

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



FY 2010-11 STAFF BUDGET BRIEFING

DEPARTMENT OF LAW

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

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**FY 2010-11 BUDGET BRIEFING
STAFF PRESENTATION TO THE JOINT BUDGET COMMITTEE**

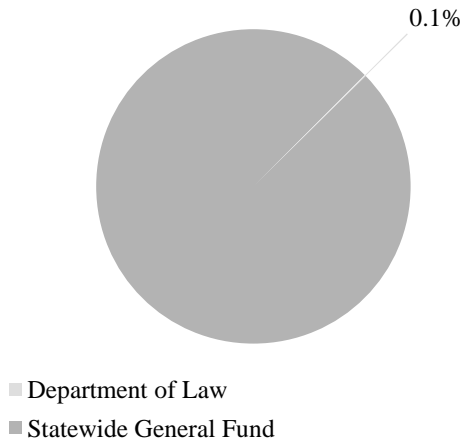
DEPARTMENT OF LAW

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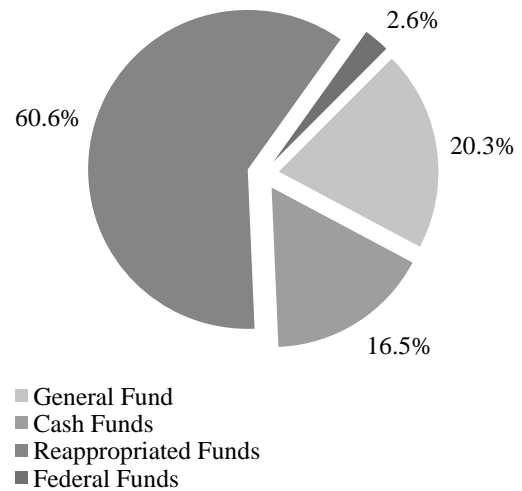
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Department of Law
GRAPHIC OVERVIEW**

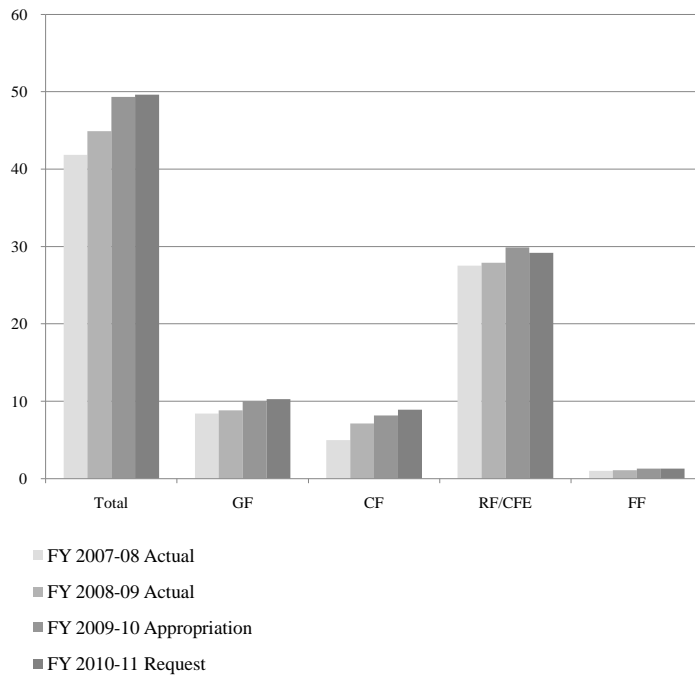
Department's Share of Statewide General Fund



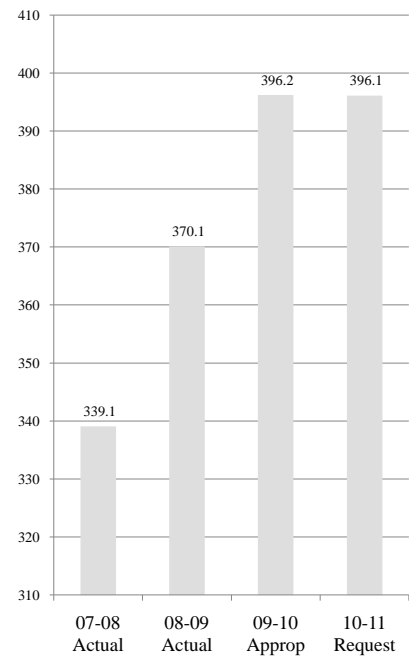
Department Funding Sources



**Budget History
(Millions of Dollars)**

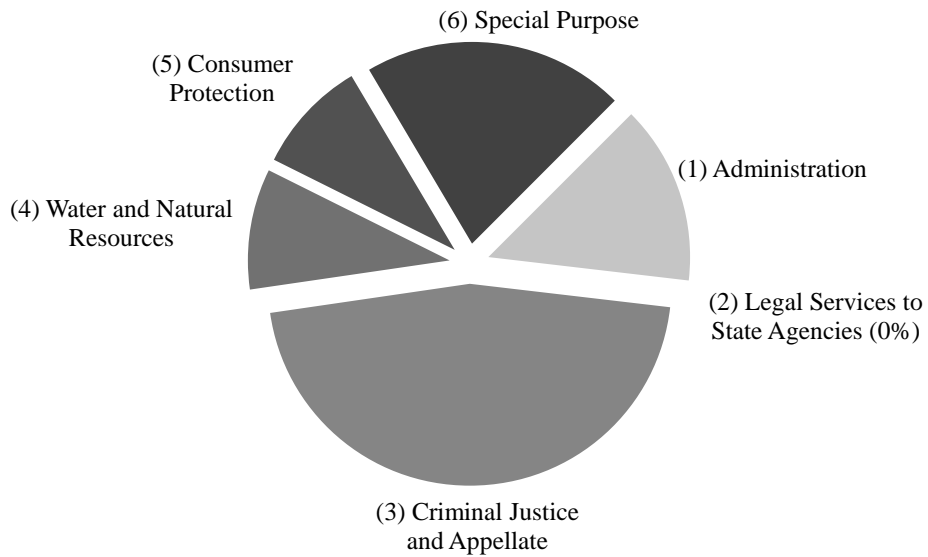


FTE History

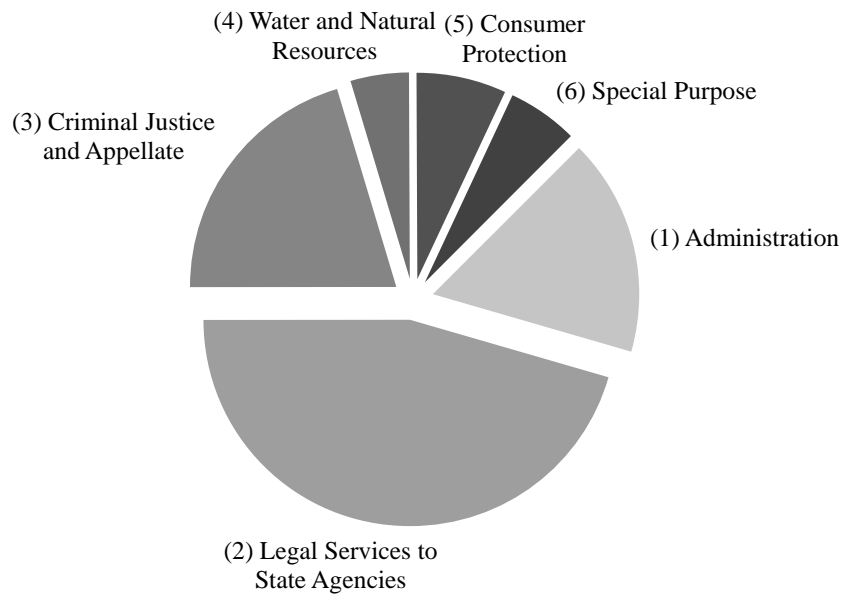


Unless otherwise noted, all charts are based on the FY 2009-10 appropriation.

Distribution of General Fund by Division



Distribution of Total Funds by Division



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DEPARTMENT OVERVIEW

Key Responsibilities

Civil Litigation

- ▶ Enforce compliance with State law and recover funds due to the State.
- ▶ Protect and defend state property rights.
- ▶ Enforce consumer credit, debt collection, consumer protection, and antitrust laws.

Criminal Enforcement

- ▶ Represent the State in criminal appeal cases.
- ▶ Assist local district attorneys in handling death penalty cases.
- ▶ Investigate and prosecute Medicaid related crimes.

Legal Counsel and Advice to the State

- ▶ Provide opinions, contract review, and other counsel to the State and its agencies.

Factors Driving the Budget

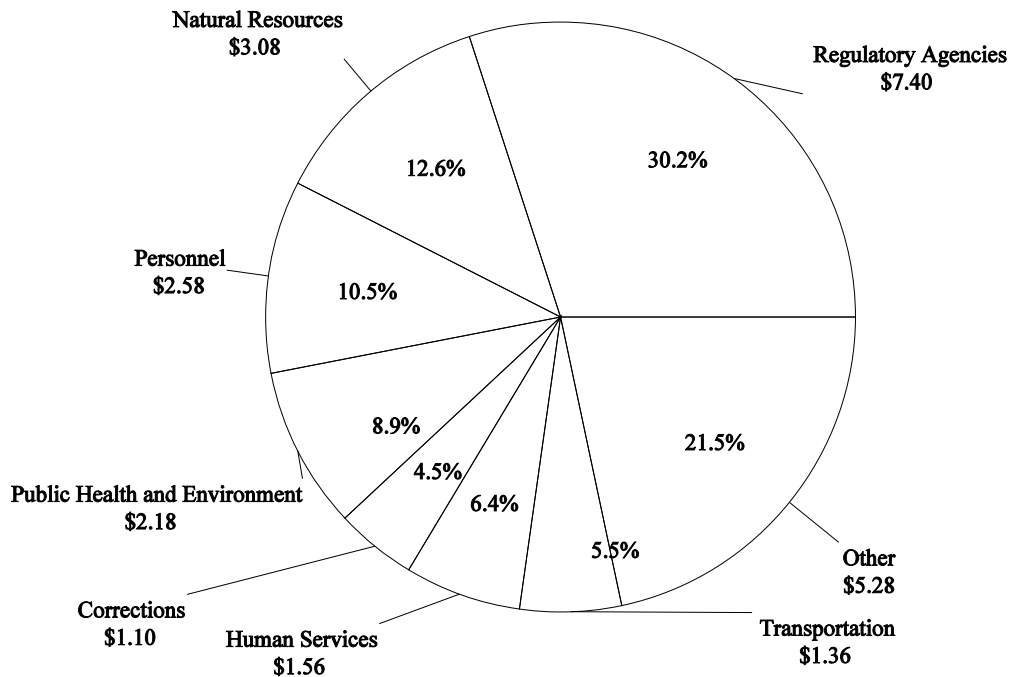
Legal Services Provided to State Agencies

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

	FY 04-05 Actual	FY 05-06 Actual	FY FY 2006-07 Actual	FY FY 2007-08 Actual	FY FY 2008-09 Actual	FY FY 2009-10 Appropriati on.
Regulatory Agencies	\$5,075,682	\$5,310,731	\$5,761,082	\$6,804,123	\$7,396,788	\$7,684,991
Natural Resources	2,198,168	2,471,139	2,555,184	2,985,212	3,082,235	3,313,102
Personnel	2,315,498	2,548,690	2,578,495	3,075,061	2,579,276	2,722,047
Public Health & Environment	1,354,044	1,599,380	1,616,692	1,996,830	2,178,418	2,428,065
Transportation	981,602	1,098,635	1,110,286	1,259,910	1,361,947	1,238,644
Human Services	1,173,984	1,301,464	1,354,909	1,460,099	1,558,179	1,389,932
Corrections	1,095,811	1,012,821	948,962	880,952	1,096,327	1,153,163
Other agencies	3,821,461	3,950,419	4,328,158	4,824,022	5,279,478	5,537,189
Total expenditure or appropriation.	18,016,250	19,293,279	20,253,768	23,286,209	24,532,648	25,467,133
% change of total from prior year	2.4%	7.1%	5.0%	15.0%	5.4%	3.8%
% of total Department. of Law appropriation.	51.8%	52.8%	50.6%	50.6%	51.3%	51.6%
% of state operating appropriation.	0.13%	0.13%	0.12%	0.14%	0.13%	0.13%
Blended Legal Rate	\$61.57	\$64.45	\$67.77	\$72.03	\$75.10	\$75.38
% change from prior year	1.3%	4.7%	5.2%	6.3%	4.3%	0.4%
Total Hours	292,953	298,038	298,291	310,387	326,575	337,850
% change from prior year	1.2%	1.7%	0.1%	4.1%	5.2%	3.5%

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

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 45.9 percent of the Department's FY 2009-10 General Fund appropriation. Approximately 56 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 Estimate
Appropriation - GF	\$2,035,165	\$2,133,564	\$2,288,824	\$2,583,983
New Cases	951	979	1,240	1,350
Case Backlog /1	258	270	400	450

/1 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 in size of \$260,000 General Fund and 3.0 FTE in FY 2009-10, but the Department did not request this increase 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 not be 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 20.9 percent 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
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%
2009-10 appropriation	2,096,078	441,473	26.7%
2010-11 request	2,313,828	217,750	10.4%

The FY 2010-11 request is in line with the increase foreseen in the fiscal note for H.B. 07-1170.

Water and Natural Resources

The Water and Natural Resources Division is the next largest user of General Fund in the Department, accounting for 9.7 percent of the Department's FY 2009-10 General Fund appropriation. Within this division, the largest General Fund appropriations go to the Federal and Interstate Water Unit, which represents the State in water rights litigation, and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Unit which uses federal CERCLA law to clean up sites that have been contaminated by hazardous substances.

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DECISION ITEM PRIORITY LIST

Decision Item	GF	CF	RAF	FF	Total	FTE
1	0	51,404	0	0	51,404	0.5
<p>Additional FTE and spending authority for the Consumer Credit Units</p> <p>Consumer Protection and Anti-trust Division. This is a two part request: (1) the Department requests that the 0.5 FTE Legal Assistant I currently assigned to the Department's two consumer credit units, the Uniform Consumer Credit Code (UCCC) Unit and the Collection Agency Board (CAB) Unit, be increased to 1.0 FTE of a Legal Assistant II at a cost of \$31,404 to in order to deal with the challenges of an increasingly complex caseload, and (2) the Department requests an addition \$20,000 of spending authority to help its two consumer credit units pay for increasing litigation costs. <i>Statutory authority: Title 5 (The Consumer Credit Code), C.R.S.</i></p>						
2	0	0	0	0	0	0.0
<p>Combine the Collection Agency Board (CAB) and the Uniform Consumer Credit Code (UCCC)</p> <p>Consumer Protection and Anti-trust Division. The Department requests that the currently separate Long Bill appropriations for its two consumer-credit units, the Uniform Consumer Credit Code (UCCC) Unit and the Collection Agency Board (CAB) Unit, be consolidated into a single appropriation. The Department believes that the additional flexibility resulting from consolidation will allow it to allocate resources more efficiently and effectively and better respond to changes in the mix of UCCC and CAB complaints. The change would not alter appropriations. <i>Statutory authority: Title 5 (The Consumer Credit Code), C.R.S.</i></p>						
Non Prioritized 1	103,389	83,012	19,972	(10,119)	196,254	0.0
<p>Administration Operating Expenses</p> <p>Administration Division. This statewide decision item would adjust the following Department of Law appropriations: Health, Life and Dental; Short Term Disability; S.B. 04-257 Amortization Equalization Disbursement; S.B. 06-235 Supplemental Amortization Equalization Disbursement; Workers' Compensation; Risk Management; Vehicle Lease; and Capitol Complex Leased Space.</p>						
Total	103,389	134,416	19,972	(10,119)	247,658	0.5

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BASE REDUCTION ITEM PRIORITY LIST

Base Reduction	GF	CF	RAF	FF	Total	FTE
1	(58,574)	(690)	(4,517)	(39)	(63,820)	0.0
General Fund Reductions						
<p>Administration Division. The Department requests that its Lease Space appropriation, which is used to pay for offsite storage space, be reduced by a total of \$6,282 from all fund sources.</p>						
<p>Criminal Justice and Appellate Division. The Department requests that the General Fund appropriation for the Peace Officers Standards and Training (POST) Board be reduced by \$50,000. The \$50,000 appropriation is a consequence of the DNA-evidence-training requirements of H.B. 08-1397. The Department requests that these training costs be paid out of the cash fund revenues generated by H.B. 09-1036, which increased the vehicle registration fee from 25¢ to 60¢ and is expected to increase fee revenue by \$1.5 million annually. <i>Statutory authority: Sections 24-31-311 and 42-3-304, C.R.S.</i></p>						
<p>Special Purpose Division. The Department requests that the General Fund appropriation for HIPAA legal services be eliminated and that departments in need of HIPAA legal advice pay for it out of their legal services appropriation. <i>Statutory authority: Section 24-36-101, C.R.S.</i></p>						
Total	(58,574)	(690)	(4,517)	(39)	(63,820)	0.0

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OVERVIEW OF NUMBERS PAGES

The following table summarizes the total change, in dollars and percent, between the Department's FY 2009-10 appropriation and its FY 2010-11 request.

Total Requested Change, FY 2009-10 to FY 2010-11 (millions of dollars)

Category	GF	CF	RAF	FF	Total	FTE
FY 2009-10 Appropriation	\$10.0	\$8.2	\$29.9	\$1.3	\$49.4	396.2
FY 2010-11 Request	10.3	8.9	29.2	1.3	49.7	396.1
Increase / (Decrease)	\$0.3	\$0.7	(\$0.7)	\$0.0	\$0.3	(0.1)
Percentage Change	3.0%	8.5%	-2.3%	0.0%	0.6%	0.0%

The following table highlights the individual changes contained in the Department's FY 2010-11 budget request, as compared with the FY 2009-10 appropriation. For additional detail, see the numbers pages in Appendix A.

Requested Changes, FY 2009-10 to FY 2010-11

Category	GF	CF	RAF	FF	Total	FTE
Impact of prior session bills	208,574	0	(107,812)	0	100,762	(0.6)
Non-prioritized decision items	103,389	83,012	19,972	(10,119)	196,254	0.0
Decision & Base Reduction Items	(58,574)	50,714	(4,517)	(39)	(12,416)	0.5
Fund mix adjustment	(60)	600,516	(600,516)	60	0	0.0
Total Change	\$253,329	\$734,242	(\$692,873)	(\$10,098)	\$284,600	(0.1)

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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 Lobata 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:

Status of Current Litigation

This is a list of unresolved cases in which the possible impact on the General Fund is at least \$1 million.

Republican River Compact (Kansas v. Colorado). The Republican River flows from Colorado and Nebraska into Kansas. Kansas has threatened to file suit against Colorado and Nebraska for consuming more water than allowed under the Republican River Compact. Pursuant to the Compact, the case is now in arbitration. Kansas could go to court and seek substantial damages, however it appears that the bulk of Kansas' claims are against Nebraska.

Cendant Corporation v. Department of Revenue. Cendant Corporation wants to file an amended corporate tax return that would result in an \$8 million refund, which would reduce General Fund

revenues. The amended return would add a consolidated tax reporting group. 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. The Department of Revenue won on appeal but Cendant intends to file a petition for certiorari. If the Department of Revenue loses, it will have to pay a refund of \$8 million plus \$2 to \$5 million in interest.

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 Department of Revenue will appeal the District Court decision. If the Department of Revenue loses, it will have to pay interest.

Common Cause et al. v. Ritter. Plaintiffs claim that several provisions of Colorado law violate the National Voter Registration Act: they assert that the state improperly removes duplicate signatures, systematically cancels registrations within ninety days of elections, improperly removes registrants based on the return of undeliverable mail, and improperly removes names of inactive voters. Plaintiffs do not seek damages, but are seeking attorneys fees, which could range from \$500 thousand to \$1 million.

Dallman, et al. v. Ritter. A group of non-profit corporations, unions, and union members assert that Amendment 54, which prohibits contributions by sole source contractors (including unions), violates their rights to free speech. They are not asking for damages, but are seeking attorneys fees, which could range from \$500 thousand to \$1 million.

Lyles v. Department of Health Care Policy and Financing and Department of Human Services. Lyles, a blind employee of Denver County who worked as a Medicaid Eligibility Technician prior to the roll-out of CBMS (the Colorado Benefits Management System), asserts that he lost his position because CBMS cannot be used by visually-impaired state or county employees. Compensatory damages would be small because Lyles was soon transferred to another job, but the court could order that CBMS be made accessible to the visually-impaired. Such modifications could cost \$1 to \$3 million. The state won a summary judgement in the trial court and Lyles has appealed.

Lobata, 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 the Colorado Constitution. Plaintiffs seek attorneys' fees and costs and seek a declaration that the current school financing system violates the Colorado Constitution. Plaintiffs' goal is to require significant additional funding for K-12 education and to have the courts maintain continuing jurisdiction over the case. Attorneys fees and costs are well over \$1 million. Plaintiffs assert that the extra funding needed for capital facilities alone is \$5 to \$10 billion. All claims were dismissed by the District Court. The Court of Appeals upheld the District Court's dismissal, but the Supreme Court reversed the decision, holding that plaintiffs may challenge the constitutionality of the state's public school financing system. The Supreme Court held

that these challenges are justiciable and that plaintiffs must be given the opportunity to prove their claim.

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, 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. When the case went to trial, the court ruled in favor of the state. The Plaintiffs have appealed.

McLane Western v. Department of Revenue. In the first McLane lawsuit, the plaintiff asserted that the Department of Revenue did not properly rebate taxes on sales of tobacco products during the 1990's 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 the same issues in a second lawsuit seeking \$5 million in tax refunds and interest. The District Court dismissed the case and the dismissal order has been appealed, by the plaintiff, to the Court of Appeals.

Recently Resolved Cases

State of Colorado v. U.S. Department of Agriculture. In two separate actions, the federal government asserted that Colorado overpaid food stamp benefits during the two year period beginning October 1, 2004, which includes the startup period for CBMS (the Colorado Benefits Management System). Colorado settled the first claim for \$9.5 million and the second for \$2.7 million. The cases are now closed.

Mesa County Board of County Commissioners v. State of Colorado (the Mill Levy Lawsuit). Plaintiffs challenged the constitutionality of a provision in S.B. 07-199 (The School Finance Act) which changed the way a school district sets its property tax mill levy. The act modified a statutory provision which required a district to lower its mill levy if it would otherwise cause the district's property tax revenue to grow by more than inflation plus student enrollment growth (i.e. by more than the "TABOR" limit of Section 20 of Article X of the State Constitution). The act added language to specify that this provision only applies to districts that have not obtained voter approval to retain and spend revenues in excess of the TABOR limit. A district court declared S.B. 07-199 unconstitutional but the Colorado Supreme Court ruled in favor of the state. The case is now closed.

Arkansas River Compact (Kansas v. Colorado). Colorado was found liable for violations of the Arkansas River Compact, a consequence of excessive groundwater pumping near the river, and, in April 2005, paid Kansas \$34.6 million in compensation. Subsequently Kansas sued Colorado for \$10

million in attorney fees and costs. The U.S. Supreme Court, which has original jurisdiction in this matter, ruled that Colorado owes Kansas \$1.4 million for fees and costs. The case is now closed.

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BRIEFING ISSUE

ISSUE: General Fund Reduction Opportunities

This issue examines the Department of Law's General Fund appropriations, asking what can be done to decrease them.

SUMMARY:

There are several opportunities for the Department of Law to reduce its General Fund appropriations, including:

- ☐ Increased fees in support of the Insurance Fraud Unit,
- ☐ Increased transfers from the Department of Regulatory Agencies to support the Securities Fraud Unit,
- ☐ Increased "tipping fees" to support the Department's CERCLA work, and
- ☐ Increased use of the Consumer Protection Custodial Cash Fund to support Consumer Protection and Antitrust work.

RECOMMENDATION:

Staff recommends that the Committee ask the Department of Law about the feasibility and desirability of each of these funding alternatives.

DISCUSSION:

This discussion systematically examines the Department of Law's FY 2009-10 General Fund appropriations, beginning with the Administration Division, and asks where the corresponding appropriations could be reduced in future years.

(1) Administration Division

Total General Fund appropriation	\$1,435,526
General Fund appropriation adjusted for Pots allocations	391,207

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. As this suggests, 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 (and, in the case of cash, reappropriated, and federal funds, according to the revenue available from the funding source). If the Department of Law received a total General Fund appropriation of \$500,000 for Health, Life and Dental, it might allocate 25 percent to itself, 20 percent to the Appellate unit, 15 percent to the Special Prosecutions Unit, and then divide the remaining 40 percent among half a dozen other units. The Department's \$150,000 central appropriation of cash funds for Health, Life and Dental Insurance would probably be allocated in completely different proportions; perhaps half would go to the consumer credit units, to be paid from their cash fund. The Department's \$1 million central appropriation of reappropriated funds for Health, Life and Dental Insurance would then be allocated among divisions in yet a different set of proportions.
- ❑ 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. Note that these costs include the portion of any central appropriation that the Department allocates to the Administration Division. In the Department of Law, this category also includes Purchase of Services from the State Computer Center and Payment to Risk Management and Property Funds. 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. For example, if the Department of Law has 350 FTE in divisions other than Administration, each FTE would be assessed 1/350th of the Department's indirect costs. A cash-funded unit with 35 FTE would pay 10 percent of the cost of the Department's indirect costs from its cash funds. A unit with 70 FTE that supports half its FTE with reappropriated funds and the other half with the General Fund, would pay 10 percent of the cost of the Department's indirect costs from its reappropriated funds – General-Fund FTE being exempt from the assessment. 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. For example, in the Department of Law the total FY 2008-09 General Fund appropriation to the Administration Division equaled \$1,434,822, but through the Pots allocation process, the Department sent \$1,044,319 of this total to its other divisions, leaving only \$390,503 of General Fund in Administration. In addition, the Pots

allocation process means that there's more General Fund available outside of the Administration Division than it appears when looking at the Long Bill or at numbers pages. In the case of the Department of Law there's an extra $\$1,044,319 - 390,503 = \$653,816$ of General Fund available outside the Administration Division. In more intuitive terms, this means that the elimination of 1.0 FTE supported by the General Fund outside the Administration division will also save related General Fund costs such as Health, Life and Dental Insurance and other employee benefits.

The presence of indirect cost recoveries also means that General Fund reductions within the Administration Division may not have the intended impact on the General Fund. For example, the Department of Law has 351 FTE outside of the Administration division, 78 percent of whom 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 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 it cuts 1.5 FTE 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 Water and Natural Resources Division 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	21,468,536
Reappropriated Funds originating from GF sources	5,367,134

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. The client agencies receive legal-services appropriations in their section of the Long Bill while 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 (\$1,384,769), Corrections (\$1,106,493), Health Care Policy and Financing (\$972,845), Natural Resources (\$876,300), and Revenue (\$451,261). 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

This division has four line items that use significant amounts of General Fund. Each will be considered in turn:

- Special Prosecutions Unit
- Appellate Unit
- Medicaid Fraud Control Unit
- Peace Officers Standards and Training (POST) Board Support

(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) Insurance Fraud Unit
- (3.1.3) Securities Fraud Unit
- (3.1.4) Capital Crimes Prosecution Unit

(3.1.1) Special Prosecutions Unit

General Fund appropriation directly to the Special Prosecutions Unit	\$1,092,855
General Fund Appropriation adjusted for Pots expenditures	1,205,644

This unit investigates and prosecutes crimes in five areas: Complex Crimes, Gang Prosecutions, Environmental Crimes, Foreign Prosecutions, and Workers' Compensation. Pinnacol Assurance pays the cost of the Workers' Compensation investigations and prosecutions, but the Division's other work is supported solely by the General Fund. Lacking refinancing options, the only way to reduce the use of General Fund is to reduce the Unit's General Fund appropriation.

(3.1.2) Insurance Fraud Unit

Implicit General Fund Appropriation	160,000
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House Bill 97-1346 (Williams/Ament) granted the Department of Law jurisdiction to investigate and prosecute allegations of criminal conduct related to insurance fraud. The Department's jurisdiction is concurrent with that of the Department of Regulatory Agencies (DORA). The legislation also added a \$120 annual fee to statute that provided funding for the Department of Law's investigations. (See Section 10-3-207 (1) (e), C.R.S.) The fee is paid by all insurance carriers authorized to write insurance policies in the state. It is collected by the Department of Regulatory Agencies, deposited in the Division of Insurance Cash Fund, and transferred to the Department of Law as cash funds exempt. House Bill 97-1346 also included 2.5 FTE for the Department of Law and a \$174,846 cash funds exempt appropriation to allow the Department to spend the funds that were to be transferred from DORA. Beginning in FY 1998-99, this appropriation appeared on the "Insurance Fraud Unit" line in the Department's section of the Long Bill.

Senate Bill 06-38 (Tapia/Knoedler), which was supported by the Department of Law, expanded the Insurance Fraud Unit from 2.6 FTE to 7.6 FTE and increased the appropriation to the Unit by \$379,950 from \$240,245 to \$620,195. The increase was financed by raising the \$120 annual fee to \$425.

Though the fiscal note for S.B. 06-38 implied that the \$425 annual fee would adequately support the program for a number of years, within two years of passage the funding provided by the fee proved inadequate. This problem arose because the fiscal note, in accord with fiscal note policies, omitted a number of central appropriations from its cost estimates. It also omitted indirect cost assessments. (See "Common Policies for Fiscal Notes," www.state.co.us/gov_dir/leg_dir/lcsstaff/2009/comsched/CommonPolicies2009.PDF, which states: "Pursuant to a Joint Budget Committee policy, funding for these items [central appropriations, indirect costs, and other items] is addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills.) The following table shows the budgetary shortfall:

	Costs	Revenue	Surplus (Deficit)
FY 2005-06			
Expenditures from the "Insurance Fraud Unit" appropriation	221,425		
Pots Expenditures	26,443		
Indirect Cost Assessment	24,039		
Total Expenditures	271,907	193,020	(78,887)
FTE	2.5		
FY 2006-07			
Expenditures from the "Insurance Fraud Unit" appropriation	520,376		
Pots Expenditures	35,775		
Indirect Cost Assessment	27,992		
Total Expenditures	584,143	685,100	100,957
FTE	5.9		
FY 2007-08			
Expenditures from the "Insurance Fraud Unit" appropriation	581,386		
Pots Expenditures	94,082		
Indirect Cost Assessment	93,234		
Total Expenditures	768,702	684,675	(84,027)
FTE	7.3		
FY 2008-09			
Expenditures from the "Insurance Fraud Unit" appropriation	594,012		
Pots Expenditures	124,658		
Indirect Cost Assessment	99,498		
Total Expenditures	818,168	705,500	(112,668)
FTE	7.6		

The deficit in FY 2009-10 will probably be close to \$160,000. Note that in all years following passage of S.B. 06-38, the revenue raised by the \$425 fee exceeds the direct appropriation on the "Insurance Fraud Unit" line of the Long Bill. Thus the bill "pays for itself" if pots and indirect costs are excluded.

The deficits in this table have been financed by the General Fund. To understand how this works, note that Section 10-3-207 (1) (f) (III) requires that revenues from the \$425 fee be deposited in the Division of Insurance Cash Fund. Also note that Section 10-3-209, C.R.S., imposes a 1 percent or 2 percent tax on many insurance premiums paid by Coloradans and that revenues from these taxes are then transferred to the General Fund, but not until an amount, not to exceed 5 percent of premium tax revenue, is transferred to the Division of Insurance Cash Fund to make up for any shortfalls that the fund may experience in meeting its other obligations, such as the shortfalls shown in the table above. Hence the (\$112,668) FY 2008-09 shortfall in the above table was financed by reducing the amount of premium tax revenue that flowed to the General Fund. In effect, the General Fund paid for the shortfall.

Recommendation: Staff recommends that the Committee consider sponsoring legislation to increase the \$425 fee imposed by Section 10-3-207 (1) (e), C.R.S. An increase of \$100 to \$525 should eliminate the deficit for FY 2009-10, though the deficit would probably reappear within a year or two unless the fee is set higher. Alternately, the Committee may wish to consider reducing

the Insurance Fraud appropriation to a level that will bring expenditures from all sources in line with projected revenues from the fee, which would require a reduction of at least 2.0 FTE.

(3.1.3) Securities Fraud Unit

General Fund appropriation directly to the Securities Fraud Unit	\$128,958
General Fund Appropriation adjusted for Pots expenditures	143,553

The Department of Law's Securities Fraud Unit dates from FY 1996-97, when the Joint Budget Committee approved a decision item that provided 3.5 FTE for securities fraud investigation and prosecution. The funding arrangement was similar to that of the Insurance Fraud unit: a portion of the fees deposited in the Division of Securities Cash Fund were transferred to the Department of Law as cash funds exempt.

The FTE appropriation remained constant until FY 2005-06 when the General Assembly added two General-Fund FTE to the Unit's Long Bill appropriation. This addition occurred in conjunction with the passage of Senate Bill 05-26 (Fit-Gerald/Pommer), a brief bill that gave the Attorney General concurrent jurisdiction with state district attorneys in securities cases and added the following provision to statute, which provided that a portion of the fees received by the Division of Securities Cash Fund were to be allocated to the Department of Law:

Section 11-51-603.5 (2) For the purpose of providing adequate funding to the department of law for the investigation and prosecution of allegations of securities fraud, a portion of the fees collected under this article shall be allocated to the department of law for the investigation and prosecution of criminal violations under this article.

Recommendation: In accord with this statutory provision, as well as established Long-Bill precedent, Staff recommends that the Committee consider refinancing the General Fund appropriation to the Securities Fraud Unit with an increased transfer from the Division of Securities Cash Fund. This can be done within the Long Bill, without any need for legislation.

(3.1.4) Capital Crimes Prosecution Unit

General Fund appropriation directly to the Capital Crimes Prosecution Unit	\$390,444
General Fund Appropriation adjusted for Pots expenditures	436,138

This unit provides investigative and prosecutorial support to local district attorneys who are determining whether the death penalty is appropriate in specific criminal cases. It operates under general statutory authority provided by section 24-31-105, C.R.S. The Unit is exclusively supported by the General Fund and Staff knows of no alternative funding sources. Lacking refinancing options, the only way to reduce the use of General Fund is to reduce the Unit's appropriation.

(3.2) Appellate Unit

General Fund appropriation directly to the Appellate Unit	\$2,583,983
General Fund Appropriation adjusted for Pots expenditures	2,911,496

This unit represents the State of Colorado in criminal cases that are appealed to state and federal appellate courts. The cases include homicides, assaults, sexual assaults, kidnaping, theft, burglary, drug related crimes, and crimes against children. The vast majority of the cases are appeals of convictions obtained by the State's District Attorneys. The unit is funded exclusively by the General Fund and Staff knows of no alternative funding sources. Lacking refinancing options, the only way to reduce the use of General Fund is to reduce the Unit's appropriation.

(3.3) Medicaid Fraud Grant.

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 against the Medicaid program as well as misconduct against Medicaid patients. The program qualifies for an enhanced Medicaid matching rate, which means that the federal government pays 75 percent of the unit's total costs, while the State provides the remaining 25 percent. Despite the enhanced match, the State keeps at least 50 percent of the recovered funds, often more. Recovered funds reduce the amount of General Fund that is appropriated for support of the Medicaid program in HCPF's Medical Services Premiums Division. In FY 2007-08 and FY 2008-09 total recoveries averaged \$4.5 million.

In light of the 3-to-1 Federal match and the fact that recoveries have consistently exceed the General Fund appropriation for this program, Staff believes that it is unwise to reduce General Fund support for this line item.

(3.4) Peace Officers Standards and Training Board (POST) Support

General Fund appropriation directly to Peace Officers Standards and Training Board Support line item	\$50,000
General Fund Appropriation adjusted for Pots expenditures	50,000

As discussed earlier during the presentation of Decision Items and Base Reduction Items, the Department proposes refinancing the \$50,000 General Fund appropriation for this line item with cash funds generated by H.B. 09-1036, which increased the vehicle registration fee from 25¢ to 60¢ and is expected to increase POST Board fee revenue by \$1.5 million annually.

(4) Water and Natural Resources Division

(4.1) Federal and Interstate Water Unit

General Fund appropriation directly to the Federal and Interstate Water Unit	\$526,872
General Fund Appropriation adjusted for Pots expenditures	583,022

This unit specializes in matters that involve Colorado's water compacts and interstate decrees, defending Colorado's interests against water rights claims made by the federal government and other states and claims involving endangered species issues. The unit is funded exclusively by the General Fund and Staff knows of no alternative funding sources. Lacking refinancing options, the only way to reduce the use of General Fund is to reduce the Unit's appropriation.

(4.1) CERCLA Units

General Fund appropriation directly to the two CERCLA line items	\$440,300
General Fund Appropriation adjusted for Pots expenditures	482,661

These two line items provide funding for the Department's CERCLA program, which uses the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to direct and finance clean up and restoration of sites that have been contaminated by hazardous substances.

During the last economic downturn, the Joint Budget Committee sponsored S.B. 03-280 (Tech/Witwer) which added a two-cent surcharge to solid waste disposal fees paid into the Hazardous Substance Response Fund. The bill increased the fee charged to commercial vehicles from 17¢ to 19¢ cents per cubic yard of waste for a period of three years and used the resulting cash fund revenue to refinance the General Fund appropriation that supported the two Department's CERCLA line items.

Recommendation: Staff recommends that the Committee consider introducing a bill similar to S.B. 03-280 that would increase solid waste disposal fees by 3¢ to pay for the Department's CERCLA work. Staff further recommends that this increase be made permanent.

Recommendation: Staff recommends that the Committee ask the Department whether it considers such a "tipping" fee to be a desirable funding source for its future CERCLA work.

(5) Consumer Protection Division

(5.1) Consumer Protection and Antitrust

General Fund appropriation directly to the Consumer Protection and Antitrust line item	\$912,882
General Fund Appropriation adjusted for Pots expenditures	1,016,285

The Anti-trust and Consumer Fraud Unit investigates and prosecutes fraudulent trade and advertising practices in a variety of areas. The total appropriation for this unit is \$1.8 million, with half coming from the General Fund and the remainder coming from Cash and Reappropriated Funds. Almost \$450,000 of the cash fund appropriation derives from court-ordered awards that the Department has received as a consequence of its consumer protection and antitrust work. Many of these awards must be used for specific purposes ordered by the court, such as consumer education, but the Department often has flexibility regarding their use. In recent years these awards have accumulated in the Consumer Protection Custodial Cash Fund, which now has a balance of approximately \$5 million. In the past, the Department has stated that it is reluctant to rely too heavily on court ordered awards as a funding source, believing that this reliance creates an incentive for the Department to pursue cases involving a substantial prospect of an award at the expense of cases that promise little money but need to be pursued for the sake of consumer protection.

Recommendation: Staff recommends that the Committee ask the Department (1) whether it is able to use more of the balance in the Consumer Protection Custodial account to support Consumer Protection and Antitrust work, given the restrictions that may have been placed upon these funds, and (2) whether it is desirable to use more of this balance in support of Consumer Protection and Antitrust work.

Recommendation: Staff also recommends that the Committee ask the Department whether it can envision any fees that could be used to fund part of its consumer protection and anti-trust work.

(6) Special Purpose Division

(6.1) District Attorneys' Salaries

General Fund appropriation District Attorneys' Salaries	\$2,096,078
General Fund Appropriation adjusted for Pots expenditures	2,096,078

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.

(6.2) Statewide HIPAA Legal Services

General Fund appropriation directly to the Federal and Interstate Water Unit	\$526,872
General Fund Appropriation adjusted for Pots expenditures	583,022

This line item was created in FY 2004-05 to fund statewide General Fund legal expenses related to the Health Insurance Portability and Accountability Act (HIPAA). As discussed during the presentation of Decision Items and Base Reduction Items, the Department proposes that this appropriation be eliminated.

**FY 2009-10 Joint Budget Committee Staff Budget Briefing
Department of Law**

APPENDIX A: NUMBERS PAGES

	FY 07-08 Actual	FY 08-09 Actual	FY 09-10 Appropriation	FY 10-11 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 virtually 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	2,523,002	2,792,460	2,960,059	2,960,059	
FTE	<u>38.2</u>	<u>39.6</u>	<u>42.2</u>	<u>42.2</u>	
General Fund	1	(9)	0	0	
Cash Funds	5,000	0	0	0	
Cash Funds Exempt/RF	2,518,001	2,792,469	2,960,059	2,960,059	
Health, Life and Dental	<u>1,423,679</u>	<u>1,774,106</u>	<u>1,940,668</u>	<u>1,994,754</u>	NP #1
General Fund	461,603	522,880	534,414	556,365	
Cash Funds	90,556	141,137	152,611	206,531	
Cash Funds Exempt/RF	847,378	1,063,960	1,194,594	1,185,372	
Federal Funds	24,142	46,129	59,049	46,486	

	FY 07-08 Actual	FY 08-09 Actual	FY 09-10 Appropriation	FY 10-11 Request	DI and Approp v Request
Short-term Disability	<u>31,935</u>	<u>36,340</u>	<u>36,556</u>	<u>42,246</u>	NP #1
General Fund	9,571	10,672	11,079	12,824	
Cash Funds	1,832	2,874	2,962	3,527	
Cash Funds Exempt/RF	19,631	21,660	21,527	24,773	
Federal Funds	901	1,134	988	1,122	
S.B. 04-257 Amortization Equalization Disbursement	<u>303,805</u>	<u>440,589</u>	<u>560,823</u>	<u>654,131</u>	NP #1
General Fund	92,272	124,687	159,454	198,573	
Cash Funds	17,229	35,889	40,983	54,607	
Cash Funds Exempt/RF	185,792	266,062	344,034	383,576	
Federal Funds	8,512	13,951	16,352	17,375	
S.B. 06-235 Supplemental Amortization Equalization Disbursement	<u>62,558</u>	<u>204,308</u>	<u>348,890</u>	<u>476,974</u>	NP #1
General Fund	17,229	56,229	98,034	144,794	
Cash Funds	3,692	16,578	25,614	39,818	
Cash Funds Exempt/RF	39,813	124,962	215,022	279,693	
Federal Funds	1,824	6,539	10,220	12,669	
Salary Survey for Classified Employees	<u>278,941</u>	<u>251,113</u>	<u>0</u>	<u>0</u>	
General Fund	114,731	48,237	0	0	
Cash Funds	37,397	55,068	0	0	
Cash Funds Exempt/RF	108,862	128,644	0	0	
Federal Funds	17,951	19,164	0	0	

	FY 07-08 Actual	FY 08-09 Actual	FY 09-10 Appropriation	FY 10-11 Request	DI and Approp v Request
Salary Survey for Exempt Employees	<u>759,834</u>	<u>649,316</u>	<u>0</u>	<u>0</u>	
General Fund	196,085	155,259	0	0	
Cash Funds	12,305	27,694	0	0	
Cash Funds Exempt/RF	541,856	461,582	0	0	
Federal Funds	9,588	4,781	0	0	
Performance-based Pay Awards for Classified Employees	<u>122,210</u>	<u>109,976</u>	<u>0</u>	<u>0</u>	
General Fund	25,543	30,751	0	0	
Cash Funds	17,488	20,811	0	0	
Cash Funds Exempt/RF	71,444	49,054	0	0	
Federal Funds	7,735	9,360	0	0	
Performance-based Pay Awards for Exempt Employees	<u>256,353</u>	<u>278,881</u>	<u>0</u>	<u>0</u>	
General Fund	66,582	64,830	0	0	
Cash Funds	4,133	11,485	0	0	
Cash Funds Exempt/RF	182,369	200,188	0	0	
Federal Funds	3,269	2,378	0	0	
Workers' Compensation	<u>51,406</u>	<u>64,888</u>	<u>53,106</u>	<u>58,406</u>	NP #1
General Fund	16,115	19,236	15,936	17,730	
Cash Funds	3,704	5,833	4,325	4,876	
Cash Funds Exempt/RF	30,119	37,990	31,426	34,249	
Federal Funds	1,468	1,829	1,419	1,551	

	FY 07-08 Actual	FY 08-09 Actual	FY 09-10 Appropriation	FY 10-11 Request	DI and Approp v Request
Attorney Registration and Continuing Legal Education	<u>0</u>	<u>92,626</u>	<u>92,626</u>	<u>92,626</u>	
General Fund	0	22,238	22,238	22,238	
Cash Funds	0	3,750	3,750	3,750	
Cash Funds Exempt/RF	0	66,075	66,075	66,075	
Federal Funds	0	563	563	563	
Operating Expenses	<u>179,039</u>	<u>192,297</u>	<u>194,679</u>	<u>194,679</u>	
General Fund	(11,604)	0	0	0	
Cash Funds Exempt/RF	190,643	192,297	194,679	194,679	
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>48,499</u>	<u>60,456</u>	<u>71,185</u>	<u>71,185</u>	
General Fund	0	0	71,185	71,185	
Cash Funds Exempt/RF	48,499	60,456	0	0	
Payment to Risk Management and Property Funds	<u>71,197</u>	<u>86,286</u>	<u>98,646</u>	<u>50,174</u>	NP #1
General Fund	0	0	0	0	
Cash Funds Exempt/RF	71,197	86,286	98,646	50,174	
Vehicle Lease Payments	<u>48,175</u>	<u>65,125</u>	<u>73,969</u>	<u>73,054</u>	NP #1
General Fund	10,724	12,446	23,891	23,789	
Cash Funds	10,737	11,362	14,773	15,697	
Cash Funds Exempt/RF	18,133	31,571	30,621	28,884	
Federal Funds	8,581	9,746	4,684	4,684	

	FY 07-08 Actual	FY 08-09 Actual	FY 09-10 Appropriation	FY 10-11 Request	DI and Approp v Request
ADP Capital Outlay	<u>91,325</u>	<u>15,138</u>	<u>13,764</u>	<u>0</u>	
General Fund	35,844	6,881	9,176	0	
Cash Funds	0	0	0	0	
Cash Funds Exempt/RF	40,350	8,257	4,588	0	
Federal Funds	15,131	0	0	0	
IT Asset Maintenance	<u>358,296</u>	<u>432,348</u>	<u>407,667</u>	<u>407,667</u>	
General Fund	0	22,935	15,291	15,291	
Cash Funds	37,699	53,722	47,298	47,298	
Cash Funds Exempt/RF	320,597	353,620	343,697	343,697	
Federal Funds	0	2,071	1,381	1,381	
Leased Space	<u>29,686</u>	<u>30,001</u>	<u>32,502</u>	<u>26,220</u>	BR #1
General Fund	4,961	4,945	5,357	4,321	
Cash Funds	3,657	3,295	3,570	2,880	
Cash Funds Exempt/RF	20,901	21,576	23,374	18,857	
Federal Funds	167	185	201	162	
Capitol Complex Leased Space	<u>1,165,178</u>	<u>1,149,527</u>	<u>1,293,584</u>	<u>1,252,757</u>	NP #1
General Fund	367,436	245,252	388,174	380,296	
Cash Funds	83,723	103,172	105,357	104,581	
Cash Funds Exempt/RF	680,846	768,765	765,483	734,604	
Federal Funds	33,173	32,338	34,570	33,276	

	FY 07-08 Actual	FY 08-09 Actual	FY 09-10 Appropriation	FY 10-11 Request	DI and Approp v Request
Security for State Services Building	<u>0</u>	<u>257,633</u>	<u>196,693</u>	<u>196,693</u>	
General Fund	0	79,153	73,989	73,989	
Cash Funds	0	21,161	15,512	15,512	
Reappropriated Funds	0	150,093	101,938	101,938	
Federal Funds	0	7,226	5,254	5,254	
Communications Services Payments	<u>5,944</u>	<u>6,208</u>	<u>6,208</u>	<u>6,208</u>	
General Fund	2,435	2,308	2,308	2,308	
Cash Funds	372	575	575	575	
Cash Funds Exempt/RF	1,465	1,773	1,773	1,773	
Federal Funds	1,672	1,552	1,552	1,552	
Attorney General Discretionary Fund - GF	5,000	5,000	5,000	5,000	
SUBTOTAL - Administration	7,816,062	8,994,622	8,386,625	8,562,833	2.1%
FTE	<u>38.2</u>	<u>39.6</u>	<u>42.2</u>	<u>42.2</u>	<u>0.0</u>
General Fund	1,414,528	1,433,930	1,435,526	1,528,703	6.5%
Cash Funds	329,524	514,406	417,330	499,652	19.7%
Cash Funds Exempt/RF	5,937,896	6,887,340	6,397,536	6,408,403	0.2%
Federal Funds	134,114	158,946	136,233	126,075	-7.5%

	FY 07-08 Actual	FY 08-09 Actual	FY 09-10 Appropriation	FY 10-11 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, Cash Funds Exempt and Reappropriated Funds from the legal fees paid by those state agencies.</i>					
Personal Services	15,831,413	17,138,755	18,397,569	18,294,345	
FTE	<u>195.3</u>	<u>203.5</u>	<u>218.5</u>	<u>217.9</u>	
General Fund	0	0	0	0	
Cash Funds	1,000,000	1,582,342	981,826	1,582,342	
Cash Funds Exempt/RF	14,831,413	15,556,413	17,415,743	16,712,003	
Operating and Litigation - CFE/RF	1,070,389	880,632	1,354,987	1,354,987	
Indirect Cost Assessment - CFE/RF	2,454,469	2,676,131	2,697,806	2,697,806	
SUBTOTAL - Legal Services to State Agencies	19,356,271	20,695,518	22,450,362	22,347,138	-0.5%
FTE	<u>195.3</u>	<u>203.5</u>	<u>218.5</u>	<u>217.9</u>	(0.6)
General Fund	0	0	0	0	n/a
Cash Funds	1,000,000	1,582,342	981,826	1,582,342	61.2%
Cash Funds Exempt/RF	18,356,271	19,113,176	21,468,536	20,764,796	-3.3%

	FY 07-08 Actual	FY 08-09 Actual	FY 09-10 Appropriation	FY 10-11 Request	DI and Approp v Request
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(3) CRIMINAL JUSTICE AND APPELLATE

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 capital murder 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 proceedings.

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.

Special Prosecutions Unit	2,504,368	2,569,528	2,905,614	2,905,614	
FTE	<u>28.6</u>	<u>29.1</u>	<u>31.0</u>	<u>31.0</u>	
General Fund	1,418,762	1,418,984	1,612,257	1,612,257	
Cash Funds	164,678	213,484	221,805	221,805	
Cash Funds Exempt/RF	920,928	937,060	1,071,552	1,071,552	
Appellate Unit	2,133,564	2,288,824	2,583,983	2,583,983	
FTE	<u>26.4</u>	<u>28.3</u>	<u>31.0</u>	<u>31.0</u>	
General Fund	2,133,564	2,288,824	2,583,983	2,583,983	
Cash Funds Exempt/RF	0	0	0	0	
Medicaid Fraud Grant	1,117,461	1,232,421	1,368,866	1,368,866	
FTE	<u>12.4</u>	<u>13.7</u>	<u>14.0</u>	<u>14.0</u>	
General Fund	275,870	302,876	342,276	342,216	
Federal Funds	841,591	929,545	1,026,590	1,026,650	

	FY 07-08 Actual	FY 08-09 Actual	FY 09-10 Appropriation	FY 10-11 Request	DI and Approp v Request
Peace Officers Standards and Training Board Support	1,165,322	1,053,301	2,741,970	2,691,970	BR #1
FTE	<u>6.0</u>	<u>4.6</u>	<u>7.0</u>	<u>7.0</u>	
General Fund	44,638	57,107	50,000	0	
Cash Funds	1,120,684	996,194	2,691,970	2,691,970	
Cash Funds Exempt/RF	0	0	0	0	
Victims Assistance	69,146	72,148	76,086	76,086	
FTE	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>	
General Fund	(45)	(1)	330	330	
Cash Funds Exempt/RF	69,191	72,149	75,756	75,756	
FTE	1.0	1.0	1.0	1.0	
Federal Funds	0	0	0	0	
Indirect Cost Assessment	<u>223,273</u>	<u>247,395</u>	<u>374,591</u>	<u>374,591</u>	
Cash Funds	85,875	106,744	105,431	105,431	
Cash Funds Exempt/RF	137,398	140,651	138,921	138,921	
Federal Funds	0	0	130,239	130,239	
SUBTOTAL - Criminal Justice and Appellate	7,213,134	7,474,003	10,051,110	10,001,110	-0.5%
FTE	<u>74.4</u>	<u>76.7</u>	<u>84.0</u>	<u>84.0</u>	<u>0.0</u>
General Fund	3,872,789	4,078,176	4,588,846	4,538,786	-1.1%
Cash Funds	1,371,237	1,316,422	3,019,206	3,019,206	0.0%
Cash Funds Exempt/RF	1,127,517	1,149,860	1,286,229	1,286,229	0.0%
Federal Funds	841,591	929,545	1,156,829	1,156,889	0.0%

	FY 07-08 Actual	FY 08-09 Actual	FY 09-10 Appropriation	FY 10-11 Request	DI and Approp v Request
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(4) WATER AND NATURAL RESOURCES

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 include the Colorado Water Conservation Board's Litigation Fund and the Hazardous Substance Response Fund.

Federal and Interstate Water Unit	436,360	470,910	526,872	526,872	
FTE	<u>4.6</u>	<u>5.5</u>	<u>5.5</u>	<u>5.5</u>	
General Fund	436,360	470,910	526,872	526,872	
FTE	4.6	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	333,452	412,928	473,329	473,329	
FTE	<u>3.8</u>	<u>4.0</u>	<u>4.0</u>	<u>4.0</u>	
General Fund	(42,664)	(11,698)	0	0	
Cash Funds	0	424,626	473,329	473,329	
Cash Funds Exempt/RF	376,116	0	0	0	
Defense of the Republican River Compact	23,500	141,218	110,000	110,000	
FTE	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	
Cash Funds	0	141,218	110,000	110,000	
Cash Funds Exempt/RF	23,500	0	0	0	

	FY 07-08 Actual	FY 08-09 Actual	FY 09-10 Appropriation	FY 10-11 Request	DI and Approp v Request
Defense of the Arkansas River Compact	0	0	0	0	
FTE	0.0	0.0	0.0	0.0	
General Fund	0	0	0	0	
Cash Funds	0	0	0	0	
Cash Funds Exempt/RF	0	0	0	0	
Consultant Expenses	36,733	92,589	50,000	50,000	
Cash Funds	0	92,589	50,000	50,000	
Cash Funds Exempt/RF	36,733	0	0	0	
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)	422,380	397,637	391,178	391,178	
FTE	<u>4.8</u>	<u>3.9</u>	<u>3.5</u>	<u>3.5</u>	
General Fund	377,713	380,905	365,300	365,300	
Cash Funds Exempt/RF	44,667	16,732	25,878	25,878	
CERCLA Contracts	<u>542,307</u>	<u>526,861</u>	<u>500,000</u>	<u>500,000</u>	
General Fund	117,307	76,861	75,000	75,000	
Cash Funds Exempt/RF	425,000	450,000	425,000	425,000	
Natural Resource Damage Claims at Rocky Mountain Arsenal	902,347	75,600	195,000	195,000	
FTE	<u>1.9</u>	<u>0.3</u>	<u>0.0</u>	<u>0.0</u>	
General Fund	(25,960)	(356)	0	0	
FTE	0.0	0.0	0.0	0.0	
Cash Funds	928,307	75,956	195,000	195,000	
FTE	1.9	0.3	0.0	0.0	

	FY 07-08 Actual	FY 08-09 Actual	FY 09-10 Appropriation	FY 10-11 Request	DI and Approp v Request
SUBTOTAL - Water and Natural Resources	2,697,079	2,117,743	2,246,379	2,246,379	0.0%
FTE	<u>15.1</u>	<u>13.7</u>	<u>13.0</u>	<u>13.0</u>	<u>0.0</u>
General Fund	862,756	916,622	967,172	967,172	0.0%
Cash Funds	928,307	734,389	828,329	828,329	0.0%
Cash Funds Exempt/RF	906,016	466,732	450,878	450,878	0.0%

(5) CONSUMER PROTECTION

This Division protects Colorado consumers and business against fraud and maintains a competitive business environment. Cash funds derive from fees paid by regulated businesses. Reappropriated funds come from the Department of Regulatory Agencies.

Consumer Protection and Anti-Trust	1,511,502	1,667,444	1,819,320	1,819,320	
FTE	<u>0.0</u>	<u>19.1</u>	<u>21.0</u>	<u>21.0</u>	
General Fund	824,385	720,977	912,882	912,882	
FTE	0.0	11.5	12.5	12.5	
Cash Funds	65,833	717,531	663,695	663,695	
FTE	0.0	0.8	1.5	1.5	
Cash Funds Exempt/RF	621,284	228,936	242,743	242,743	
FTE	0.0	6.8	7.0	7.0	
Collection Agency Board	270,396	296,884	314,425	345,267	DI #1, DI #2
FTE	<u>5.0</u>	<u>5.2</u>	<u>5.2</u>	<u>5.5</u>	
Cash Funds	265,453	296,884	314,425	345,267	
Cash Funds Exempt/RF	4,943	0	0	0	

	FY 07-08 Actual	FY 08-09 Actual	FY 09-10 Appropriation	FY 10-11 Request	DI and Approp v Request
Uniform Consumer Credit Code (UCCC)	925,391	971,571	1,014,033	1,034,595	DI #1, DI #2
FTE	<u>11.1</u>	<u>12.3</u>	<u>12.3</u>	<u>12.5</u>	
Cash Funds	825,285	971,571	1,014,033	1,034,595	
Cash Funds Exempt/RF	100,106	0	0	0	
Indirect Cost Assessment	<u>263,756</u>	<u>313,952</u>	<u>328,698</u>	<u>328,698</u>	
Cash Funds	214,685	276,278	291,487	291,487	
Cash Funds Exempt/RF	49,071	37,674	37,211	37,211	
SUBTOTAL - Consumer Protection	2,971,045	3,249,851	3,476,476	3,527,880	1.5%
FTE	<u>16.1</u>	<u>36.6</u>	<u>38.5</u>	<u>39.0</u>	<u>0.5</u>
General Fund	824,385	720,977	912,882	912,882	0.0%
Cash Funds	1,371,256	2,262,264	2,283,640	2,335,044	2.3%
Cash Funds Exempt/RF	775,404	266,610	279,954	279,954	0.0%

(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, one-time lawsuits.

District Attorneys' Salaries - GF	1,315,985	1,654,605	2,096,078	2,313,828	
Litigation Management and Technology Fund	<u>308,828</u>	<u>327,006</u>	<u>325,000</u>	<u>325,000</u>	
Cash Funds	0	327,006	325,000	325,000	
Cash Funds Exempt/RF	308,828	0	0	0	
Statewide HIPAA Legal Services - GF	18,578	17,490	7,538	0	BR #1

	FY 07-08 Actual	FY 08-09 Actual	FY 09-10 Appropriation	FY 10-11 Request	DI and Approp v Request
Tobacco Litigation	<u>126,245</u>	<u>372,226</u>	<u>300,000</u>	<u>300,000</u>	
General Fund	0	0	0	0	
Cash Funds	0	372,226	300,000	300,000	
Cash Funds Exempt/RF	126,245	0	0	0	
Referendum K - GF	10,732	0	0	0	
FTE	0.0	0.0	0.0	0.0	
SUBTOTAL - Special Purpose	1,780,368	2,371,327	2,728,616	2,938,828	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	1,345,295	1,672,095	2,103,616	2,313,828	10.0%
FTE	0.0	0.0	0.0	0.0	0.0
Cash Funds	0	699,232	625,000	625,000	0.0%
FTE	0.0	0.0	0.0	0.0	0.0
Cash Funds Exempt/RF	435,073	0	0	0	n/a
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	41,833,959	44,903,064	49,339,568	49,624,168	0.6%
FTE	<u>339.1</u>	<u>370.1</u>	<u>396.2</u>	<u>396.1</u>	<u>(0.1)</u>
General Fund	8,319,753	8,821,800	10,008,042	10,261,371	2.5%
Cash Funds	5,000,324	7,109,055	8,155,331	8,889,573	9.0%
Cash Funds Exempt/RF	27,538,177	27,883,718	29,883,133	29,190,260	-2.3%
Federal Funds	975,705	1,088,491	1,293,062	1,282,964	-0.8%

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Department of Law**

APPENDIX B: SUMMARY OF MAJOR LEGISLATION

2008 Session Bills (Key Bills)

- ☐ **H.B. 08-1397 (Jahn and King/Kopp and Gordon): Disposition of Evidence in Criminal Cases.** Requires the preservation of potential DNA evidence in class 1 felony cases and specifies a process for disposing of DNA evidence. Requires all peace officers to receive DNA evidence training. For FY 2008-09 appropriates \$81,207 of General Fund to the Department of Law so the Department's Peace Officer Standards and Training Board can develop and certify the curriculum for the training courses.

2009 Session Bills

- ☐ **S.B. 09-192 (Keller/Pommer):** Supplemental appropriation to the FY 2008-09 Long Bill for the Department of Law.
- ☐ **S.B. 09-259 (Keller/Pommer):** General Appropriations Act for FY 2009-10.
- ☐ **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. A similar amount of revenue is anticipated in FY 2010-11.
- ☐ **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.

**2008 and 2009 Session Bills with Appropriations for Client Agencies
to Purchase Legal Services from the Department of Law**

Client Agency Bill Number (Sponsors): Bill Title	Legal Services Appropriation (RF)			
	2008 Session Bills		2009 Session Bills	
	FY FY 2008-09	FY FY 2009-10	FY FY 2009-10	FY FY 2010-11
Education				

Client Agency Bill Number (Sponsors): Bill Title	Legal Services Appropriation (RF)			
	2008 Session Bills		2009 Session Bills	
	FY FY 2008-09	FY FY 2009-10	FY FY 2009-10	FY FY 2010-11
H.B. 08-1335 (Romanoff/Groff and Schwartz): Building Excellent Schools Today Act	32,414	32,414		
S.B. 09-123 (Williams/Todd): Healthy Choices Dropout Prevent			751	0
S.B. 09-163 (Hudak & King/Middleton & Massey): Ed Account system			7,135	0
H.B. 09-1319 (Merrifield/Williams): Concurrent Enrollment of Public School Students			10,139	3,004
Human Services				
H.B. 08-1314 (Primavera/Spence): Local Gaming Funds Gambling Addiction,	2,866	0		
Labor				
H.B. 08-1325 (Looper/Tapia): Seasonal Agricultural Worker Program, Labor	4,322	2,161		
Natural Resources				
H.B. 08-1161 (Kefalas and Fischer/Johnson): Strengthen Mining Reclamation Standards	14,406	5,762		
Public Health and Environment				
S.B. 08-153 (Boyd/Ferrandino): License Home Care Agencies	\$2,881	\$5,762		
Regulatory Agencies				
S.B. 08-029 (Groff/Balmer): Continuing Education of Architects	9,004	9,004		
S.B. 08-152 (Tochtrop/Gagliardi): Regulate the Practice of Occupational Therapy	10,805	13,687		
S.B. 08-200 (Veiga/Judd): Expand Discrimination Prohibitions	60,073	60,073		
S.B. 08-219 (Romer/McFadyen and Rice): Licensure of Massage Therapists	18,008	31,693		
H.B. 08-1058 (McGihon/Gordon): Uniform Athlete Agents Act	7,564	9,364		
H.B. 08-1226 (May M./Veiga): Mobility Of Practice of Non-Colorado CPAs	3,602	36,015		
H.B. 08-1227 (Madden/Tapia): Sunset Continue the Public Utilities Commission	43,218	43,218		
H.B. 08-1383 (Roberts/Tochtrop): Inactive Nursing License Status	720	0		
S.B. 09-026 (Williams/Riesberg) Regulation of Athletic Trainers			\$21,779	\$14,269
S.B. 09-138 (Boyd/Gagliardi): Sunset Certification of Nurse Aides			3,755	0
S.B. 09-167 (Boyd/Kefalas): Sunset Chiropractor Board			4,882	0
S.B. 09-239 (Tochtrop/Riesberg): Sunset Nursing Board			33,795	11,265

Client Agency Bill Number (Sponsors): Bill Title	Legal Services Appropriation (RF)			
	2008 Session Bills		2009 Session Bills	
	FY FY 2008-09	FY FY 2009-10	FY FY 2009-10	FY FY 2010-11
H.B. 09-1086 (McGihon/Boyd): Continuing Competency Mental Health Professionals			30,000	0
H.B. 09-1136 (Soper/Tochtrop): Electrician License Requirements			11,265	3,755
H.B. 09-1202 (Todd/Foster): Mortuary Registration			24,783	12,767
Revenue				
H.B. 09-1173 (Riesberg/Hodge): Contraband Cigarettes			7,510	7,510
Transportation				
H.B. 08-1257 (Vaad/Williams): Overweight Motor Vehicle Permits and Fees, Transportation	10,890	0		
Total legal services appropriation	\$220,773	\$249,153	\$155,794	\$52,570
Total FTE	1.7	1.9	1.2	0.4
Number of bills	14	14	11	11
Average legal services appropriation in each bill	\$15,770	\$17,797	\$14,163	\$4,779
Average FTE in each bill	0.12	0.14	0.10	0.04

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

Long Bill Footnotes

- 46 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 \$77.97 per hour for attorneys and not exceed \$63.04 per hour for paralegals, which equates to a blended rate of \$75.38 per hour.

Comment: The Department is utilizing these rates.

- 47 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 2009-10, as well as information technology asset maintenance needs that would otherwise require General Fund appropriations during FY 2009-10. 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 quarterly 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, 2009.

Comment: The report was submitted as requested. The Medicaid Fraud Control Unit's FY 2009-10 appropriation is \$1.4 million and 14.0 FTE, 75 percent of which is Federal Funds. The Unit is responsible for monitoring the financial integrity of more than \$3.7 billion worth of payments made to 10,000 Medicaid providers around the State on behalf of almost 700,000 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 \$3.7 worth of payments amounts to more than \$66 million of fraud.

During FY 2008-09, the Fraud Unit resolved 35 cases and opened 37 new ones, ending the year with 68 ongoing cases. 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 \$5.3 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 of this \$5.3 million of restitution came from national settlements with BMS/Apothecon, Cephalon, and Eli Lilly.

During FY 2007-08, the Unit referred 34 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 fraud, patient abuse, theft, forgery, sexual assault, and drug diversion. Of these, 4 have banned from Medicare and Medicaid programs for an average of almost 5 years.