

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



FY 2011-12 STAFF BUDGET BRIEFING

DEPARTMENT OF LAW

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

**Prepared By:
Stephen P. Allen, JBC Staff
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For Further Information Contact:

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

**FY 2011-12 BUDGET BRIEFING
STAFF PRESENTATION TO THE JOINT BUDGET COMMITTEE**

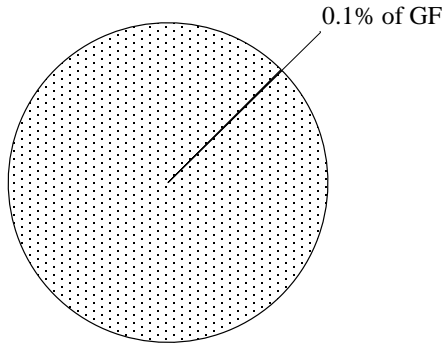
DEPARTMENT OF LAW

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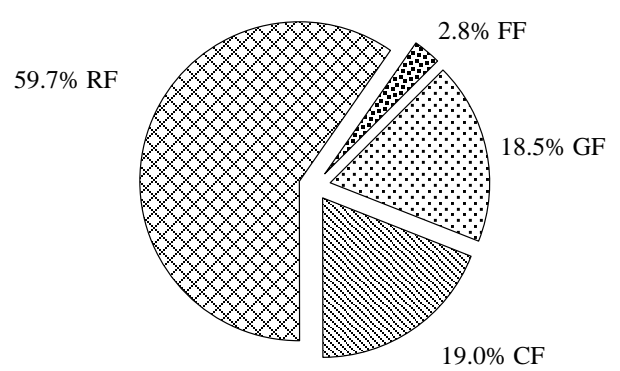
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**FY 2011-12 Joint Budget Committee Staff Budget Briefing
Department of Law
GRAPHIC OVERVIEW**

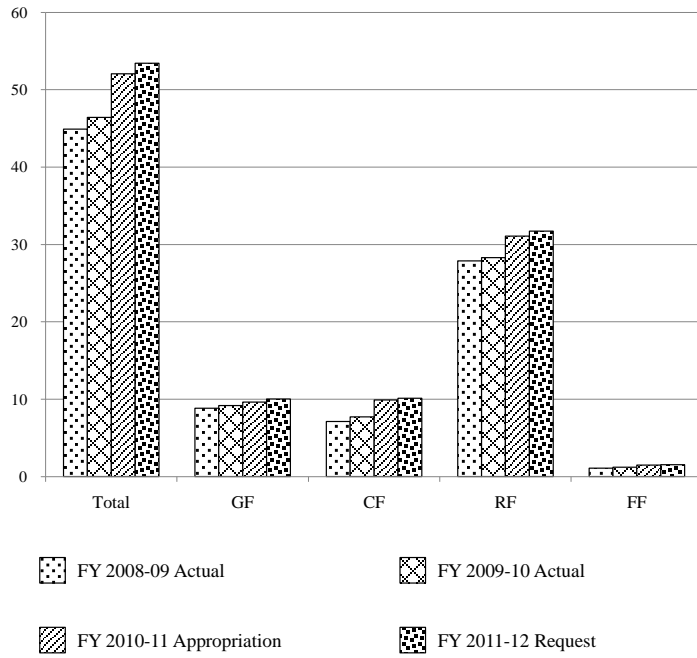
Department's Share of Statewide General Fund



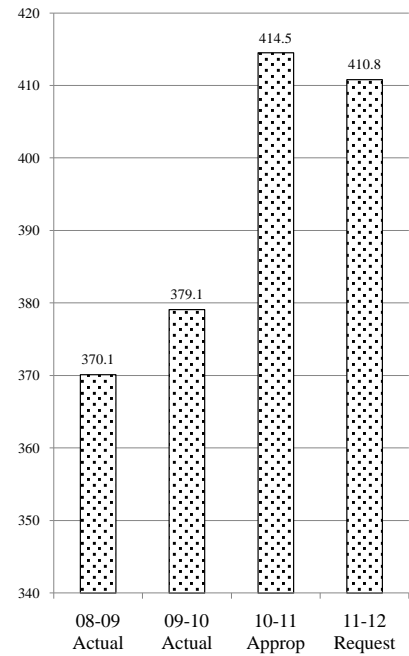
Department Funding Sources



**Budget History
(Millions of Dollars)**

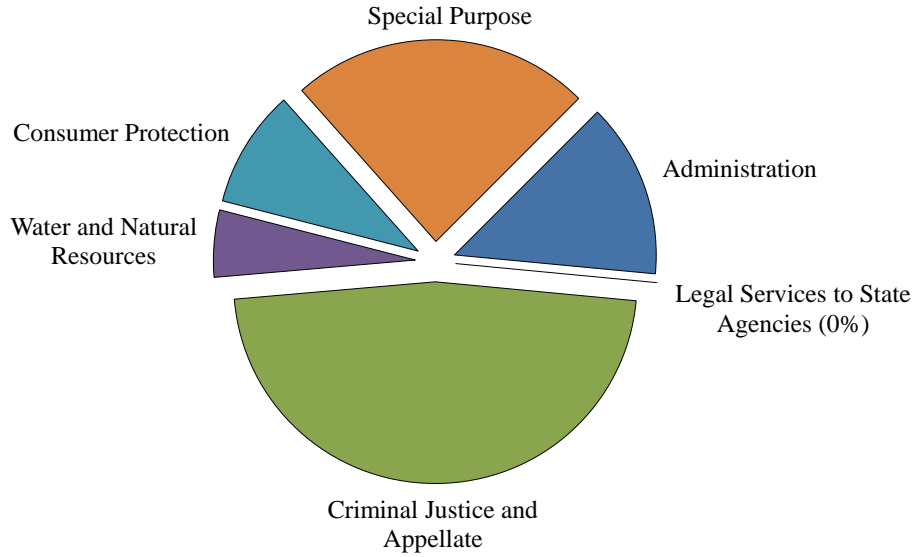


FTE History

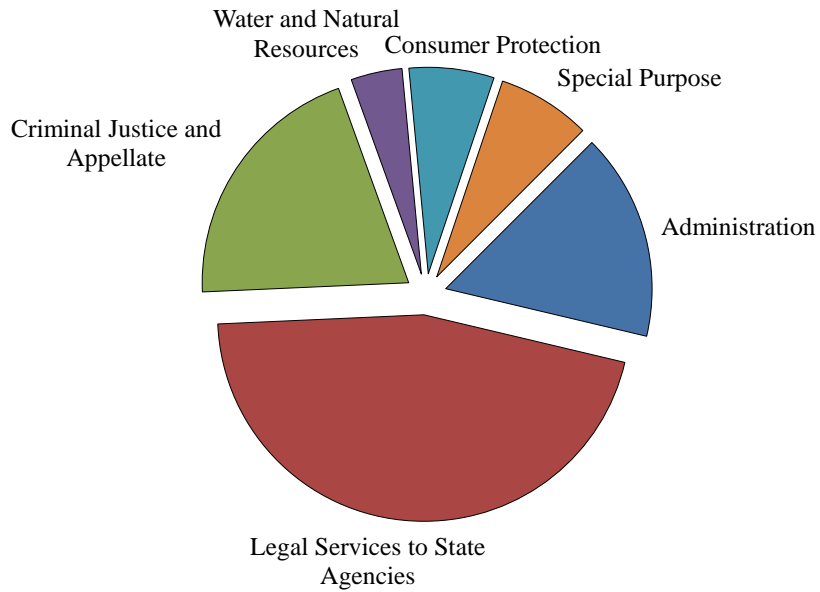


Unless otherwise noted, all charts are based on the FY 2010-11 appropriation.

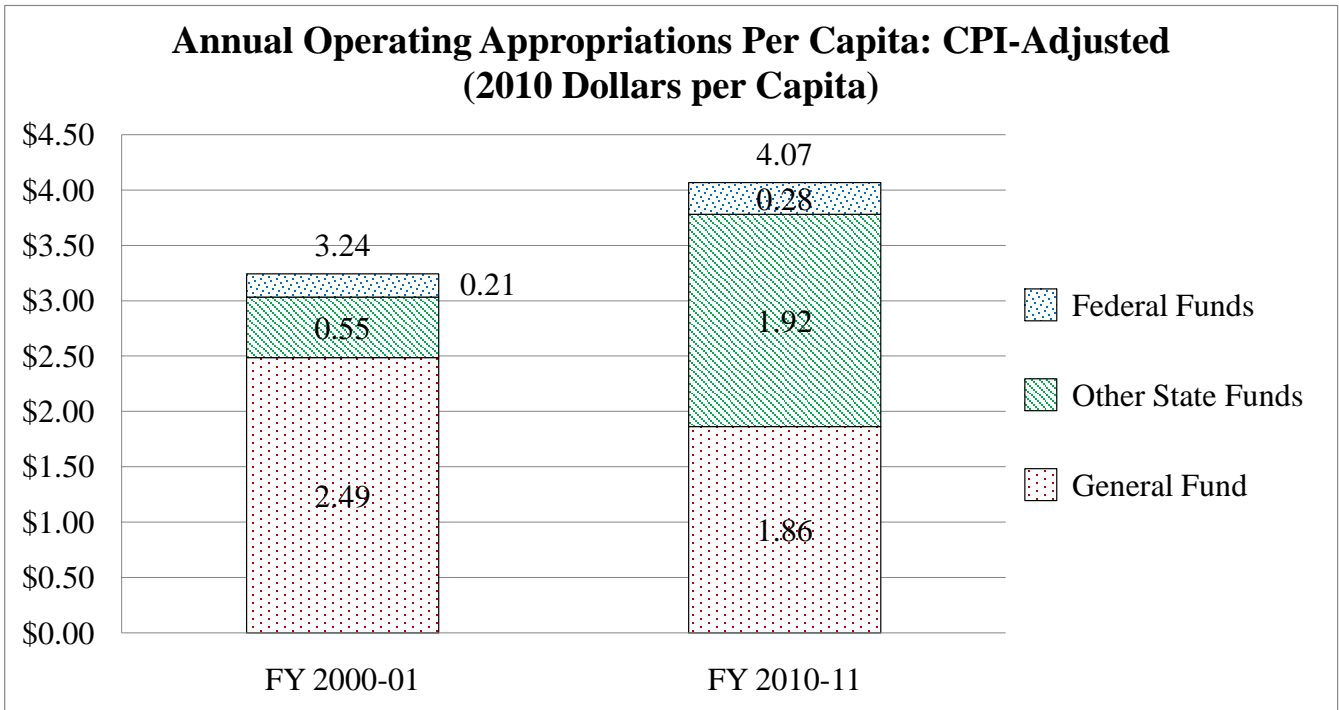
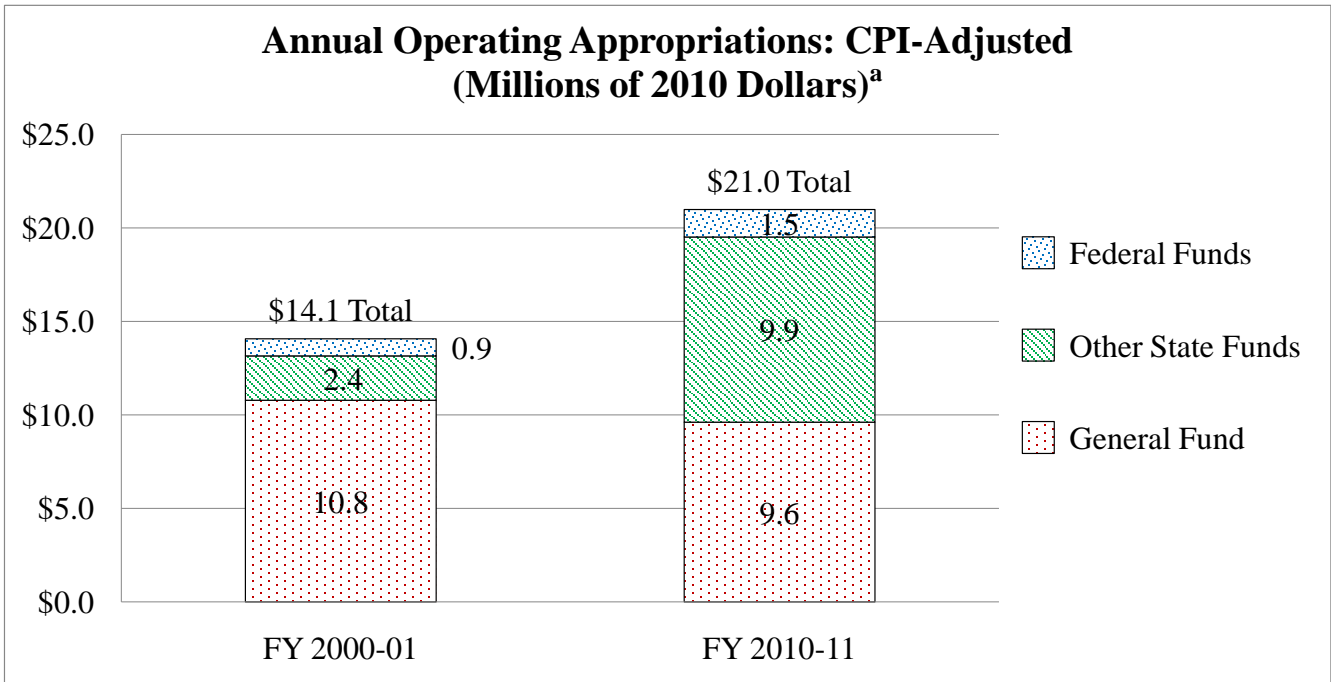
Distribution of General Fund by Division



Distribution of Total Funds by Division



FY 2011-12 Joint Budget Committee Staff Budget Briefing
Department of Law
COMPARISON OF FY 2000-01 AND FY 2010-11 APPROPRIATIONS



NOTES: a/ All appropriations above *exclude* duplicate appropriations (i.e., transferred amounts that were noted with a "(T)" for FY 2000-01 and "reappropriated funds" for FY 2010-11). For the department of Law, these amounts primarily reflect payments received from other state agencies for the provision of legal services.

b/ For the purpose of providing comparable figures, FY 2000-01 appropriations are adjusted to reflect changes in the Denver-Boulder-Greeley consumer price index (CPI) from 2000 to 2010. Based on the Legislative Council Staff September 2010 Economic and Revenue Forecast, the CPI is projected to increase 21.9 percent over this period.

c/ In the second table, above, appropriations are divided by the Colorado population (for 2000 and 2010, respectively). Based on the Legislative Council Staff September 2010 Economic and Revenue Forecast, Colorado population is projected to increase by 18.9 percent over this period.

**FY 2011-12 Joint Budget Committee Staff Budget Briefing
Department of Law**

DEPARTMENT OVERVIEW

Key Responsibilities

Legal Counsel and Advice to the State

- ▶ Provide legal services such as legal representation, legal opinions, contract review, and rule writing assistance.

Civil Litigation

- ▶ Enforce state consumer credit and debt collection laws
- ▶ Enforce consumer protection and antitrust laws.
- ▶ Represent the state 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, frequently called the Superfund Act).

Criminal Enforcement

- ▶ Represent the State in criminal appeal cases.
- ▶ Assist local district attorneys with homicide cases.
- ▶ Investigate and prosecute Medicaid-related crimes.
- ▶ Investigate and prosecute securities, insurance, and workers' compensation fraud.
- ▶ Certify and help train peace officers appointed by state and local law enforcement agencies (P.O.S.T. Board).

Factors Driving the Budget

Legal Services Provided to State Agencies

Since 1973, the Department of Law has provided legal services to other state agencies under the "Oregon" plan. The General Assembly makes legal-services appropriations to state agencies and these agencies use the spending authority to purchase legal services from the Department of Law, much as they would purchase legal services from a private-sector law firm. The Department of Law collects the payments when it provides the legal services, billing attorney hours at a uniform rate and paralegal hours at another lower uniform rate. These two rates are commonly summarized by a single "blended" legal rate, a weighted average of the two that is reported in the following table. Since the Department of Law cannot spend the money it collects unless it too has an appropriation, the General Assembly must make dual appropriations for legal services, one to the state agency that buys the services and another equal appropriation to the Department of Law's Legal Services to State

Agencies (LSSA) Division, which delivers the services. Total LSSA billings for recent years are shown in the following table and pie chart. As the table indicates, seven departments account for over 80 percent of the legal services that the Department supplies.

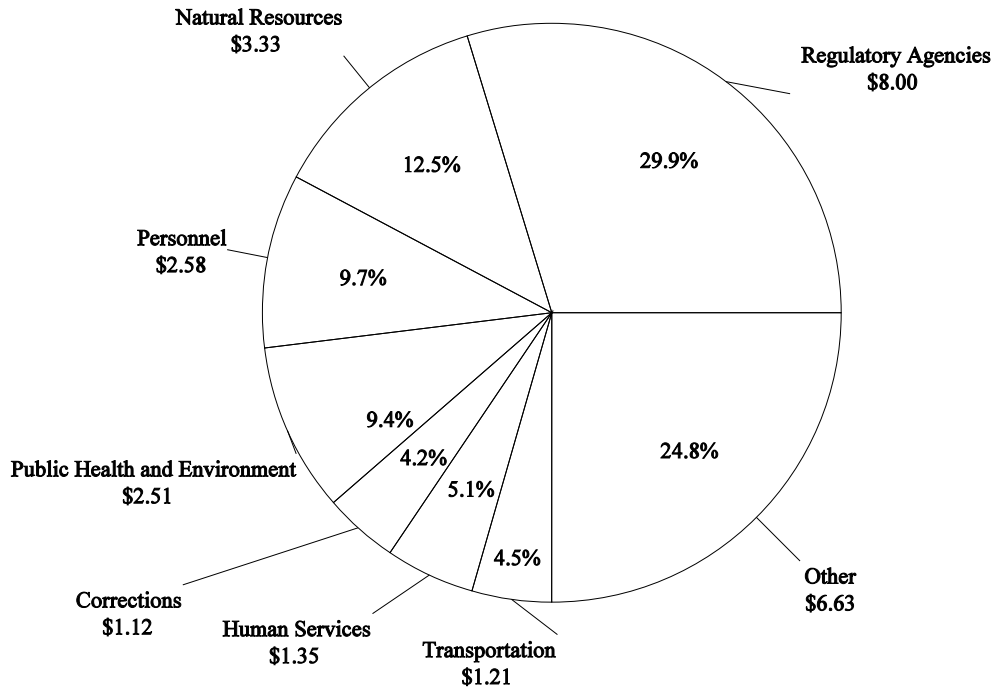
	FY 04-05	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 10-11
	Actual	Actual	Actual	Actual	Actual	Actual	Approp.	% of Total
Regulatory Agencies	\$5,075,682	\$5,310,731	\$5,761,082	\$6,804,123	\$7,396,788	\$7,546,070	\$8,002,466	29.9%
Natural Resources	2,198,168	2,471,139	2,555,184	2,985,212	3,082,235	3,260,139	3,331,732	12.5%
Personnel	2,315,498	2,548,690	2,578,495	3,075,061	2,579,276	2,363,953	2,583,431	9.7%
Public Health & Environ	1,354,044	1,599,380	1,616,692	1,996,830	2,178,418	2,146,754	2,512,042	9.4%
Transportation	981,602	1,098,635	1,110,286	1,259,910	1,361,947	1,187,488	1,205,616	4.5%
Human Services	1,173,984	1,301,464	1,354,909	1,460,099	1,558,179	1,550,136	1,352,869	5.1%
Corrections	1,095,811	1,012,821	948,962	880,952	1,096,327	1,401,307	1,122,414	4.2%
Other agencies ¹	3,821,461	3,950,419	4,328,158	4,824,022	5,279,478	5,430,854	6,632,355	24.8%
Total expenditure or approp.	18,016,250	19,293,279	20,253,768	23,286,209	24,532,648	24,886,702	26,742,925	100.0%
% change of total from prior year	2.4%	7.1%	5.0%	15.0%	5.4%	1.4%	7.5%	
% of total Dept. of Law approp.	51.8%	52.8%	50.6%	50.6%	51.3%	50.4%	54.2%	
% of state operating approp.	0.13%	0.13%	0.12%	0.14%	0.13%	0.13%	0.14%	
Blended Legal Rate	\$61.57	64.45	67.77	72.03	75.1	75.38	73.37	
% change from prior year	1.3%	4.7%	5.2%	6.3%	4.3%	0.4%	-2.7%	
Total Hours	292,953	298,038	298,291	310,387	326,575	330,150	364,494	
% change from prior year	1.2%	1.7%	0.1%	4.1%	5.2%	1.1%	10.4%	

¹ The appropriation column includes estimates of unappropriated legal services to be provided to higher education institutions. The actual columns include actual services provided to those institutions.

The steady rise of the appropriation for legal services can be broken into two components: (1) changes in the number of hours of legal services provided to state agencies and (2) changes in the blended legal rate. Legal hours increase as a result of (a) legal services appropriations in special bills enacted by the General Assembly and (b) legal services appropriations in support of decision items approved by the General Assembly and funded through the Long Bill. In recent years special bill appropriations have accounted for 46 percent of this increase while decision item have accounted for the remaining 54 percent. The blended legal rate changes with personal services costs and with the cost of benefits and operating expenses. In FY 2009 the blended rate declined due to the numerous cost reduction measures implemented by the State and the Department, the PERA adjustment being chief among them.

The following pie chart shows data for the appropriated year with dollar amounts in millions of dollars.

Actual Legal Services Expenditures by State Agencies (\$ million), FY 2008-09



Criminal Justice and Appellate

The largest user of General Fund in the Department is the Criminal Justice and Appellate Division, which accounts for 47.1 percent of the Department's FY 2009-10 General Fund appropriation. Approximately 55 percent of the Division's General Fund appropriation is devoted to the Appellate Unit, which represents the State in criminal appeals, and 35 percent is devoted to the Special Prosecutions Unit, which investigates and prosecutes a variety of crimes, including securities and insurance fraud, multi-jurisdictional crimes, complex crimes, gang prosecutions, environmental crimes, foreign prosecutions, and workers' compensation fraud. The following table contains summary appropriation and workload measures for the Appellate Unit.

Appellate Unit	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Actual	FY 2009-10 Actual
General Fund ¹	\$2,035,165	\$2,133,564	\$2,288,824	\$2,554,482
New Cases	951	979	1240	1152
Case Backlog ²	258	270	400	434

¹ House Bill 10-1305 (Department of Law Supplemental) refinanced \$281,534 of the Appellate Unit's FY 2009-10 General Fund appropriation with reappropriated funds obtained from indirect cost recoveries. These indirect cost recoveries were available on a one-time basis due to various expenditure-reduction measures. To enhance comparisons, expenditure of these reappropriated funds is classified as a General Fund expenditure in this table.

² Number of cases awaiting answer briefs at the end of the fiscal year.

Pursuant to H.B. 07-1054, which increased the number of Colorado judges, and the bill's Legislative Council Staff Fiscal Note, the Appellate Unit increased in size in FY 2008-09 by \$160,334 General Fund and 2.0 FTE. The fiscal note for the bill called for a further increase of \$260,000 General Fund and 3.0 FTE in FY 2009-10, but the Department has deferred requesting these FTE to future years due to the state's budget shortfalls.

District Attorney Salaries

Prior to passage of H.B. 07-1170, Section 20-1-306, C.R.S., set the base salary of a District Attorney at \$67,000 and required the state to pay 80 percent of that cost plus 80 percent of the PERA, Medicare, Amortization Equalization Disbursement and Supplemental Amortization Equalization Disbursement on that base salary. The corresponding General Fund appropriation is contained in the Department's Special Purpose Division. County commissioners in the judicial districts could set the salary higher than the base, and many did, with the counties in the district paying the entire amount in excess of the base from local funds.

H.B. 07-1170, Compensation of Elected District Attorneys, increased the minimum salary for district attorneys as follows.

Minimum District Attorney Salary	
Prior to January 1, 2009	\$67,000
January 1, 2009	100,000
January 1, 2010	110,000
January 1, 2011	120,000
January 1, 2012	130,000

The first of these increases was timed to coincide with the beginning of a four-year term of office for District Attorneys following the November 2008 election, in which all Colorado district attorneys stood for election. Because of the state constitution's requirement that the salaries of elected officials be neither increased or decreased during their term of office, January 1, 2009 was the first date at which H.B. 07-1170 could increase DA salaries. The continuing salary increases after 2009 may seem to contradict the no-salary-increase-or-decrease provision, however, Legislative Legal Services advises that an elected official's salary can be changed while in office according a schedule that has been approved before the term of office begins, such as the schedule above. This schedule of salary increases cannot again be altered until January 1, 2013, following the November 2012 election.

As a consequence of H.B. 07-1170, District Attorneys' salaries have become the second largest General Fund appropriation in the Department, after the General Fund appropriations to the Criminal Justice and Appellate Division, accounting for a quarter of the Department's General Fund appropriation. The following table shows recent expenditures and appropriations.

Fiscal Year	General Fund	Increase from prior year	Percentage Increase	GF increase forecast in Fiscal Note	Cumulative GF increase forecast in Fiscal Note
2006-07 expenditure	\$1,307,731	\$5,894	0.5%		
2007-08 expenditure	1,315,985	8,254	0.6%		
2008-09 expenditure	1,654,605	338,620	25.7%	\$332,218	\$332,218
2009-10 expenditure	2,096,078	441,473	26.7%	436,295	768,513
2010-11 appropriation	2,313,828	217,750	10.4%	209,739	978,252
2011-12 request	2,534,796	220,968	9.6%	212,907	1,191,159
2012-13 forecast				110,018	1,301,177

The cumulative increase in General Fund appropriations due to this bill between FY 2007-08 and FY 2010-11 approaches \$1.0 million and by FY 2011-12 will equal \$1.3 million. Note that H.B. 07-1170 had no impact upon General Fund expenditures in FY 2007-08, the fiscal year following its enactment, which may have aided passage.

Water and Natural Resources

The Consumer Protection and Anti-Trust Unit and the Water and the Federal and Interstate Water Unit are the next biggest components of the General Fund appropriation, accounting for 9.3 and 5.4 percent of the General Fund appropriation, respectively. In most years, appropriations to these units change with personal services costs and with the cost of benefits and operating expenses. They also get bumped by the occasional bill or Decision Item that targets Consumer Protection and Anti-Trust or Water.

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Department of Law**

DECISION ITEM PRIORITY LIST

Decision Item	GF	CF	RF	FF	Total	FTE
1	(194,949)	0	194,949	0	0	0.0
<p>Refinance 2.0 FTE to Securities Fraud Cash Fund</p> <p>Criminal Justice and Appellate Division. The Department requests that \$194,949 of General Fund appropriations that currently support 2.0 Criminal Investigator FTE in the Department of Law's Securities Fraud Unit be replaced with an equal amount of reappropriated funds from the Division of Securities Cash Fund, which is administered by the Department of Regulatory Agencies. As a result, the Securities Fraud Unit, which has 5.6 FTE, would be completely funded by industry fees. This change would increase fees for Division of Securities fee payers by approximately 5 percent. <i>Statutory authority: Section 11-51-603, C.R.S.</i></p>						
2	0	0	0	0	0	0.0
<p>CERCLA Tipping Fees</p> <p>Water and Natural Resources Division. H.B. 10-1329 authorized the Colorado Department of Public Health and Environment (CDPHE) to set the per cubic yard fee paid by hazardous waste haulers when they dispose of waste. Previously the fee was established in statute. CDPHE transfers up to 3.5 cents of this per cubic yard fee to the Department of Law's Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Unit to pay part of the cost of the Unit's operations. For budgeting clarity, the Department of Law requests that \$75,000 of appropriations related to this transfer be moved from the "CERCLA Contracts" line item to the "CERCLA" line item. This will consolidate the transfers into a single line in the Long Bill and will not change the overall level of appropriations. <i>Statutory authority: 25-16-104.5 (1.7), C.R.S.</i></p>						
3	0	0	132,066	0	132,066	1.0
<p>Legal Services for CDPHE</p> <p>Legal Services to State Agencies. The Department requests an appropriation of \$132,066 reappropriated funds, which will give it the authority to spend legal services payments received from the Colorado Department of Public Health and Environment (CDPHE). In its Decision Item #4, CDPHE is requesting 1800 hours of additional legal services for their Air Pollution Control and Water Quality Control Divisions. At the blended legal rate of \$73.37, this corresponds to an appropriation of \$132,066. <i>Statutory authority: 24-31-101 (1) (a), C.R.S.</i></p>						
Non Prioritized 1	260	167	1,033	47	1,507	0.0
<p>Printing of Statewide Warrants and Mainframe Documents</p> <p>All divisions except Special Purpose. This statewide decision item would increase the appropriation for operating expenses of many of the Department of Law's divisions in order to pay for their use of centralized printing of warrants and other mainframe documents by the Department of Personnel and Administration.</p>						

Decision Item	GF	CF	RF	FF	Total	FTE
Non Prioritized 2	(2,635)	1,995	(1,577)	(1,935)	(4,152)	0.0
Annual Vehicle Replacement						
<p>Administration Division. The proposed fleet management fee, which applies to all vehicles, including those off lease, is declining by \$9 per vehicle; a vehicle used by the Medicaid Fraud Control Unit is coming off lease; the Department is requesting a fund split adjustment to better align appropriations and billing with usage. <i>[Sections 24-31-101, C.R.S.]</i></p>						
Total	(197,324)	2,162	326,471	(1,888)	129,421	1.0

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Department of Law**

OVERVIEW OF NUMBERS PAGES

The following table summarizes the total change, in dollars and percent, between the Department's FY 2010-11 appropriation and its FY 2011-12 request.

Total Requested Change, FY 2010-11 to FY 2011-12 (millions of dollars)*

Category	GF	CF	RAF	FF	Total	FTE
FY 2010-11 Appropriation	\$9.6	\$9.9	\$31.1	\$1.5	\$52.1	414.5
FY 2011-12 Request	10.0	10.1	31.7	1.5	53.4	410.8
Increase / (Decrease)	\$0.4	\$0.2	\$0.6	\$0.1	\$1.3	(3.7)
Percentage Change	4.3%	2.3%	2.1%	4.0%	2.6%	-0.9%

*Totals may not sum due to rounding.

The following table highlights the individual changes contained in the Department's FY 2011-12 budget request, as compared with the FY 2010-11 appropriation. For additional detail, see the numbers pages in Appendix A.

Requested Changes, FY 2010-11 to FY 2011-12

Category	GF	CF	RAF	FF	Total	FTE
Change in potted central appropriations	\$145,308	\$78,595	\$555,887	\$62,183	\$841,973	0.0
Restore state PERA contribution to 10.15% from 7.65%	125,604	73,709	502,698	20,444	722,455	0.0
District Attorney Salaries	220,968	0	0	0	220,968	0.0
Legal Services for other agencies	0	0	132,066	0	132,066	0.0
End one time refinancing of part of Appellate Unit approp.	124,214	0	(124,214)	0	0	0.0
Fund mix adjustment	0	76,752	(76,752)	0	0	0.0
Decision Items	(194,949)	0	194,949	0	0	0.0
Impact of 2010 session bills	(7,226)	0	(537,710)	(21,670)	(566,606)	(4.0)
Auto Theft Prevention Grant adjustments	0	0	(4,588)	0	(4,588)	0.0
Non-prioritized decision items	(2,375)	2,162	(544)	(1,888)	(2,645)	0.0
Total Change	\$411,544	\$231,218	\$641,792	\$59,069	\$1,343,623	(4.0)

**FY 2011-12 Joint Budget Committee Staff Budget Briefing
Department of Law**

BRIEFING ISSUE

ISSUE: Significant Actions Taken from FY 2007-08 to FY 2010-11 to Balance the Budget

Total appropriations to the Department of Law have increased since FY 2007-08. The largest components of this increase have been the additional cash and reappropriated funds appropriated for the provision of legal services to other agencies and the additional cash funds appropriated for the Peace Officers Standards and Training (P.O.S.T.) Board by H.B. 09-1036. General Fund appropriations have also increased; the largest component of this increase has been the additional appropriations for district attorney salaries pursuant to H.B. 07-1170.

Since the most recent economic downturn started in 2008, the General Assembly has taken a number of actions to mitigate General Fund increases in the department. As a result, General Fund appropriation to the Department of Law increased by \$939,000 (10.8 percent) from FY 2007-08 to FY 2010-11.

SUMMARY:

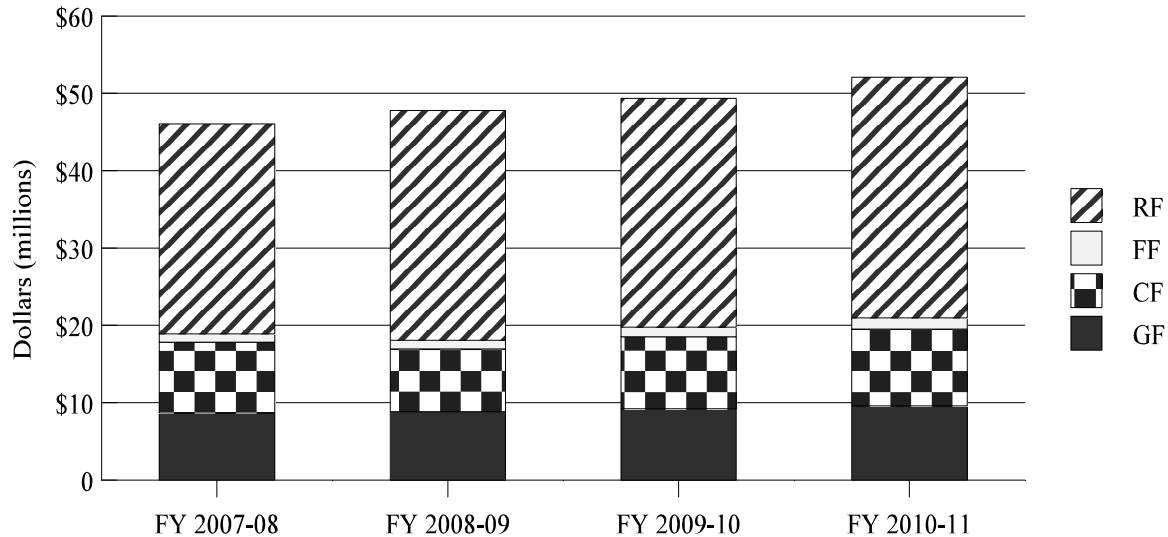
- ❑ During FY 2008-09, in order to mitigate General Fund increases, the General Assembly reduced various General Fund appropriations to the Department by \$790,000, comprised of \$645,000 of one time reductions and \$145,000 of one-time refinancing with cash funds.
- ❑ For FY 2009-10, in order to mitigate General Fund increases, the General Assembly reduced various General Fund appropriations to the Department by \$898,000, comprised of \$823,000 of one time reductions and \$75,000 of one-time cash fund refinancing.
- ❑ For FY 2010-11, the General Assembly enacted House Bill 10-1329 which permanently reduced General Fund appropriations for CERCLA work by \$511,000, refinancing it with cash funds from solid waste disposal fees .

DISCUSSION:

From FY 2007-08 to FY 2010-11, total appropriations to the Department of Law increased by 13.1 percent (\$6.0 million). Almost two thirds of this increase came in the form of reappropriated funds. General Fund appropriations to the Department increased by \$939,000 over this period while cash and federal funds rose by \$747,000 and \$374,000 respectively. The largest components of the increase in total appropriations were the increase for the provision of legal services to other state agencies (\$3.2 million) and the additional cash funds for the Peace Officers Standards and Training (P.O.S.T.) Board (\$1.5 million) pursuant to H.B. 09-1036.

Appropriations to the Department of Law for FY 2007-08 through FY 2010-11 are illustrated and detailed in the following bar chart and table.

Department Appropriations FY 2007-08 to FY 2010-11



Department of Law Appropriations FY 2007-08 to FY 2010-11					
	Total Funds	General Fund	Cash Funds	Federal Funds	Reappropriated Funds
FY 2007-08 /a	\$46,038,992	\$8,675,523	\$9,152,987	\$1,095,355	\$27,115,127
FY 2008-09	47,776,818	8,855,044	8,117,746	1,097,051	29,706,977
FY 2009-10	49,339,112	9,225,846	9,292,899	1,263,078	29,557,289
FY 2010-11	52,073,927	9,615,003	9,900,454	1,469,096	31,089,374
Increase/(Decrease.) /b	\$6,034,935	\$939,480	\$747,467	\$373,741	\$3,974,247
Percent Change /b	13.1%	10.8%	8.2%	34.1%	14.7%

a/ FY 2007-08 appropriations have been adjusted to correspond to the "cash funds" and "reappropriated funds" definitions adopted in FY 2008-09. Source: Page 303 of the FY 2008-09 Appropriations Report, plus 2009 legislation affecting FY 2007-08 appropriations (S.B. 09-192).

b/ Increase/(Decrease) and Percent Change compare FY 2007-08 and FY 2010-11.

As illustrated in this chart, appropriations to the Department grew at an average annual rate of 4.2% between FY 2007-08 and FY 2010-11, while General Fund appropriations grew by 3.5% annually. The most important causes for the increase in total appropriations were:

- The steady rise in the provision of legal services to other agencies of state government, which resulted from (1) the legal services appropriations in 42 special bills enacted during the 2008, 2009 and 2010 sessions, which are listed in Appendix B, and (2) increased legal services in support of decision items approved by the General Assembly and funded through the Long Bill. Legal services increases, which came primarily in the form of reappropriated funds, increased the total appropriation by \$3.2 million.

- ❑ H.B. 09-1036, which increased motor vehicle registration fees and appropriated the resulting \$1.5 million of cash fund revenue, along with 1.0 FTE, to the Department's Peace Officers Standards and Training (P.O.S.T.) Board.
- ❑ \$1.3 million for salary survey and performance-based pay that was appropriated in the FY 2008-09 Long Bill and subsequently increased base salaries. (Total salary survey and performance-based pay of \$1,415,470 was appropriated during the 2008 session; during the 2009 session this was reduced to \$1,289,286 by a supplemental bill. The FY 2009-10 and FY 2010-11 Long Bills did not include salary survey or performance-based pay appropriations.)

The single biggest driver of General Fund increases over this period was H.B. 07-1170, which increased the amount that the state pays to support district attorney salaries by \$978,000 between FY 2007-08 and FY 2010-11.

Beginning in January of 2009 and continuing through the 2010 Session, the General Assembly has taken a number of actions to mitigate the increase of the Department of Law's General Fund expenditures. These actions are discussed in more detail below.

Major Budget Balancing Actions from FY 2007-08 to FY 2010-11

1. The Department of Law's January 2009 supplemental bill reduced General Fund appropriations by \$645,000 from a variety of sources, including vacancy savings, health, life and dental, salary survey, and performance-based pay awards. All reductions were one-time measures that only affected FY 2008-09 appropriations.
2. The Department's January 2009 supplemental bill also substituted \$145,000 of cash and reappropriated funds for \$145,000 of General Fund appropriations that support the Consumer Protection Unit and the CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) Unit.
3. The FY 2009-10 appropriation contained \$762,000 of one-time General Fund reductions from a variety of sources, including furloughs, vacancy savings, and a department-wide operating-expense reduction. Furloughs accounted for \$65,000 of these reductions and also reduced appropriations from other fund sources by an added \$406,000. The FY 2009-10 appropriation also included a \$75,000, one-time refinance of General Fund CERCLA appropriations with cash funds.
4. The FY 2009-10 appropriation contained a state-wide 1.8 percent personal services base reduction for all personal services line items with 20 or more FTE. Applied to the Department of Law, this base reduction resulted in \$467,000 of reduced total appropriations, comprised of \$61,000 General Fund, \$29,000 cash funds, and \$377,000 reappropriated funds.

The Department did not request restoration of this reduction during FY 2010-11 nor did the General Assembly restore the reduction; thus appropriations to the Department continued the 1.8 percent base reduction in FY 2010-11 and will continue it again in FY 2011-12 if next year's appropriation corresponds to the Department's request.

5. The Legislative Council Staff Fiscal Note for H.B. 07-1054 stated that the Department would need 5.0 additional FTE for its Appellate Division in FY 2008-09 and FY 2009-10 in order to implement the bill's requirements. The General Assembly appropriated 2.0 of these FTE in FY 2008-09 and another 1.0 FTE in FY 2009-10, but has delayed appropriating the remaining 2.0 FTE.
6. The FY 2010-11 Long Bill, implementing the requirements of S.B. 10-146, includes a one-time, state-wide increase of 2.5 percent for employee PERA contributions and a corresponding reduction in state contributions. Applied to the Department of Law, this action reduced total appropriations by \$724,161, including \$135,688 of General Fund reductions and \$588,473 of reduced appropriations from other fund sources.
7. House Bill 10-1329 reduced General Fund appropriations for CERCLA work by \$511,000, refinancing it with cash funds from solid waste disposal fees. This is a continuing change that will reduce General Fund appropriations by similar amounts in the future.

Actions Taken to Increase Available State Revenues

1. The General Assembly enacted H.B. 10-1385, which increased the fee paid by insurance entities regulated by the Division of Insurance in the Department of Regulatory Agencies. The additional revenue replaced \$160,000 of insurance premium tax revenue that formerly supported the Department of Law's insurance fraud investigation and prosecution program. Since premium tax revenues flow to the General Fund, this increased FY 2010-11 General Fund revenues by \$160,000.

**FY 2011-12 Joint Budget Committee Staff Budget Briefing
Department of Law**

BRIEFING ISSUE

ISSUE: Major Litigation Pending Against the State

Summarizes legal cases involving the state that could have a significant adverse impact on the General Fund.

SUMMARY:

- This issue provides background information for questions that the Committee may wish to ask the Department of Law about litigation in which the state is engaged.
- Cases were selected for inclusion if they have a potential General Fund impact in excess of \$1 million.

RECOMMENDATION:

- Staff recommends that the Committee ask the Department for an update on the status of the Lobato case and the Republican River case.
- Though the State's ongoing dispute with tobacco manufacturers who participate in the Master Settlement Agreement is not listed below (because it does not involve the General Fund) the Committee may also wish to ask for an update on the status of the arbitration proceeding with tobacco manufacturers who participate in the Master Settlement Agreement.

DISCUSSION:

This is a list of unresolved cases in which the possible impact on the General Fund, either through damages, attorneys fees and costs, or the cost of state compliance with court orders exceeds \$1 million.

Republican River Compact (Kansas v. Colorado). 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. In 2008 Kansas began arbitration proceedings against Nebraska and Colorado, alleging continued overuse of river water. Following the arbitrator's 2010 decision, which favored Kansas, Kansas asked the U.S. Supreme Court, which has original jurisdiction, to accept a suit against Nebraska for consuming

too much river water. Kansas has indicated that it is primarily concerned about Nebraska's over use; it has not asserted specific claims against Colorado. However, claims against Colorado are possible and could reach into the millions of dollars. Nebraska could also assert claims against Colorado.

Public Service Company of Colorado v. Department of Revenue. Public Service Company (PSCo) claims a \$12 million refund of sales and use taxes paid on equipment used to generate electricity. The Executive Director of the Department of Revenue ruled against PSCo in a hearing, but PSCo appealed to the Denver District Court and prevailed. The District Court entered a \$9.9 million judgement, plus interest. The Department of Revenue has appealed the District Court decision.

Davis v. Henneberry. Plaintiffs are recipients of public benefits provided by the State of Colorado. Plaintiffs claim that CBMS (the Colorado Benefits Management System) has violated their right to receive timely public assistance benefits, in violation of state and federal law. Plaintiffs' main objective is to force the state to issue food stamps, Medicaid, and other benefits in a timely manner 95% of the time. In December 2004 the court found that the state was in violation of state and federal laws requiring application for public benefits to be processed within specific time limits and ordered the state to take steps to resolve the late processing of benefits. In 2008, the parties reached a settlement of the case that required the State to comply with state and federal law deadlines for processing applications. Though compliance has improved, the State is still not complying with state and federal law. The case may return to active litigation before the end of FY 2010-11, after court-imposed deadlines for specific CBMS improvements pass. Further expenditures to come into compliance with court orders are possible as are fines for failure to comply with the previous orders.

Lobato, et al v. State of Colorado. School districts in the San Luis Valley, joined by district parents and students, claim that Colorado's current school funding system fails to provide a thorough and uniform system of free public education as required by Article IX, Section 2 of the Colorado Constitution. Plaintiffs seek attorneys' fees and costs and seek a declaration that the current school financing system violates the Colorado Constitution; plaintiffs do not seek monetary damages. Plaintiffs' goal is to require significant additional funding for K-12 education and to have the courts maintain continuing jurisdiction over the case. Plaintiffs assert that the extra funding needed for capital facilities alone is \$5.7 to \$10 billion. Should plaintiffs prevail on their claim for attorneys' fees and costs, these fees and costs would probably exceed \$1 million. All claims were dismissed by the District Court in March 2006. In January 2008 the Court of Appeals upheld the District Court's dismissal, but the Supreme Court reversed the decision in October 2009, holding that plaintiffs have standing to challenge the constitutionality of the state's public school financing system. The case is currently scheduled to be reheard by the district court in August 2011. The FY 2010-11 Long Bill included a \$432,000 appropriation for the Department of Law to provide legal services in this case.

Martinez et al v. Department of Human Services, et al. Colorado's Aid To The Needy Disabled (AND) program provides cash assistance to low-income Colorado residents, age 18 and over, who have had a total disability for at least six-months. AND benefits are reduced if a recipient receives

other income, such as Supplemental Security Income (SSI) benefits. The state requires AND recipients to apply for SSI; if they qualify for SSI, AND benefits are reduced. Some AND recipients hired attorneys to help them when they had difficulty qualifying for SSI. These disabled individuals assert, in a class action lawsuit, that the state should pay a portion of their attorney fees because the state benefitted from their expenditure. They ask for \$10 million in damages. In 2008, a district court ruled in favor of the state. The Colorado Court of Appeals upheld this judgement. The Plaintiffs have appealed to the Colorado Supreme Court.

McLane Western v. Department of Revenue. In the first McLane lawsuit, the plaintiff asserted that the Department of Revenue did not properly assess taxes on sales of tobacco products and sought a refund. The state prevailed in Denver District Court, in the Colorado Court of Appeals and in the Colorado Supreme Court. The plaintiff has raised similar issues in a second lawsuit seeking \$5 million in tax refunds and interest. The District Court dismissed the case but the Court of Appeals reinstated it. The District Court trial is set for January 2011.

Recently Resolved Cases

Lyles v. Department of Health Care Policy and Financing and Department of Human Services. Lyles, a blind Denver County employee who worked as a Medicaid Eligibility Technician prior to the roll-out of CBMS (the Colorado Benefits Management System), asserted that he lost his position because CBMS cannot be used by visually-impaired state or county employees and sought an injunction that would have required the state to modify CBMS. The cost of the modifications could have exceeded \$1 million. The case settled for \$75,000 and is now closed.

Cendant Corporation v. Department of Revenue. Cendant Corporation sought to file an amended corporate tax return that would have resulted in an \$8 million refund, which would have reduced General Fund revenues. The case was heard by the Executive Director of the Department of Revenue, who ruled against Cendant. Cendant appealed the ruling in District Court, where it prevailed. In July 2009, the Court of Appeals ruled in favor of the State. Cendant filed for Colorado Supreme Court review, but the court decided not to hear the case, which is now closed.

**FY 2011-12 Joint Budget Committee Staff Budget Briefing
Department of Law**

BRIEFING ISSUE

ISSUE: General Fund Reduction Candidates

This issue provides background on the Department of Law's General Fund appropriations. It is designed to start a discussion of the choices that the Committee and the General Assembly must make if the Department's General Fund appropriations are to be reduced.

SUMMARY:

This issue gives background on the Department of Law's General Fund appropriations. It recommends that the Committee ask the Department during its hearing to discuss the consequences of reducing General Fund appropriations for some or all of the programs that are discussed.

RECOMMENDATION:

Staff recommends that the Committee ask the Department during its hearing to discuss the consequences of reducing General Fund appropriations for some or all of the programs discussed in this briefing issue.

Staff specifically recommends that the Committee ask the Department to discuss the consequences of eliminating 2.0 FTE from the Securities Fraud unit as an alternative to Decision Item #1, which would pay for the FTE by refinancing \$195,000 of General Fund appropriations with reappropriated funds from the Division of Securities Cash Fund.

Staff also recommends that the Committee ask the Department to discuss the effectiveness of the Safe2Tell program and the consequences of its elimination.

DISCUSSION:

This discussion systematically examines the Department of Law's FY 2009-10 General Fund appropriations, beginning with the Administration Division. Appropriations in the tables are for FY 2010-11.

(1) Administration Division

Total General Fund appropriation	\$1,346,510
Estimated General Fund appropriation adjusted for Pots allocations	444,510

The Administration Division includes the Office of the Attorney General, Human Resources, Accounting, and other units that benefit the entire department. It also includes a number of central appropriations, which are allocated among divisions. Most Administration-division appropriations fall into two categories:

- ❑ Central appropriations or "Pots," such as the appropriation for Health, Life and Dental Insurance or the appropriation for Short-term Disability Insurance. The General Assembly makes a "central" appropriation to the Department for each of these items and the Department then allocates the totals among its divisions according to their needs.
- ❑ Appropriations for "indirect costs", i.e. for expenditures that benefit the entire Department and are allocated among divisions on the basis of a formula. Examples include Administration operating expenses, the salary and benefits of the Attorney General, and the salary and benefits of Administration personnel. These indirect costs are then apportioned among divisions according to the Department's indirect cost plan, which in the case of the Department of Law, allocates costs proportionate to the number of FTE in each unit. Within the Long Bill, most divisions in the Department of Law have an indirect cost recovery appropriation through which they pay a share of the cost of running the Administration division.

When thinking about General Fund reductions, the presence of central appropriations within an Administration Division or an Executive Director's Office means that the Division or Office may not be as promising a budget cutting target as it first appears because much of the General Fund Pots appropriation will be allocated to other divisions. It also means that the elimination of 1.0 FTE supported by the General Fund outside the Administration division will also save related General Fund costs in the Administration division's central appropriations such as Health, Life and Dental Insurance.

The presence of indirect cost recoveries implies that General Fund reductions within the Administration Division may not have the intended impact on the General Fund. For example, about 78 percent of the Department's FTE who are outside the administration division are supported by cash, reappropriated, or federal funds. That means that 78 percent of the Administration Division's salaries, operating expenses and other indirect costs are paid from cash, reappropriated, or federal funds via the Department's indirect cost assessments. If the Administration adds 1.5 FTE at a total cost of \$100,000, including allocations of central appropriations, \$78,000 of that cost will be paid from the Department's cash, reappropriated, or federal funds and only \$22,000 will be paid by the General Fund. Conversely, if the Administration Division cuts 1.5 FTE who are supported by the General Fund at a total cost of \$100,000, the General Fund savings will be only \$22,000.

Indirect costs also alter the impact of FTE changes outside the Administration Division. For example, the refinancing of 1.0 FTE who work in the Special Prosecutions Unit with cash funds at

a cost of \$100,000, including benefits and other Pots allocations, means that in addition to the \$100,000 General Fund savings, indirect cost recoveries of the Administration Division will grow by the \$12,404 that the Department assess on each FTE, so the benefit of the funding switch to the General Fund will be \$112,404 rather than \$100,000.

Summary: Due to the Department of Law's indirect cost plan, a \$1 spending reduction in the Administration Division will only reduce General Fund appropriations by 22¢. A \$1 General Fund spending reduction outside the Administration division, will reduce General Fund appropriations by \$1.12 if the savings comes from FTE reductions.

(2) Legal Services to State Agencies Division

Total Reappropriated Funds appropriation	23,740,102
Estimated reappropriated funds originating from GF sources	5,935,026

The Legal Services to State Agencies (LSSA) division provides legal services to other state agencies, with the other agencies purchasing these services much as they would purchase legal services from a private-sector law firm. These client agencies receive legal-services appropriations in their section of the Long Bill and the Department of Law receives a corresponding appropriation of reappropriated funds, which allows it to spend the payments it receives.

While there are no direct opportunities to reduce GF within the Legal Services to State Agencies Division, there are indirect opportunities to reduce General Fund use. Approximately 25% of the Division's appropriation of Reappropriated Funds derives from GF appropriations in client agencies, with the largest General Fund appropriations in the Departments of Human Services (\$1,352,869), Corrections (\$1,163,219), Health Care Policy and Financing (\$872,590), Natural Resources (\$810,804), and Revenue (\$849,141). If the General Fund appropriations for legal services are reduced in these agencies, appropriations of reappropriated funds within the Department of Law will be reduced by the same amount.

(3) Criminal Justice and Appellate Division

The following line items in the Criminal Justice and Appellate Division receive General Fund appropriations. Each will be considered in turn:

- (3.1) Special Prosecutions Unit
- (3.2) Appellate Unit
- (3.3) Safe2Tell
- (3.4) Medicaid Fraud Control Unit

(3.1) Special Prosecutions Unit

The Special Prosecutions unit is comprised of the following sub-units, which were separately appropriated in the Long Bill prior to FY 2009-10:

- (3.1.1) Special Prosecutions Unit
- (3.1.2) Securities Fraud Unit
- (3.1.3) Homicide Assistance Team

(3.1.1) Special Prosecutions Unit

Estimated General Fund appropriation directly to the Special Prosecutions Unit	\$1,100,000
Estimated General Fund Appropriation adjusted for Pots expenditures	1,210,000

The Special Prosecutions Unit prosecutes many of the state's multi-jurisdiction crimes, as well as special investigations that may be referred by other state agencies or by the governor. The General-Fund supported portion of this unit investigates and prosecutes crimes in a variety of areas, including complex crimes, gang crimes, narcotic crimes associated with gang activity, environmental crimes, and foreign prosecutions. The Unit is handling the investigation of the 1987 murder of Peggy Hettrick in Fort Collins and has taken over operation of the District Attorney's office in the Seventh Judicial District while Myrl Serra, the incumbent District Attorney, is under investigation. In 2009 the unit indicted 60 defendants who were involved in two separate drug rings that operated in Denver, northern Colorado, and Wyoming. In 2009 the unit also indicted and prosecuted 7 members of a loan-sharking, insurance fraud and money laundering ring, 6 members of a heavy equipment theft ring, 12 members of an identity theft ring, 2 members of a multi-jurisdictional charity fraud scheme, 2 members of an auto theft and methamphetamine enterprise near Durango, and a 10-defendant burglary, auto theft and methamphetamine ring in metro Denver. The head of the unit states that his unit could be doubled in size and would have no shortage of quality cases to investigate.

(3.1.2) Securities Fraud Unit

General Fund appropriation directly to the Securities Fraud Unit	\$166,276
General Fund Appropriation adjusted for Pots expenditures	194,949

The Department of Law's Securities Fraud Unit dates from the mid 1990s and was originally funded by a transfer from the Division of Securities Cash Fund. The FTE appropriation remained constant at 3.5 FTE until FY 2005-06 when the General Assembly added 2.0 General Fund FTE to the Unit's Long Bill appropriation. This addition coincided with passage of S.B. 05-26, a bill that gave the Attorney General concurrent jurisdiction with state district attorneys in securities cases. The Unit currently has two attorneys, two investigators and a paralegal.

The Unit now investigates and prosecutes allegations of securities violations statewide. The cases generally involve individuals who solicit investor money for unregulated and fraudulent investment schemes. Many are Ponzi schemes in which the returns paid to early investors come from subsequent investors. Approximately half of the cases are referred to the Unit by the Colorado Division of Securities in the Department of Regulatory agencies and the other half are initiated by the staff of the Securities Unit, often in response to complaints from private citizens, private attorneys, or law enforcement. During FY 2009-10 the unit opened 12 criminal investigations, obtained 10 convictions, and won restitution orders totaling \$2.5 million. Generally only a small fraction of total restitution orders are repaid.

Staff recommends that the Committee ask the Department to discuss the consequences of eliminating 2.0 FTE from the Securities Fraud unit as an alternative to Decision Item #1, which would pay for the FTE by refinancing \$195,000 of General Fund appropriations with reappropriated funds from the Division of Securities Cash Fund.

(3.1.3) Homicide Assistance Team (HAT)

General Fund appropriation directly to the Capital Crimes Prosecution Unit	\$390,000
General Fund Appropriation adjusted for Pots expenditures	436,000

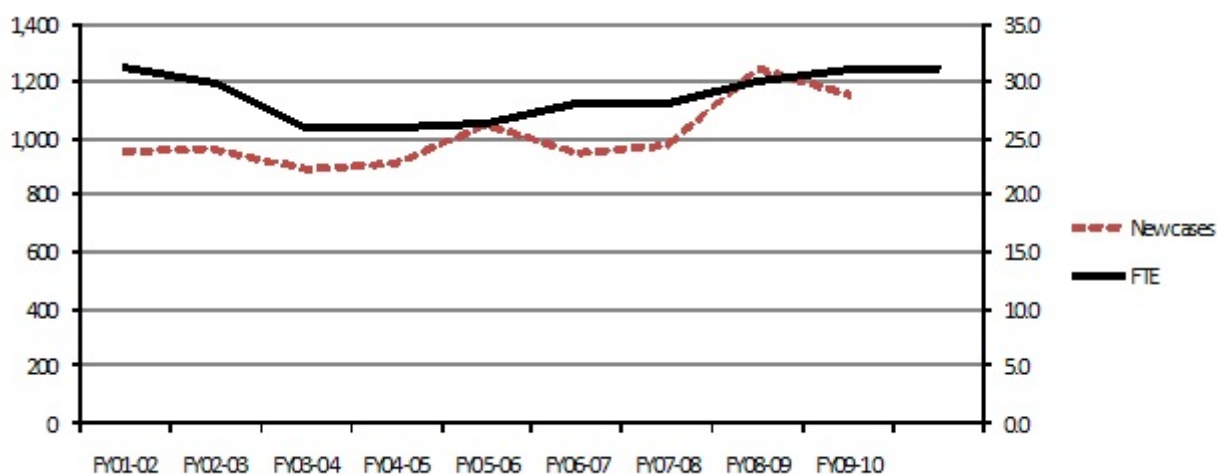
This unit, which began life as a Long Bill initiative in FY 1994-95, originally provided assistance to district attorneys in prosecuting death penalty cases and was known as the "Capital Crimes Prosecution Unit." In recent years it has been transformed into a homicide assistance team, comprised of two attorneys and investigator, that supports local district attorneys, particularly rural district attorneys, in all aspects of homicide investigation and prosecution, including cases that do not involve the death penalty. The assistance the team provides in rural areas is particularly valuable because rural district attorneys generally have small staffs that see few homicides and as a consequence may lack the skills and experience needed for effective investigation and prosecution. Recently a team attorney served as the lead prosecutor for the John Caudle double homicide case in the San Luis Valley and the team has also been involved in the Hettrick homicide investigation in Fort Collins. The team only becomes involved in a case upon request of the local district attorney and approval of the Attorney General. Requests for assistance exceed the available resources. The homicide assistance team is exclusively supported by the General Fund. It has no alternative funding sources.

(3.2) Appellate Unit

General Fund appropriation directly to the Appellate Unit	\$2,450,093
General Fund Appropriation adjusted for Pots expenditures	2,798,093

The Appellate Unit represents the State in criminal cases that are appealed to state and federal appellate courts. Most of the cases are appeals of convictions obtained by the State's District Attorneys. About a third come from criminals who are represented by the public defender, a third are from private council, and a third are from criminals who represent themselves. The Division's attorneys successfully uphold about 90 percent of appealed convictions and sentences.

Because the Unit cannot decline an appeal, it cannot control its caseload. The following graph shows the number of new cases that the unit has received each year since FY 2001-02. Note that the Unit lost 5.0 FTE during the previous economic downturn, finally regaining its FY 2001-02 FTE appropriation in FY 2009-10 as a result of H.B. 07-1054, which increased the number of judges and related personnel.



Some evidence suggests that the appellate division is working at or beyond full capacity. A 2007 study of appellate court systems in 13 states¹ revealed that Colorado is the slowest at processing cases, taking an average of 720 days to complete a case, as opposed to a 427 day average for appellate courts in all 13 states. The article pointed to delays by public defenders and delays by attorneys representing the state as one of the factors behind the overall delay.

Opportunities to shift appellate work to the local district attorneys who prosecuted the case in district court appear limited; last year the Appellate Unit offered a number of cases to local district attorneys but only had one taker, probably reflecting the fact that local district attorneys are also working at capacity. In addition, shifting work outside the Unit has risks. Whenever the appellate unit files a brief in a case, it must consider the implications for subsequent cases, for the people of Colorado, and for the State. An attorney working in a local district attorney's office, lacking such perspective, might advance an argument that wins the current case but adversely affects subsequent cases.

¹"Seeking Best Practices among Intermediate Courts of Appeal: a Nascent Journey," W. Warren H. Binford, Preston C. Greene, Maria C. Schmidkofer, Robert M. Wilsey, and Hillary A. Taylor, *The Journal of Appellate Practice and Process*, 2007.

Efforts to shift some of the Unit's caseload to private contract attorneys would encounter similar problems. In the past, the Unit has utilized private attorneys for appellate cases and has discovered that the highly specialized nature of the work required it to give these attorneys a substantial amount of assistance, thus undermining the value of outsourcing. In addition, the Department of Law's low hourly cost for legal work –\$76.36 per hour – is a good indicator of the cost of legal work everywhere in the Department. In an era in which the average bill rate for attorneys in the mountain west exceeds \$250 per hour², it's difficult to find a qualified private sector attorney who will work for \$76.36 per hour or less.

(3.3) Medicaid Fraud Control Unit

General Fund appropriation directly to the Medicaid Fraud Grant line item	\$342,276
General Fund Appropriation adjusted for Pots expenditures	391,774

This line item funds the Medicaid Fraud Unit, which investigates and prosecutes criminal fraud involving the State's Medicaid program as well as provider misconduct against Medicaid patients. The program qualifies for an enhanced federal match, which means that the federal government pays 75 percent of the unit's costs, while the State pays 25 percent. Despite the enhanced match, the State keeps at least 50 percent of the recovered funds, often more. In FY 2009-10 these recoveries totaled \$4.2 million. During FY 2009-10, the Unit also referred 91 Colorado health care providers to the U.S. Department of Health and Human Services for alleged misconduct against Medicaid patients, including patient abuse, neglect, theft, forgery, assault, sex assault, child abuse, harassment, impersonation, identity theft, and drug diversion. Of these, 17 were banned from participation in federally funded health care programs for 5 years, 2 were banned for 12-13 years, 1 was banned for 99 years, and 3 resulted in no suspension. The remaining cases are pending.

(3.4) Safe2Tell

General Fund appropriation directly to the Safe2Tell program	\$98,351
General Fund Appropriation adjusted for Pots expenditures	102,351

The Safe2Tell program was moved from the Department of Public Safety to the Department of Law in the FY 2010-11 Long Bill. The program operates a toll-free hotline and a web site for students and others to anonymously provide tips on potential safety issues at school and elsewhere. The hotline, which is operated by the Department of Public Safety out of its Denver Call Center, receives about 700 calls per year. When the Call Center receives a tip, it relays it to the appropriate authority via fax or e-mail. Since its inception the program has made presentations to over 60,000 children and others around the state. The program emphasizes that these presentations are an important part of

² <http://www.lawmarketing.com>

its mission; among other things, the presentations educate audiences about the dangers of the "Code of Silence." According to Safe2Tell's literature, it has been asked on a number of occasions to help restore a sense of safety following a school or community tragedy.

Staff recommends that the Committee ask the Department to discuss the effectiveness of the Safe2Tell program and discuss the consequences of its elimination.

(4) Water and Natural Resources Division

(4.1) Federal and Interstate Water Unit

General Fund appropriation directly to the Federal and Interstate Water Unit	\$516,519
General Fund Appropriation adjusted for Pots expenditures	569,019

The primary objectives of the Federal and Interstate Water Unit (the Water Unit) are to (1) protect Colorado and its water users against water claims made by other states or by federal agencies, and (2) deal with internal Colorado water allocation issues. The unit spends about 80 percent of its time dealing with interstate issues and the remainder dealing with internal allocation issues.

At any given time Colorado is involved in one or more water disputes with neighboring states or is dealing with the consequences of these disputes. Currently, the Unit's major water-litigation efforts involve the Rio Grand River Compact, the Arkansas River Compact, and the Republican River Compact. In the Rio Grand River basin, where Colorado has overused past water allotments, individuals with senior water rights have seen their allotments curtailed as the result of a compact call. The Water Unit is now working with the State Engineer and water users to develop rules that recognize the effects that wells have upon surface water supplies. These rules will ultimately distribute some of the curtailment in a more equitable fashion that includes well owners. In the Republican River basin, the Water Unit is defending Colorado's against claims by Kansas and Nebraska that Colorado has over used its water allotment. The Unit is also trying to win Kansas' approval for a pipeline that will divert water from the Platt river basin into the Republican River basin and will help Colorado meet future compact obligations. In the Arkansas River basis, the Unit is providing legal advice on disputes that have arisen over the Special Master's Decree and is drafting rules that will address new watering techniques that utilize more water and potentially threaten Colorado's compliance with the compact.

(5) Consumer Protection Division

(5.1) Consumer Protection and Antitrust

General Fund appropriation directly to the Consumer Protection and Antitrust line item	\$907,056
General Fund Appropriation adjusted for Pots expenditures	1,085,674

The Anti-trust and Consumer Fraud Unit investigates and prosecutes fraudulent trade and advertising practices in a variety of areas. It enforces a substantial number of laws, including the Colorado No-Call List Act, the Colorado Antitrust Act, The Foreclosure Protection Act, and various mortgage fraud-related laws. Much of its work in the last year has focused on loan modification scams, mortgage fraud, and foreclosure prevention. The unit receives about 75 consumer complaints per day and files a variety of cases in response to these complaints. Often these cases result in settlements in which the offending individual or company agrees to stop the illegal practice and pay fines or restitution.

About a quarter of the Unit's appropriation derives from court-ordered awards that the Department has received as a consequence of its consumer protection and antitrust work. Last year, the Committee asked the Department whether it could use more of the balance in the Consumer Protection Custodial account to support Consumer Protection and Antitrust work. The Department provided the following response:

To the extent that we already fund several FTE in Consumer Protection with custodial funds, we have done so reluctantly (potential loss of 30% of the Unit staff during 2003-04 budget "crisis"). Funding a significant portion (or all) of a Unit primarily dedicated to law enforcement activities from recoveries obtained in law enforcement actions creates a potential conflict of interest. In enforcing consumer protection and antitrust laws, the Attorney General must always have the freedom to challenge the most egregious practices, and to pursue those cases that have the broadest public consequences. Such cases do not always have the greatest potential for the recovery of money damages or custodial funds. In fact, the appropriate focus in many such cases is on injunctive relief, restitution, and civil or criminal penalties. The Attorney General acts to stop such conduct, and must do so without regard to whether damages or custodial funds can be recovered.....Using custodial moneys to fund a significant portion of the Consumer Protection Unit also creates great uncertainty in the budget and planning for future law enforcement activities....Finally, funding a significant portion of the Consumer Protection Unit through custodial funds will mean that fewer, if any, of those funds will be available for important consumer education and outreach programs currently funded in this fashion (e.g., AARP ElderWatch), or that might be funded in the future.

(6) Special Purpose Division

(6.1) District Attorneys' Salaries

General Fund appropriation District Attorneys' Salaries	\$2,313,828
General Fund Appropriation adjusted for Pots expenditures	2,313,828

In accord with Section 20-1-306, C.R.S., the state pays 80 percent of the schedule of base salaries established in Section 20-1-301, C.R.S. for district attorneys. Article 12, Section 11 of the Colorado Constitution precludes any changes to the base salary schedule prior to January 1, 2013, which is the date when DA's will begin their next term of office. The appropriation can be adjusted up, or down, or even eliminated at that time, but once the term of office begins, it will be fixed for four more years.

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Department of Law**

APPENDIX A: NUMBERS PAGES

	FY 08-09 Actual	FY 09-10 Actual	FY 10-11 Appropriation	FY 11-12 Request	DI and Approp v Request
DEPARTMENT OF LAW					
John W. Suthers, Attorney General					
(1) ADMINISTRATION					
<i>This Division includes the Office of the Attorney General, Human Resources, Fiscal and Accounting, Information Technology Services, and Legal Support Services. It also includes the department's central appropriations or "Pots", such as Health, Life and Dental, and Short Term Disability, which are allocated among divisions and are financed by almost all of the department's various fund sources. Much of the division's other activity is supported by reappropriated funds that derive from indirect cost recoveries.</i>					
Personal Services	2,792,460	2,723,687	2,947,855	3,013,268	
FTE	<u>39.6</u>	<u>36.6</u>	<u>42.2</u>	<u>42.2</u>	
General Fund	(9)	0	0	0	
Cash Funds	0	0	0	0	
Cash Funds Exempt/RF	2,792,469	2,723,687	2,947,855	3,013,268	
Health, Life and Dental	<u>1,774,106</u>	<u>1,940,668</u>	<u>2,022,131</u>	<u>2,281,572</u>	DI #1
General Fund	522,880	534,414	529,390	577,900	
Cash Funds	141,137	152,611	216,077	237,546	
Cash Funds Exempt/RF	1,063,960	1,194,594	1,226,397	1,385,970	
Federal Funds	46,129	59,049	50,267	80,156	

	FY 08-09 Actual	FY 09-10 Actual	FY 10-11 Appropriation	FY 11-12 Request	DI and Approp v Request
Short-term Disability	<u>36,340</u>	<u>36,556</u>	<u>42,246</u>	<u>51,296</u>	DI #1
General Fund	10,672	11,079	11,893	13,021	
Cash Funds	2,874	2,962	3,829	4,886	
Cash Funds Exempt/RF	21,660	21,527	25,271	31,462	
Federal Funds	1,134	988	1,253	1,927	
S.B. 04-257 Amortization Equalization Disbursement	<u>440,589</u>	<u>560,822</u>	<u>654,314</u>	<u>811,469</u>	DI #1
General Fund	124,687	159,454	183,131	205,982	
Cash Funds	35,889	40,983	58,252	77,296	
Cash Funds Exempt/RF	266,062	344,034	393,530	497,713	
Federal Funds	13,951	16,351	19,401	30,478	
S.B. 06-235 Supplemental Amortization Equalization Disbursement	<u>204,308</u>	<u>348,889</u>	<u>477,318</u>	<u>652,073</u>	DI #1
General Fund	56,229	98,034	133,747	165,521	
Cash Funds	16,578	25,614	42,475	62,113	
Cash Funds Exempt/RF	124,962	215,022	286,950	399,948	
Federal Funds	6,539	10,219	14,146	24,491	
Salary Survey for Classified Employees	<u>251,113</u>	<u>0</u>	<u>0</u>	<u>0</u>	
General Fund	48,237	0	0	0	
Cash Funds	55,068	0	0	0	
Cash Funds Exempt/RF	128,644	0	0	0	
Federal Funds	19,164	0	0	0	

	FY 08-09 Actual	FY 09-10 Actual	FY 10-11 Appropriation	FY 11-12 Request	DI and Approp v Request
Salary Survey for Exempt Employees	<u>649,316</u>	<u>0</u>	<u>0</u>	<u>0</u>	
General Fund	155,259	0	0	0	
Cash Funds	27,694	0	0	0	
Cash Funds Exempt/RF	461,582	0	0	0	
Federal Funds	4,781	0	0	0	
Performance-based Pay Awards for Classified Employees					
	<u>109,976</u>	<u>0</u>	<u>0</u>	<u>0</u>	
General Fund	30,751	0	0	0	
Cash Funds	20,811	0	0	0	
Cash Funds Exempt/RF	49,054	0	0	0	
Federal Funds	9,360	0	0	0	
Performance-based Pay Awards for Exempt Employees					
	<u>278,881</u>	<u>0</u>	<u>0</u>	<u>0</u>	
General Fund	64,830	0	0	0	
Cash Funds	11,485	0	0	0	
Cash Funds Exempt/RF	200,188	0	0	0	
Federal Funds	2,378	0	0	0	
Workers' Compensation	<u>64,888</u>	<u>50,893</u>	<u>50,863</u>	<u>81,150</u>	DI #1
General Fund	19,236	15,272	14,877	22,592	
Cash Funds	5,833	4,136	5,038	8,358	
Cash Funds Exempt/RF	37,990	30,125	29,605	47,657	
Federal Funds	1,829	1,360	1,343	2,543	

	FY 08-09 Actual	FY 09-10 Actual	FY 10-11 Appropriation	FY 11-12 Request	DI and Approp v Request
Attorney Registration and Continuing Legal Education	<u>92,626</u>	<u>92,628</u>	<u>92,626</u>	<u>92,626</u>	
General Fund	22,238	22,239	22,238	22,238	
Cash Funds	3,750	3,750	4,538	4,538	
Cash Funds Exempt/RF	66,075	66,076	65,287	65,287	
Federal Funds	563	563	563	563	
Operating Expenses	<u>192,297</u>	<u>169,420</u>	<u>194,679</u>	<u>194,835</u>	DI NP1
General Fund	0	0	0	0	
Cash Funds Exempt/RF	192,297	169,420	194,679	194,835	
Administrative Law Judges	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	
Cash Funds	0	0	0	0	
Cash Funds Exempt/RF	0	0	0	0	
Purchase of Services from Computer Center	<u>60,456</u>	<u>68,003</u>	<u>37,522</u>	<u>75,727</u>	
General Fund	0	68,003	0	0	
Cash Funds Exempt/RF	60,456	0	37,522	75,727	
Payment to Risk Management and Property Funds	<u>86,286</u>	<u>92,968</u>	<u>28,842</u>	<u>113,724</u>	
General Fund	0	0	0	0	
Cash Funds Exempt/RF	86,286	92,968	28,842	113,724	
Vehicle Lease Payments	<u>65,125</u>	<u>73,969</u>	<u>72,813</u>	<u>68,661</u>	DI NP2
General Fund	12,446	23,891	21,214	18,579	
Cash Funds	11,362	14,773	21,431	23,426	
Cash Funds Exempt/RF	31,571	30,621	25,484	23,907	
Federal Funds	9,746	4,684	4,684	2,749	

	FY 08-09 Actual	FY 09-10 Actual	FY 10-11 Appropriation	FY 11-12 Request	DI and Approp v Request
ADP Capital Outlay	<u>15,138</u>	<u>13,764</u>	<u>0</u>	<u>0</u>	
General Fund	6,881	9,176	0	0	
Cash Funds	0	0	0	0	
Cash Funds Exempt/RF	8,257	4,588	0	0	
Federal Funds	0	0	0	0	
IT Asset Maintenance	<u>432,348</u>	<u>407,667</u>	<u>407,667</u>	<u>407,667</u>	
General Fund	22,935	15,291	15,291	15,291	
Cash Funds	53,722	47,298	59,588	59,588	
Cash Funds Exempt/RF	353,620	343,697	331,407	331,407	
Federal Funds	2,071	1,381	1,381	1,381	
Leased Space	<u>30,001</u>	<u>32,502</u>	<u>26,220</u>	<u>26,220</u>	
General Fund	4,945	5,357	4,321	4,321	
Cash Funds	3,295	3,570	2,880	2,880	
Cash Funds Exempt/RF	21,576	23,374	18,857	18,857	
Federal Funds	185	201	162	162	
Capitol Complex Leased Space	<u>1,149,527</u>	<u>1,276,139</u>	<u>1,252,757</u>	<u>1,340,779</u>	DI #1
General Fund	245,252	382,931	368,073	373,262	
Cash Funds	103,172	103,874	124,080	138,099	
Cash Funds Exempt/RF	768,765	755,229	727,537	787,395	
Federal Funds	32,338	34,105	33,067	42,023	

	FY 08-09 Actual	FY 09-10 Actual	FY 10-11 Appropriation	FY 11-12 Request	DI and Approp v Request
Security for State Services Building	<u>257,633</u>	<u>196,693</u>	<u>120,919</u>	<u>120,919</u>	DI #1
General Fund	79,153	73,989	34,587	33,993	
Cash Funds	21,161	15,512	11,976	11,976	
Reappropriated Funds	150,093	101,938	71,164	71,758	
Federal Funds	7,226	5,254	3,192	3,192	
Communications Services Payments	<u>6,208</u>	<u>6,208</u>	<u>7,744</u>	<u>7,920</u>	
General Fund	2,308	2,308	2,748	2,810	
Cash Funds	575	575	2,092	2,140	
Cash Funds Exempt/RF	1,773	1,773	1,056	1,080	
Federal Funds	1,552	1,552	1,848	1,890	
Attorney General Discretionary Fund - GF	5,000	5,000	5,000	5,000	
SUBTOTAL - Administration	8,994,622	8,096,476	8,441,516	9,344,906	10.7%
FTE	<u>39.6</u>	<u>36.6</u>	<u>42.2</u>	<u>42.2</u>	<u>0.0</u>
General Fund	1,433,930	1,426,438	1,346,510	1,460,510	8.5%
Cash Funds	514,406	415,658	552,256	632,846	14.6%
Cash Funds Exempt/RF	6,887,340	6,118,673	6,411,443	7,059,995	10.1%
Federal Funds	158,946	135,707	131,307	191,555	45.9%

	FY 08-09 Actual	FY 09-10 Actual	FY 10-11 Appropriation	FY 11-12 Request	DI and Approp v Request
(2) LEGAL SERVICES TO STATE AGENCIES (LSSA)					
<i>This Division provides legal services to other agencies of state government, earning its appropriations of Cash Funds and Reappropriated Funds from the legal fees paid by those state agencies.</i>					
Personal Services	17,138,755	18,075,032	19,586,780	19,636,569	DI #3
FTE	<u>203.5</u>	<u>212.7</u>	<u>231.3</u>	<u>227.6</u>	
General Fund	0	0	0	0	
Cash Funds	1,582,342	1,659,140	1,582,388	1,659,140	
Cash Funds Exempt/RF	15,556,413	16,415,892	18,004,392	17,977,429	
Operating and Litigation - CFE/RF	880,632	849,567	1,545,006	1,505,284	DI #3
Indirect Cost Assessment - CFE/RF	2,676,131	2,665,207	2,608,316	2,608,316	
SUBTOTAL - Legal Services to State Agencies	20,695,518	21,589,806	23,740,102	23,750,169	0.0%
FTE	<u>203.5</u>	<u>212.7</u>	<u>231.3</u>	<u>227.6</u>	(3.7)
General Fund	0	0	0	0	n/a
Cash Funds	1,582,342	1,659,140	1,582,388	1,659,140	4.9%
Cash Funds Exempt/RF	19,113,176	19,930,666	22,157,714	22,091,029	-0.3%

	FY 08-09 Actual	FY 09-10 Actual	FY 10-11 Appropriation	FY 11-12 Request	DI and Approp v Request
(3) CRIMINAL JUSTICE AND APPELLATE					
<i>This Division prosecutes fraud involving insurance, securities, Medicaid, and workers' compensation. It also handles foreign prosecutions, certifies peace officers, provides support to district attorneys in homicide cases, and represents the state in criminal appeals. When the Department is involved in criminal appeals or in trial court criminal prosecution, the division is responsible for keeping crime victims informed about the case.</i>					
<i>Reappropriated funds are transferred from the Department of Regulatory Agencies and the Department of Public Safety. Cash funds derive from Pinnacol Assurance and the P.O.S.T. Board Cash Fund. Federal Funds derive from the U.S. Department of Health and Human Services' Medicaid Fraud Control Program.</i>					
Special Prosecutions Unit	2,579,914	2,685,907	2,844,966	2,905,728	DI #1, DI NP1
FTE	<u>29.1</u>	<u>29.1</u>	<u>31.0</u>	<u>31.0</u>	
General Fund	1,429,370	1,480,003	1,578,099	1,446,041	
Cash Funds	213,484	203,794	872,706	891,351	
Cash Funds Exempt/RF	937,060	1,002,110	394,161	568,336	
Auto Theft Prevention Grant	0	57,463	246,976	242,388	
FTE	<u>0.0</u>	<u>0.5</u>	<u>2.0</u>	2.0	
Cash Funds	0	57,463	0	0	
Cash Funds Exempt/RF	0	0	246,976	242,388	
Appellate Unit	2,360,972	2,627,235	2,648,687	2,703,575	DI NP1
FTE	<u>29.3</u>	<u>30.7</u>	<u>32.0</u>	<u>32.0</u>	
General Fund	2,288,823	2,301,608	2,450,093	2,627,657	
FTE	28.3	30.7	31.0	31.0	
Cash Funds Exempt/RF	72,149	325,627	198,594	75,918	
FTE	1.0		1.0	1.0	

	FY 08-09 Actual	FY 09-10 Actual	FY 10-11 Appropriation	FY 11-12 Request	DI and Approp v Request
Medicaid Fraud Control Unit	1,232,421	1,272,725	1,618,187	1,616,613	DI NP1
FTE	<u>13.7</u>	<u>13.9</u>	<u>17.0</u>	<u>17.0</u>	
General Fund	302,876	318,208	404,547	404,152	
Federal Funds	929,545	954,517	1,213,640	1,212,461	
Peace Officers Standards and Training Board Support	1,053,301	2,107,154	2,681,744	2,691,996	DI NP1
FTE	<u>4.6</u>	<u>6.5</u>	<u>7.0</u>	<u>7.0</u>	
General Fund	57,107	0	0	0	
Cash Funds	996,194	2,107,154	2,681,744	2,691,996	
Cash Funds Exempt/RF	0	0	0	0	
Safe2Tell - GF	0	0	98,351	98,351	
FTE	0.0	0.0	1.0	1.0	
Indirect Cost Assessment	<u>247,395</u>	<u>328,276</u>	<u>375,994</u>	<u>375,994</u>	
Cash Funds	106,744	77,430	205,732	205,732	
Cash Funds Exempt/RF	140,651	138,920	46,113	46,113	
Federal Funds	0	111,926	124,149	124,149	
SUBTOTAL - Criminal Justice and Appellate	7,474,003	9,078,760	10,514,905	10,634,645	1.1%
FTE	<u>76.7</u>	<u>80.7</u>	<u>90.0</u>	<u>90.0</u>	<u>0.0</u>
General Fund	4,078,176	4,099,819	4,531,090	4,576,201	1.0%
Cash Funds	1,316,422	2,445,841	3,760,182	3,789,079	0.8%
Cash Funds Exempt/RF	1,149,860	1,466,657	885,844	932,755	5.3%
Federal Funds	929,545	1,066,443	1,337,789	1,336,610	-0.1%

	FY 08-09 Actual	FY 09-10 Actual	FY 10-11 Appropriation	FY 11-12 Request	DI and Approp v Request
(4) WATER AND NATURAL RESOURCES					
<i>This Division represents the state in legal cases involving water and natural resources, such as oil, gas, mining and minerals. It is also involved in legal cases involving wildlife, pollution, hazardous waste, and protection of the state's air and water. Reappropriated funds come from the Colorado Water Conservation Board's Litigation Fund and the Hazardous Substance Response Fund.</i>					
Federal and Interstate Water Unit	470,910	487,168	516,519	526,892	DI NP1
FTE	<u>5.5</u>	<u>5.5</u>	<u>5.5</u>	<u>5.5</u>	
General Fund	470,910	487,168	516,519	526,892	
FTE	5.5	5.5	5.5	5.5	
Cash Funds	0	0	0	0	
FTE	0.0	0.0	0.0	0.0	
Defense of the Colorado River Basin Compact	412,928	275,383	333,017	340,011	DI NP1
FTE	<u>4.0</u>	<u>3.4</u>	<u>3.0</u>	<u>3.0</u>	
General Fund	(11,698)	0	0	0	
Cash Funds	424,626	275,383	333,017	340,011	
Cash Funds Exempt/RF	0	0	0	0	
Defense of the Republican River Compact	141,218	65,190	110,000	110,000	
FTE	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	
Cash Funds	141,218	39,043	110,000	110,000	
Cash Funds Exempt/RF	0	26,147	0	0	
Consultant Expenses	92,589	82,678	50,000	50,000	
Cash Funds	92,589	55,267	50,000	50,000	
Cash Funds Exempt/RF	0	27,411	0	0	

	FY 08-09 Actual	FY 09-10 Actual	FY 10-11 Appropriation	FY 11-12 Request	DI and Approp v Request
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)	397,637	291,374	382,962	466,191	DI #2, DI NP1
FTE	<u>3.9</u>	<u>3.4</u>	<u>3.5</u>	<u>3.5</u>	
General Fund	380,905	276,351	0	0	
Cash Funds Exempt/RF	16,732	15,023	382,962	466,191	
CERCLA Contracts	<u>526,861</u>	<u>447,550</u>	<u>500,000</u>	<u>425,000</u>	DI #2, DI NP1
General Fund	76,861	0	0	0	
Cash Funds Exempt/RF	450,000	447,550	500,000	425,000	
Natural Resource Damage Claims at Rocky Mountain Arsenal	75,600	1,670	150,000	150,000	
FTE	<u>0.3</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	
General Fund	(356)	0	0	0	
FTE	0.0	0.0	0.0	0.0	
Cash Funds	75,956	1,670	150,000	150,000	
FTE	0.3	0.0	0.0	0.0	
Indirect Cost Assessment - CFE/RF	0	0	41,384	41,384	
SUBTOTAL - Water and Natural Resources	2,117,743	1,651,013	2,083,882	2,109,478	1.2%
FTE	<u>13.7</u>	<u>12.3</u>	<u>12.0</u>	<u>12.0</u>	<u>0.0</u>
General Fund	916,622	763,519	516,519	526,892	2.0%
Cash Funds	734,389	371,363	643,017	650,011	1.1%
Cash Funds Exempt/RF	466,732	516,131	924,346	932,575	0.9%

	FY 08-09 Actual	FY 09-10 Actual	FY 10-11 Appropriation	FY 11-12 Request	DI and Approp v Request
(5) CONSUMER PROTECTION					
<i>This Division protects Colorado consumers and business against fraud and maintains a competitive business environment. Cash funds derive from fees paid by regulated businesses, court-ordered awards, and custodial funds. Reappropriated funds come from the Department of Regulatory Agencies.</i>					
Consumer Protection and Anti-Trust	1,667,444	1,627,090	1,814,069	1,849,900	DI NP1
FTE	<u>19.1</u>	<u>19.5</u>	<u>21.0</u>	<u>21.0</u>	
General Fund	720,977	794,743	907,056	928,148	
FTE	11.5	11.0	12.5	12.5	
Cash Funds	717,531	592,455	664,957	674,911	
FTE	0.8	1.5	1.5	1.5	
Cash Funds Exempt/RF	228,936	239,892	242,056	246,841	
FTE	6.8	7.0	7.0	7.0	
Consumer Credit Unit	1,268,455	1,280,987	1,350,707	1,378,738	DI NP1
FTE	<u>17.5</u>	<u>17.3</u>	<u>18.0</u>	<u>18.0</u>	
Cash Funds	1,268,455	1,280,987	1,350,707	1,378,738	
Cash Funds Exempt/RF	0	0	0	0	
Indirect Cost Assessment	<u>313,952</u>	<u>311,188</u>	<u>307,418</u>	<u>307,418</u>	
Cash Funds	276,278	273,977	271,947	271,947	
Cash Funds Exempt/RF	37,674	37,211	35,471	35,471	

	FY 08-09 Actual	FY 09-10 Actual	FY 10-11 Appropriation	FY 11-12 Request	DI and Approp v Request
SUBTOTAL - Consumer Protection	3,249,851	3,219,265	3,472,194	3,536,056	1.8%
FTE	<u>36.6</u>	<u>36.8</u>	<u>39.0</u>	<u>39.0</u>	<u>0.0</u>
General Fund	720,977	794,743	907,056	928,148	2.3%
Cash Funds	2,262,264	2,147,419	2,287,611	2,325,596	1.7%
Cash Funds Exempt/RF	266,610	277,103	277,527	282,312	1.7%

(6) SPECIAL PURPOSE

This division contains special purpose appropriations and programs that do not fit within the Department's other divisions. Over the years it has also included appropriations for a number of large lawsuits.

District Attorneys' Salaries - GF	1,654,605	2,096,027	2,313,828	2,534,796	
Litigation Management and Technology Fund	<u>327,006</u>	<u>145,258</u>	<u>325,000</u>	<u>325,000</u>	
Cash Funds	327,006	145,258	325,000	325,000	
Cash Funds Exempt/RF	0	0	0	0	
Statewide HIPAA Legal Services - GF	17,490	3,538	0	0	
Tobacco Litigation	<u>372,226</u>	<u>535,462</u>	<u>750,000</u>	<u>750,000</u>	
General Fund	0	0	0	0	
Cash Funds	372,226	535,462	750,000	750,000	
Cash Funds Exempt/RF	0	0	0	0	
Lobato Litigation Expenses - RF	0	0	432,500	432,500	

	FY 08-09 Actual	FY 09-10 Actual	FY 10-11 Appropriation	FY 11-12 Request	DI and Approp v Request
SUBTOTAL - Special Purpose	2,371,327	2,780,285	3,821,328	4,042,296	5.8%
FTE	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
General Fund	1,672,095	2,099,565	2,313,828	2,534,796	9.5%
FTE	0.0	0.0	0.0	0.0	0.0
Cash Funds	699,232	680,720	1,075,000	1,075,000	0.0%
FTE	0.0	0.0	0.0	0.0	0.0
Cash Funds Exempt/RF	0	0	432,500	432,500	0.0%
FTE	0.0	0.0	0.0	0.0	0.0
Federal Funds	0	0	0	0	n/a
FTE	0.0	0.0	0.0	0.0	0.0
DEPARTMENT OF LAW					
TOTAL FUNDS	44,903,064	46,415,605	52,073,927	53,417,550	2.6%
FTE	<u>370.1</u>	<u>379.1</u>	<u>414.5</u>	<u>410.8</u>	<u>(3.7)</u>
General Fund	8,821,800	9,184,084	9,615,003	10,026,547	4.3%
Cash Funds	7,109,055	7,720,141	9,900,454	10,131,672	2.3%
Cash Funds Exempt/RF	27,883,718	28,309,230	31,089,374	31,731,166	2.1%
Federal Funds	1,088,491	1,202,150	1,469,096	1,528,165	4.0%

**FY 2011-12 Joint Budget Committee Staff Budget Briefing
Department of Law**

APPENDIX B: SUMMARY OF MAJOR LEGISLATION

- **S.B. 10-167 (Boyd/Riesberg): Medicaid Efficiency and False Claims.** Creates the False Claims Act, which authorizes a civil action by the state or by a private person (a whistleblower) against those who submit false Medicaid claims to the state, such as a claim for payment for medical services that were not provided. Specifies penalties for submitting false claims and allows whistleblowers to receive a portion of penalties and recoveries that result from the information they provide. Allows whistleblowers to sue those who retaliate against them, provided the whistleblower has acted lawfully in the false claims action. The whistleblower's complaint is initially filed under seal and is initially given to the state but not to the defendant. The complaint must be supported by evidence that is given to the state but is not initially filed in court. If the federal government rules that the Act complies with federal requirements, Colorado will retain an extra 10 percent of most recoveries received by the state and share less of the recoveries with the federal government. Colorado has applied for Federal approval, but the approval process is currently on hold in Washington due to congressional concerns. For FY 2010-11 the bill appropriates \$69,145 General Fund, \$207,435 federal funds, and 3.0 FTE to the Department of Law's Medicaid Fraud Control Unit (MFCU) to carry out the Act's provisions.

- **H.B. 10-1305 (Pommer/Keller):** Supplemental adjustments to the FY 2009-10 Long Bill for the Department of Law.

- **H.B. 10-1329 (Peniston/Boyd): Solid Waste User Fees.** Allows the Solid and Hazardous Waste Commission within the Department of Public Health and Environment to set the solid waste user fees that provide revenue to the Hazardous Substance Response Fund. Previously the fees were set in statute. One of these fees is a per-cubic-yard fee on hazardous waste haulers, up to 3.5 cents of which can be used to support the Department of Law's CERCLA Unit. CERCLA is the federal Comprehensive Environmental Response, Compensation and Liability Act, which is commonly referred to as the Superfund program. Switches from General Fund to reappropriated funds \$511,159 of FY 2010-11 appropriations to the Department of Law that are contained in the FY 2010-11 Long Bill. The funding source for the reappropriated funds is an additional appropriation of \$511,159 from the Hazardous Substance Response Fund to the Colorado Department of Public Health and Environment for payments to the Department of Law for CERCLA-related services. In addition, increases the appropriation for indirect cost assessments by \$41,384 reappropriated funds. For more information see the corresponding bill description for the Department of Public Health and Environment.

- **H.B. 10-1376 (Pommer/Keller):** General Appropriations Act for FY 2010-11.

- **H.B. 10-1385 (Lambert/Tapia): Funding Insurance Fraud Cases.** The Long Bill (H.B. 10-1376) provided \$860,186 to the Department of Law's Insurance Fraud program from the Division of Insurance Cash Fund. In a two-step appropriation, these moneys pass through the Division of Insurance within the Department of Regulatory Agencies, where they appear as a cash funds appropriation, and then pass to the Department of Law, where they appear as reappropriated funds. Approximately \$700,000 of these moneys derive from the insurance-fraud fee paid by insurance companies regulated by the Division of Insurance, while the remaining \$160,000 comes from insurance premium taxes. House Bill 10-1385 increases the fraud fee from \$425 to \$561 and directs all fraud-fee revenues to the Insurance Fraud Cash Fund, which is created by the bill. The bill then replaces the two-step appropriation with a direct cash fund appropriation to the Department of Law from the Insurance Fraud Cash Fund. Since premium tax revenues flow to the General Fund, the bill increases General Fund revenues by about \$160,000.
- **H.B. 09-1036 (S. King/Morse): Automobile Registration Fee for POST Board Cash Fund.** Increases the motor vehicle registration fee that funds the Peace Officers Standards and Training Board from 25¢ to 60¢ beginning on July 1, 2009. Appropriates \$1,494,995 cash funds and 1.0 FTE to the Department of Law's Criminal Justice and Appellate Division for FY 2009-10. 20.
- **H.B. 09-1141 (Ferrandino/White): Update Consumer Credit Protections.** Simplifies the fee structure for the Department of Law's Uniform Consumer Credit Code program, removes statutory caps on fees, sets a reserve limit equal to one third of annual program expenditures, and allows the Department to set fees.
- **H.B. 07-1054 (T. Carroll/Shaffer): Increase Appellate, District, and County Court Judges.** In addition to the additional judges, support staff and public defenders in the Judicial Branch, indicates the need in FY 2008-09 for 2.0 attorney FTE and \$160,334 General Fund in the Department of Law's Appellate division and the need in FY 2009-10 for additional 3.0 attorney FTE. The Department of Law requested and received the additional FTE in the FY 2008-09 Long Bill but, due to the economic downturn, did not request or receive the additional FTE indicated for FY 2009-10.

**2008 -2010 Session Bills with Appropriations for the
Purchase of Legal Services from the Department of Law**

Client Agency Bill Number: Bill Title	Legal Services Appropriation (RF) ¹					
	2008 Session Bills		2009 Session Bills		2010 Session Bills	
	FY 08-09	FY 09-10	FY 09-10	FY 10-11	FY 09-10	FY 10-11
Agriculture						
S.B. 10-072: Colorado Seed Potato Act					905	377
Education						
H.B. 08-1335: Building Excellent Schools Today Act	32,414	32,414				
S.B. 09-123: Healthy Choices Dropout Prevent			751	0		
S.B. 09-163: Ed Account system			7,135	0		
H.B. 09-1319: Concurrent Enrollment of Public School Students			10,139	3,004		
Human Services						
H.B. 08-1314: Local Gaming Funds Gambling Addiction,	2,866	0				
Labor						
H.B. 08-1325: Seasonal Agricultural Worker Program, Labor	4,322	2,161				
Natural Resources						
H.B. 08-1161: Strengthen Mining Reclamation Standards	14,406	5,762				
Personnel and Administration						
H.B. 10-1176: Require Government Recovery Audits					2,000	2,000
Public Health and Environment						
S.B. 08-153: License Home Care Agencies	\$2,881	\$5,762				
H.B. 10-1018: Reduce Waste Tire Stockpile Risks					15,076	15,076
H.B. 10-1125: Regulate Grease Collection & Disposal					7,538	3,769
Regulatory Agencies						
S.B. 08-029: Continuing Education of Architects	9,004	9,004				
S.B. 08-152: Regulate the Practice of Occupational Therapy	10,805	13,687				
S.B. 08-200: Expand Discrimination Prohibitions	60,073	60,073				
S.B. 08-219: Licensure of Massage Therapists	18,008	31,693				
H.B. 08-1058: Uniform Athlete Agents Act	7,564	9,364				

Client Agency Bill Number: Bill Title	Legal Services Appropriation (RF) ¹					
	2008 Session Bills		2009 Session Bills		2010 Session Bills	
	FY 08-09	FY 09-10	FY 09-10	FY 10-11	FY 09-10	FY 10-11
H.B. 08-1226: Mobility Of Practice of Non-Colorado CPAs	3,602	36,015				
H.B. 08-1227: Sunset Continue the Public Utilities Commission	43,218	43,218				
H.B. 08-1383: Inactive Nursing License Status	720	0				
S.B. 09-026: Regulation of Athletic Trainers			\$21,779	\$14,269		
S.B. 09-138: Sunset Certification of Nurse Aides			3,755	0		
S.B. 09-167: Sunset Chiropractor Board			4,882	0		
S.B. 09-239: Sunset Nursing Board			33,795	11,265		
H.B. 09-1086: Continuing Competency Mental Health Professionals			30,000	0		
H.B. 09-1136: Electrician License Requirements			11,265	3,755		
H.B. 09-1202: Mortuary Registration			24,783	12,767		
S.B. 10-109: Medical Marijuana Doctor Patient Relations (\$99,879 of FY 10 legal services are for CDPHE)					612,463	123,774
S.B. 10-124: Medical Transparency					7,538	1,508
H.B. 10-1128: Division of Registrations Regulatory Efficiency					(9,799)	(9,799)
H.B. 10-1141: Mortgage company registration					6,407	6,407
H.B. 10-1148: Architect license renewal					(11,307)	(11,307)
H.B. 10-1224: Sunset Podiatry Board					2,261	6,784
H.B. 10-1260: Sunset Board Medical Examiners					17,262	678
H.B. 10-1278: Create Home Owners Association Ombudsman					15,679	0
H.B. 10-1365: Utilities Convert to Natural Gas					13,041	13,041
H.B. 10-1415: Surgical Tech Registration					3,769	17,337
Revenue						
H.B. 09-1173: Contraband Cigarettes			7,510	7,510		
H.B. 10-1193: Sales tax out-of-state retailers					40,000	20,000
H.B. 10-1284: Medical Marijuana Regulation					271,368	271,368
State						
S.B. 10-203: Independent expenditures after Citizens United					4,522	0

Client Agency Bill Number: Bill Title	Legal Services Appropriation (RF) ¹					
	2008 Session Bills		2009 Session Bills		2010 Session Bills	
	FY 08-09	FY 09-10	FY 09-10	FY 10-11	FY 09-10	FY 10-11
Transportation H.B. 08-1257: Overweight Motor Vehicle Permits and Fees, Transportation	10,890	0				
Total legal services appropriation	\$220,773	\$249,153	\$155,794	\$52,570	\$998,723	\$461,013
Total FTE	1.7	1.9	1.2	0.4	7.6	3.5
Number of bills	14	14	11	11	16	16
Average legal services in each bill	\$15,770	\$17,797	\$14,163	\$4,779	\$62,420	\$28,813
Average FTE in each bill	0.12	0.14	0.10	0.04	0.47	0.22

¹This table shows the change in expenditures for legal services relative to the expenditures that would have occurred if the bill had not become law. For example, an expenditure of \$5,000 in the first year and \$3,000 in the second, means the legal expenditures required to implement the bill declined by \$2,000 in the second year.

**FY 2011-12 Joint Budget Committee Staff Budget Briefing
Department of Law**

**APPENDIX C: UPDATE OF FY 2009-10
LONG BILL FOOTNOTES AND REQUESTS FOR INFORMATION**

Long Bill Footnotes

32 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 \$76.36 per hour for attorneys and not exceed \$60.03 per hour for paralegals, which equates to a blended rate of \$73.37 per hour.

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

33 Department of Law, Special Purpose, Litigation Management and Technology Fund -- It is the intent of the General Assembly to grant the Department of Law additional flexibility by allowing the Department to use funds appropriated in this line item to address unanticipated state legal needs that arise during FY 2010-11, as well as information technology asset maintenance needs that would otherwise require General Fund appropriations during FY 2010-11. It is also the intent of the General Assembly that moneys spent from this fund 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 fund will not be used to offset present or future personal services deficits in any division in the Department. The Department is requested to submit a quarterly report to the Joint Budget Committee detailing the purpose for which moneys from this fund have been expended. Such a report 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 has been utilizing the Litigation and Management Technology Fund in the fashion designated in this footnote and has been submitting the required reports.

Requests for Information

1 Department of Law, Criminal Justice and Appellate, Medicaid Fraud Grant -- The General Assembly requests that the Department of Law's Medicaid Fraud Control Unit produce a progress report on the Department's efforts to reduce Medicaid fraud and abuse in Colorado. The report should include: (1) the most recent estimates on the total amount of Medicaid fraud and abuse in Colorado; (2) a summary of total fines, costs, and restitutions recovered, attributable to the Medicaid Fraud Control Unit's efforts; (3) a detailed explanation of the Medicaid Fraud Control Unit's participation in global or national Medicaid fraud settlements, including total awards

received due to them; and (4) evidence of the effectiveness of the Medicaid Fraud Control Unit in reducing the amount of Medicaid fraud and abuse in Colorado. The Medicaid Fraud Control Unit is requested to submit the report to the Joint Budget Committee by November 1, 2010.

Comment: The report was submitted as requested. The Medicaid Fraud Control Unit's FY 2010-11 appropriation is 17.0 FTE and \$1.6 million, 75 percent of which is Federal Funds with the remainder General Fund. The Unit is responsible for monitoring the financial integrity of approximately \$4 billion worth of payments made to over 10,000 Medicaid providers around the State on behalf of some 600,000 Medicaid recipients. The report reiterates the findings of a 1999 Medicaid fraud and abuse programs performance audit, which estimated fraud and abuse nationwide at 10 percent while placing the corresponding Colorado rate at 1.8 percent. The report notes that a 1.8 percent fraud rate applied to \$4.0 billion worth of payments amounts to more than \$72 million of fraud within the state.

The Fraud Unit's caseload has been increasing. During FY 2009-10, the Unit resolved 41 cases and opened 51 new ones, ending the year with 78 ongoing cases, 10 more than the ending FY 2007-08 caseload and 11 more than FY 2008-09. Approximately half of these cases involve pharmaceutical manufacturers or providers of durable medical equipment and supplies. The Unit was involved in convictions and settlements that generated \$4.2 million in restitution for the state. The Unit cooperates with federal agencies and with other states to investigate and prosecute multi-jurisdictional Medicaid fraud cases; all but \$5,300 this \$4.2 million of restitution came from national settlements, primarily with pharmaceutical companies. The biggest individual settlement was \$2.96 million received from Pfizer Pharmaceutical.

During FY 2009-10, the Unit referred 91 Colorado health care providers to the U.S. Department of Health and Human Services' Office of the Inspector General for further action. The abuses involved patient abuse, neglect, theft, forgery, assault, sex assault, child abuse, harassment, impersonation, identity theft, and drug diversion. Of these, 17 were banned from participation in federally funded health care programs for 5 years, 2 were banned for 12-13 years, 1 was banned for 99 years, and 3 resulted in no suspension. The remaining cases are pending.