0</b>	<b>8,382,411</b> 24.1%	<b>17,401,333</b> 50.1%	<b>5,993,083</b> 17.2%	<b>1,654,812</b> 4.8%	<b>1,323,301</b> 3.8%	<b>34,754,940</b> 100.0%

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**Appendix H: Hours of Legal Services Provided, by Agency (FY 2003-04 to FY 2013-14)**

<b>Hours of Legal Services Provided to State Agencies, by Agency</b>											<b>FY 13-14 (Approp./ Estim.)</b>
<b>DEPARTMENT</b>	<b>FY 03-04</b>	<b>FY 04-05</b>	<b>FY 05-06</b>	<b>FY 06-07</b>	<b>FY 07-08</b>	<b>FY 08-09</b>	<b>FY 09-10</b>	<b>FY 10-11</b>	<b>FY 11-12</b>	<b>FY 12-13</b>	
Regulatory Agencies	81,668	82,080	81,361	84,589	90,369	98,008	99,427	100,781	95,895	94,212	107,566
Natural Resources	36,857	35,944	38,521	37,763	40,010	41,237	43,305	44,614	43,856	45,423	50,592
Revenue	10,532	10,079	8,943	11,133	12,630	12,789	12,836	23,227	37,466	35,215	39,857
Personnel and Administration	35,840	37,923	39,831	38,261	41,171	34,711	31,710	35,295	34,336	31,354	36,703
Public Health and Environment	23,782	21,794	24,462	23,608	26,495	28,816	28,245	27,475	29,745	31,103	33,998
Human Services	17,776	19,477	20,663	20,416	19,849	21,072	21,015	19,639	18,862	18,471	18,439
Transportation	16,151	16,002	17,159	16,467	16,902	18,242	15,846	14,894	15,143	12,392	16,432
Corrections	15,863	17,875	15,508	13,830	11,748	14,619	18,647	14,619	13,337	16,451	15,298
Health Care Policy and Financing	13,260	12,300	11,642	11,132	10,249	11,682	10,147	10,982	11,885	11,198	13,915
Higher Education	10,283	10,747	11,549	11,475	10,142	13,402	13,114	12,879	13,002	11,875	11,348
Labor and Employment	7,788	7,086	7,144	7,125	7,926	8,338	8,169	8,881	9,406	7,498	8,805
State	2,258	2,490	3,034	4,963	4,125	3,066	4,187	5,058	6,645	3,700	7,118
Governor	3,210	3,326	1,509	1,718	1,268	2,653	6,442	15,003	9,292	5,552	6,640
Education	3,014	3,147	4,792	4,827	4,786	5,712	4,610	4,080	3,685	3,142	4,900
Agriculture	3,148	3,365	3,079	3,460	4,315	4,501	4,129	3,841	4,712	4,325	5,013
Judicial Branch	4,084	3,588	3,990	2,838	2,698	2,949	2,458	1,700	2,145	2,309	3,104
Public Safety	1,946	1,966	1,971	2,040	1,953	2,146	1,682	2,161	3,856	4,156	3,676
Local Affairs	1,598	2,248	1,427	1,671	2,462	980	1,917	1,657	1,493	1,588	1,790
Treasury	188	1,190	576	599	756	1,220	1,675	1,635	2,186	1,697	575
Legislative Branch	247	179	225	55	264	152	106	98	66	70	188
Military and Veterans Affairs	15	100	107	24	15	43	131	510	124	78	110
PERA	13	38	27	10	5	13	29	2	2	7	29
Law	<u>12</u>	<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>0</u>
<b>GRAND TOTAL</b>	<b>289,529</b>	<b>292,959</b>	<b>298,041</b>	<b>298,291</b>	<b>310,387</b>	<b>326,576</b>	<b>329,907</b>	<b>349,184</b>	<b>357,139</b>	<b>341,814</b>	<b>386,096</b>
Annual change	(9,636)	3,430	5,082	250	12,096	16,189	3,331	19,277	7,955	(15,325)	44,281
Annual % change	-3.2%	1.2%	1.7%	0.1%	4.1%	5.2%	1.0%	5.8%	2.3%	-4.3%	13.0%