

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



**FY 2007-08 BRIEFING
DEPARTMENT OF LAW**

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

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**FY 2007-08 BUDGET BRIEFING
STAFF PRESENTATION TO THE JOINT BUDGET COMMITTEE:**

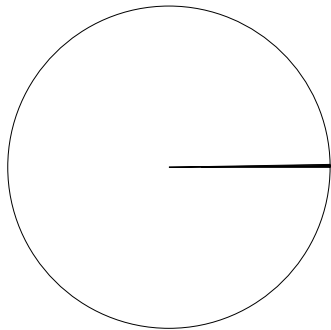
DEPARTMENT OF LAW

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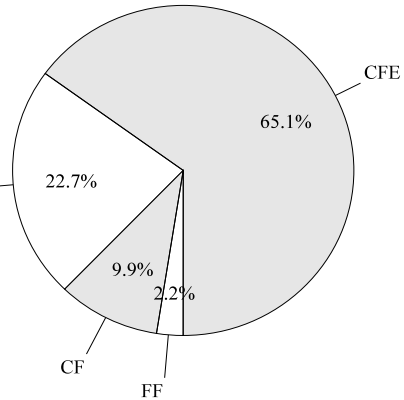
DEPARTMENT OF LAW GRAPHIC OVERVIEW

**Share of State General Fund
FY 2006-07**

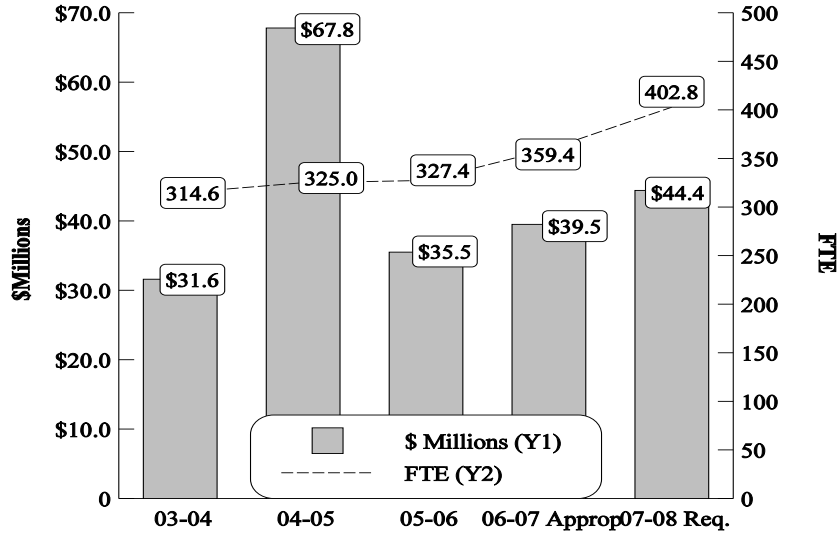


Law (0.1%)^{GF}

**Funding Source Split
FY 2006-07**

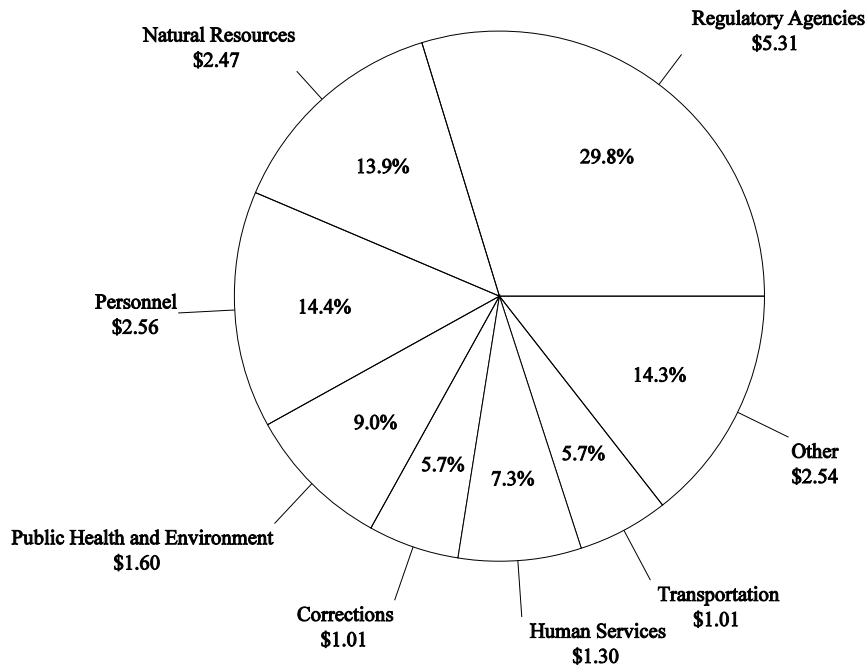


Budget History



**DEPARTMENT OF LAW
LEGAL SERVICES OVERVIEW**

Distribution of Legal Services Provided to State Agencies



Total FY 2006-07 Legal Services Appropriation = \$19.3 million

(The dollar amounts in this chart are in millions of dollars. The chart includes all hourly and contract funding provided to agencies in their legal services line items, but does not include the Medicaid Fraud Control Unit.)

**DEPARTMENT OF LAW
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 virtually all 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.

General Factors Driving the Budget

Legal Services Provided to State Agencies

The FY 2006-07 appropriation for the provision of legal services to state agencies appears in two places in the Long Bill. First there are the appropriations in the Legal Services to State Agencies Division, which equal \$18.2 million cash funds exempt and constitute 46.1 percent of the Department's overall appropriation. Next are the centralized appropriations within the Administration section, which increase the appropriation for the provision of legal services to state agencies to \$20.5 million cash funds exempt, which equals 51.9 percent of the Department's overall appropriation. The seven departments shown in the following chart account for 78.4 percent of the total legal services appropriated to state agencies.

Legal Services Expenditures by State Agencies

	FY 02-03 Actual	FY 03-04 Actual	FY 04-05 Actual	FY 05-06 Actual	FY 06-07 Approp.
Regulatory Agencies	\$4,914,917	\$4,984,120	\$5,075,682	\$5,310,731	\$5,767,024
Natural Resources	2,246,550	2,229,281	2,198,168	2,471,139.0	2,680,439
Personnel	2,130,381	2,152,987	2,315,498	2,548,690	2,391,739
Public Health & Envirmt.	1,464,852	1,464,533	1,354,044	1,599,380	1,872,485
Corrections	1,007,912	959,650	1,095,811	1,012,821	1,036,745
Human Services	1,125,465	1,050,906	1,173,984	1,301,464	1,249,611

	FY 02-03 Actual	FY 03-04 Actual	FY 04-05 Actual	FY 05-06 Actual	FY 06-07 Approp.
Transportation	1,079,928	978,367	981,602	1,098,635	1,113,597
Other	<u>3,917,207</u>	<u>4,067,368</u>	<u>3,692,423</u>	<u>2,544,352</u>	<u>4,434,936</u>
Total	\$17,887,212	\$17,887,212	\$17,887,212	\$17,887,212	\$20,546,576

Criminal Justice and Appellate

The largest user of General Fund in the Department is the Criminal Justice and Appellate Unit, which accounts for about 40% of the Department's FY 2006-07 General Fund appropriation. The bulk of this division's General Fund and General-Fund-Supported FTE are in the Special Prosecutions Unit and the Appellate Unit. The former is composed of investigators and attorneys who primarily handle cases related to insurance, securities and workers compensation fraud, while the latter represents the State in the civil and criminal appeals process. The Department's FY 2007-08 budget request includes three decision items for the Division that would together increase the division's General Fund appropriation by \$233,197.

Water and Natural Resources

After the Criminal Justice and Appellate Division, the Water and Natural Resources Division is the next largest user of General Fund in the Department, accounting for about 20% of the Department's FY 2006-07 General Fund appropriation. This division is comprised of the Federal and Interstate Water Unit and moneys appropriated to represent the State in specific water rights litigation. Lawsuits and remediation contracts related to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) also represent a significant portion of the Long Bill appropriation made to this division. The Department's FY 2007-08 budget request includes a decision item for additional General Fund to recover natural resource damages at Rocky Mountain Arsenal. This decision item would boost the Division's General Fund by \$1.9 million, which would more than double it.

Summary of Major Legislation

- ✓ **S.B. 06S-1014 (Buescher/Tapia) Federal Reimbursement for Illegal Immigration Costs.** Directs the Attorney General to pursue all available remedies to recover moneys owing from the federal government to the state of Colorado for the reimbursement of costs incurred by the state of Colorado in dealing with illegal immigration. Requires the Attorney General, on or before the end of the 2006 and 2007 calendar years, to file written reports with specified persons detailing the status of the pursuit of remedies. For the 2006-07 fiscal year, appropriates \$45,822 and 0.5 FTE from the General Fund to the Department.
- ✓ **S.B. 06S-1017 (Solano/Bacon): Employer Verification Requirements.** Requires employers to attest that they have verified the legal work status of each employee, have retained copies of

certain required documents, have not falsified these documents, and have not knowingly hired an unauthorized alien. Upon request, employers must submit the retained documents to the Department of Labor and Employment. Department of Labor and Employment can conduct random employer audits to ensure compliance. Employers who violate these rules are subject to fines. Appropriates \$3,223 to the department of labor and employment for allocation to the executive director's office for legal services.

- ✓ **S.B. 06-38 (Knodeler/Tapia): Insurance Fraud Investigation.** Increases the annual registration fee for insurance companies regulated by the Department of Regulatory Agencies from \$120 to \$425 so that additional funds are available for the prosecution of insurance fraud. Requires the Attorney General's Office to provide annual reports to the Joint Budget Committee, the Senate Business, Labor and Technology Committee, and the House Business Affairs and Labor Committee, as well as to post a statistical report of the number of referrals, convictions, arrests, actions initiated and restitutions, fines, costs, and forfeitures obtained from the investigation and prosecution of insurance fraud on the Department of Law's website. Appropriates \$379,950 cash funds exempt and 5.0 FTE to the Department of Law for the provision of legal services.
- ✓ **S.B. 06-110 (M. May/Weins):** Creates a minimum \$50,000 fine for any person who knowingly forges, counterfeits, alters, falsely makes or provides any document listed in Title 8, Section 274a.2 (b)(1)(v) of the Code of Federal Regulations. Such documents are generally used for verification of employment eligibility. Deposits any fines collected into the Judicial Stabilization Cash Fund for the pursuit of legal actions brought pursuant to this legislation. Appropriates \$68,879 cash funds and 1.0 FTE to the Department of Law for the provision of legal services.
- ✓ **H.B. 06-1028 (T. Carroll/Mitchell): Increase Number of Judges -** Creates three new judgeships on the Colorado Court of Appeals, and four new county court judgeships (located in Jefferson, Douglas, Mesa, and Weld counties). Appropriates \$75,300 General Fund and 1.0 FTE to the Department of Law to process and prosecute the increased caseload from the creation of these judgeships.
- ✓ **H.B. 06-1222 (Plant/Tapia):** Supplemental appropriation to the FY 2005-06 Long Bill for the Department of Law.
- ✓ **H.B. 06-1274 (Hodge/Entz): License Private Pesticide Applicators -** Makes changes to the regulation of pesticide applicators. Appropriates \$76,051 cash funds exempt and 0.8 FTE to the Department of Law for the provision of legal services.
- ✓ **S.B. 05-226 (Owen/Plant): Resolution of *Kansas v. Colorado* Litigation -** Authorizes the transfer of moneys from the Severance Tax Trust Fund and the Local Government Severance Trust Fund to the *Kansas v. Colorado* Plaintiff's Damages Payment Fund in the amount of \$34,796,129. Appropriates these moneys in FY 2004-05, but they may be spent through the end

of FY 2005-06.

Major Funding Changes FY 2005-06 to FY 2006-07

Action (Source)	General Fund	Other Funds	Total Funds	FTE
FY 2005-06 Appropriation	7,203,044	29,324,322	36,527,366	345.5
Salary and benefits adjustments	208,194	831,890	1,040,084	0.0
Special Bills from 2006 Regular and Special Sessions	121,122	614,760	735,882	8.8
Annualization for Defense of Colorado River Basin Compact	0	606,618	606,618	2.7
Natural Resource Damage Claims at Rocky Mountain Arsenal	742,312	(137,500)	604,812	2.0
Health, Life, and Dental	73,920	174,182	248,102	0.0
Salary Survey for Exempt Employees	51,908	129,127	181,035	0.0
Legal rate reconciliation	0	180,178	180,178	3.7
Amortization Equalization Disbursement	43,862	75,856	119,718	0.0
Adjustments to centrally-appropriated items	64,407	4,864	69,271	0.0
Uniform Consumer Credit*	0	54,297	54,297	1.0
Annualization of Appellate Unit FTE	50,595	0	50,595	0.7
Indirect cost assessment	0	31,723	31,723	0.0
Operating and Litigation	0	25,800	25,800	0.0
Securities Fraud Unit vehicle expense	0	1,213	1,213	0.0
Fund mix adjustment	0	0	0	0.0
Operating Expenses adjustment	150,087	(150,087)	0	0.0
Sunset of S.B. 03-280	530,971	(530,971)	0	0.0
Adjustment for prior session special bills	(27,100)	(684,839)	(711,939)	(5.2)
Elimination of Tobacco Litigation funds	(225,000)	0	(225,000)	0.0
Personal Services base reduction	(5,976)	(41,383)	(47,359)	0.0
Other changes	(1,463)	0	(1,463)	0.0
FY 2006-07 Appropriation	8,980,883	30,510,050	39,490,933	359.2
Change from FY 2005-06	1,777,839	1,185,728	2,963,567	13.7

The preceding table shows the funding changes that altered the Department of Law's total appropriation between FY 2005-06 and FY 2006-07. Of this increase,\$1,185,728 is General Fund.

FY 2007-08 Joint Budget Committee Staff Budget Briefing

Department of Law

Decision Items

Priority	Division: Description <i>[Statutory Authority]</i>	GF	CF <i>[Source]</i>	CFE <i>[Source]</i>	FF	TOTAL	FTE
1	<p>Water and Natural Resources</p> <p>The Department requests funding for a Natural Resource Damage Assessment at the Rocky Mountain Arsenal, a study that will be prepared by a private contractor. The assessment will be the basis of a multi-million dollar claim for Natural Resource Damages from the U.S. Army and Shell Oil Company.</p> <p><i>[Section 24-31-101, C.R.S.]</i></p>	1,922,695	0	0	0	1,922,695	0.0
2	<p>Consumer Protection</p> <p>The statutory duties of the Department's Business Regulation Unit have grow dramatically in recent years with little increase in staffing levels. The Department requests an extra FTE for its consumer fraud program. This will allow it to pursue enforcement actions against individuals and entities that it is currently unable to investigate for lack of resources.</p> <p><i>[Section 6-1-101, C.R.S.]</i></p>	91,208	0	0	0	91,208	1.0

FY 2007-08 Joint Budget Committee Staff Budget Briefing

Department of Law

Decision Items

Priority	Division: Description <i>[Statutory Authority]</i>	GF	CF <i>[Source]</i>	CFE <i>[Source]</i>	FF	TOTAL	FTE
3	<p>Criminal Justice and Appellate</p> <p>The Department's Peace Officer Standards and Training (P.O.S.T.) board maintains paper records for 29,100 present and former peace officers. The Department requests funding so it can scan and index these files and then dispose of the paper records. The result will be a database that is searchable from a personal computer and is no longer vulnerable to fire and other threats. The Department also requests funding to develop and begin issuing a secure and verifiable peace officer ID card.</p> <p><i>[Section 12-7-102.5, C.R.S.]</i></p>	80,012		0	0	80,012	0.0
4	<p>Criminal Justice and Appellate</p> <p>The Department requests an additional criminal investigator for its special prosecutions unit. The unit currently has 2 investigators, a number that has not changed for years, despite a very dramatic increase in the unit's caseload.</p> <p><i>[Section 24-31-101, C.R.S.]</i></p>	99,156	0	0	0	99,156	1.0

FY 2007-08 Joint Budget Committee Staff Budget Briefing

Department of Law

Decision Items

Priority	Division: Description <i>[Statutory Authority]</i>	GF	CF <i>[Source]</i>	CFE <i>[Source]</i>	FF	TOTAL	FTE
5	<p>Administration</p> <p>The Department requests an additional FTE for its Information Systems Unit, which maintains the Department's computer systems. This request is directly related to growth in the Department's overall workload.</p> <p><i>[Section 24-31-101, C.R.S.]</i></p>	7,225	0	78,120 <i>[Indirect Costs]</i>	0	85,345	1.0
6	<p>Criminal Justice and Appellate</p> <p>The Department requests two criminal investigators and one paralegal for its Medicaid Fraud Unit. In the past 17 years, the unit's staff has increased 10% while the state's medicaid program has grown 600%.</p> <p><i>[Section 24-31-101, C.R.S.]</i></p>	54,029	0	0	162,087	216,116	3.0
7	<p>Consumer Protection</p> <p>The Department requests an extra attorney and half of a legal assistant for its Uniform Consumer Credit Code and Colletion Agency Board Units. The request is a consequence of the rapid growth in sub-prime lending (such as "payday" lending) and related areas during recent years.</p> <p><i>[Section 24-31-101, C.R.S.]</i></p>	0	0	112,745 <i>[Collection Agency Cash Fund]</i>	0	112,745	1.5

FY 2007-08 Joint Budget Committee Staff Budget Briefing

Department of Law

Decision Items

Priority	Division: Description <i>[Statutory Authority]</i>	GF	CF <i>[Source]</i>	CFE <i>[Source]</i>	FF	TOTAL	FTE
8	<p>Water and Natural Resources</p> <p>As the Arkansas River lawsuit winds down, the Department requests funding changes that will allow it to begin a 2 1/2 year transition period during which it will gradually stop using outside counsel and will train an in-house attorney to take over the case.</p> <p><i>[Section 24-31-101, C.R.S.]</i></p>	28,712	0	(71,333) <i>[Colorado Water Conservation Board Litigation Fund]</i>	0	(42,621)	0.5
9	<p>Legal Services to State Agencies</p> <p>Additional Legal Services to support a Decision Item requested by the Department of Natural Resources.</p> <p><i>[Section 6-1-101, C.R.S.]</i></p>	0	0	128,763 <i>[Transfer from DNR]</i>	0	128,763	0.0
Total Prioritized Requests		2,283,037	0	248,295	162,087	2,693,419	8.0

	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	Change
	Actual	Actual	Appropriation	Request	Requests
DEPARTMENT OF LAW					
John W. Suthers, Attorney General					
(1) ADMINISTRATION					
<i>Primary Functions are comprised of Department administration including budgeting, accounting, and information technology.</i>					
Personal Services	2,219,080	2,404,272	2,474,053	2,638,104	DI #1, #5
FTE	<u>37.1</u>	<u>36.7</u>	<u>38.7</u>	<u>39.7</u>	
Cash Funds	5,000	5,000	5,000	5,000	
Cash Funds Exempt	2,214,080	2,399,272	2,469,053	2,633,104	
Health, Life and Dental	<u>806,245</u>	<u>918,370</u>	<u>1,166,472</u>	<u>1,349,104</u>	
General Fund	238,465	263,367	363,616	439,084	
Cash Funds	51,207	73,885	63,732	80,104	
Cash Funds Exempt	503,362	566,360	720,233	805,870	
Federal Funds	13,211	14,758	18,891	24,046	
Short-term Disability	<u>31,765</u>	<u>31,786</u>	<u>25,199</u>	<u>31,594</u>	
General Fund	8,554	8,310	7,560	9,591	
Cash Funds	1,788	2,743	1,515	1,830	
Cash Funds Exempt	20,516	19,370	15,625	19,363	
Federal Funds	907	1,363	499	810	
S.B. 04-257 Amortization Equalization Disbursement	n/a	<u>52,568</u>	<u>172,286</u>	<u>295,256</u>	
General Fund		7,448	51,310	92,544	
Cash Funds		5,124	10,027	7,670	
Cash Funds Exempt		38,512	107,570	187,194	
Federal Funds		1,484	3,379	7,848	

	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	Change
	Actual	Actual	Appropriation	Request	Requests
Salary Survey for Classified Employees	<u>152,486</u>	<u>233,165</u>	<u>246,897</u>	<u>326,222</u>	
General Fund	58,514	95,590	104,828	132,256	
Cash Funds	21,563	33,861	31,760	44,322	
Cash Funds Exempt	61,113	87,853	95,857	130,430	
Federal Funds	11,296	15,861	14,452	19,214	
Salary Survey for Exempt Employees	<u>346,453</u>	<u>806,921</u>	<u>987,957</u>	<u>979,531</u>	
General Fund	92,068	189,218	241,127	239,382	
Cash Funds	5,004	12,937	12,940	18,195	
Cash Funds Exempt	246,786	598,087	723,918	711,192	
Federal Funds	2,595	6,679	9,972	10,762	
Classified Anniversary/Performance-based Pay	<u>74,611</u>	<u>84,436</u>	<u>0</u>	<u>76,442</u>	
General Fund	32,542	32,647	0	30,804	
Cash Funds	922	11,757	0	10,933	
Cash Funds Exempt	35,109	34,114	0	30,049	
Federal Funds	6,038	5,918	0	4,656	
Exempt Anniversary/Performance-based Pay	<u>246,767</u>	<u>201,260</u>	<u>0</u>	<u>157,218</u>	
General Fund	58,588	44,132	0	39,396	
Cash Funds	1,075	3,153	0	2,530	
Cash Funds Exempt	184,991	152,212	0	113,965	
Federal Funds	2,113	1,763	0	1,327	
Workers' Compensation	<u>39,810</u>	<u>45,668</u>	<u>49,615</u>	<u>51,963</u>	
General Fund	12,559	13,728	15,238	16,268	
Cash Funds	2,602	3,161	3,516	3,630	
Cash Funds Exempt	23,670	27,667	29,652	30,867	
Federal Funds	979	1,112	1,209	1,198	

	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	Change
	Actual	Actual	Appropriation	Request	Requests
Operating Expenses	<u>187,833</u>	<u>302,659</u>	<u>190,143</u>	<u>190,643</u>	DI #5
General Fund	187,833	250,687	176,529	177,029	
Cash Funds Exempt	0	51,972	13,614	13,614	
Administrative Law Judges	<u>6,408</u>	<u>0</u>	<u>82</u>	<u>1,327</u>	
Cash Funds	6,408	0	82	1,327	
Cash Funds Exempt	0	0			
Purchase of Services from Computer Center - GF	33,443	29,862	30,303	27,138	
Payment to Risk Management - GF	75,065	26,082	65,665	88,196	
Vehicle Lease Payments	<u>28,225</u>	<u>25,353</u>	<u>33,281</u>	<u>43,167</u>	DI #6
General Fund	16,542	7,448	12,629	7,760	
Cash Funds	1,912	3,543	4,020	10,506	
Cash Funds Exempt	4,047	6,452	8,740	16,260	
Federal Funds	5,724	7,910	7,892	8,641	
ADP Capital Outlay	<u>66,777</u>	<u>49,543</u>	<u>26,825</u>	<u>77,875</u>	DI #2, #4,
General Fund	0	0	0	35,844	#5, #6, #7
Cash Funds	6,489	2,165	0	0	
Cash Funds Exempt	60,288	1,083	26,825	26,900	
Federal Funds	0	46,295	0	15,131	
IT Asset Maintenance	<u>396,410</u>	<u>322,625</u>	<u>358,296</u>	<u>358,296</u>	
Cash Funds	38,049	1	37,982	37,699	
Cash Funds Exempt	358,361	316,311	320,314	320,597	
Federal Funds	0	6,313	0	0	

	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	Change
	Actual	Actual	Appropriation	Request	Requests
Leased Space	<u>26,292</u>	<u>26,292</u>	<u>26,292</u>	<u>29,686</u>	
General Fund	4,372	4,372	4,372	4,961	
Cash Funds	3,583	3,583	3,583	3,657	
Cash Funds Exempt	18,337	0	18,337	20,901	
Federal Funds	0	18,337	0	167	
Capitol Complex Leased Space	<u>906,405</u>	<u>976,506</u>	<u>1,009,085</u>	<u>1,058,946</u>	
General Fund	279,447	294,071	309,995	331,531	
Cash Funds	59,313	67,717	71,503	73,969	
Cash Funds Exempt	545,366	590,939	603,008	629,036	
Federal Funds	22,279	23,779	24,579	24,410	
Communications Services Payments	<u>3,448</u>	<u>4,624</u>	<u>4,932</u>	<u>5,028</u>	
General Fund	1,795	1,986	1,958	2,061	
Cash Funds	318	318	352	314	
Cash Funds Exempt	181	1,166	1,037	1,239	
Federal Funds	1,154	1,154	1,585	1,414	
Attorney General Discretionary Fund - GF	5,000	5,000	5,000	5,000	
SUBTOTAL - Administration	5,652,523	6,546,992	6,872,383	7,790,736	13.4%
FTE	<u>37.1</u>	<u>36.7</u>	<u>38.7</u>	<u>39.7</u>	<u>1.0</u>
General Fund	1,104,787	1,273,948	1,390,130	1,678,845	20.8%
Cash Funds	205,233	228,948	246,012	301,686	22.6%
Cash Funds Exempt	4,276,207	4,891,370	5,153,783	5,690,581	10.4%
Federal Funds	66,296	152,726	82,458	119,624	45.1%

	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	Change
	Actual	Actual	Appropriation	Request	Requests
(2) LEGAL SERVICES TO STATE AGENCIES					
<i>Primary Functions include the representation of state agencies in disputes and general legal advice for all areas of state government.</i>					
<i>Cash Funds Exempt are earned from state agencies through the blended hourly rate for the provision of legal services.</i>					
<i>Cash Funds are earned from non-state agencies and state enterprises such as PERA and the State Lottery Commission.</i>					
Personal Services	13,277,571	14,055,579	15,159,885	16,058,408	DI #9
FTE	<u>189.5</u>	<u>186.2</u>	<u>197.2</u>	<u>199.4</u>	
Cash Funds	513,972	1,000,000	945,000	945,000	
Cash Funds Exempt	12,763,599	13,055,579	14,214,885	15,113,408	
Operating and Litigation - CFE	631,565	690,050	867,422	905,411	DI #9
Indirect Cost Assessment - CFE	1,990,161	2,088,238	2,109,083	2,132,110	DI #9
SUBTOTAL - Legal Services to State Agencies	15,899,297	16,833,867	18,136,390	19,095,929	5.3%
FTE	<u>189.5</u>	<u>186.2</u>	<u>197.2</u>	<u>199.4</u>	<u>2.2</u>
Cash Funds	513,972	1,000,000	945,000	945,000	0.0%
Cash Funds Exempt	15,385,325	15,833,867	17,191,390	18,150,929	5.6%

(3) CRIMINAL JUSTICE AND APPELLATE

Primary Functions include investigation and provision of legal services related to criminal appeals and crimes against the state such as tax evasion and workers' compensation fraud. Cash funds are from the Manufactured Home Fund and cash exempt are from custodial funds.

Special Prosecution Unit	1,459,038	1,006,677	1,065,815	1,197,129	DI #4
FTE	<u>15.4</u>	<u>11.5</u>	<u>11.8</u>	<u>12.8</u>	
General Fund	787,021	822,591	870,019	992,484	
FTE	n/a				

	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	Change
	Actual	Actual	Appropriation	Request	Requests
Cash Funds	179,578	184,086	195,796	204,645	
FTE	n/a				
Cash Funds Exempt	492,439	0	0	0	
Insurance Fraud Unit - CFE	n/a	221,422	620,195	595,782	
FTE		2.6	7.6	7.6	
Securities Fraud Unit	n/a	411,977	448,472	465,077	
FTE		<u>5.3</u>	<u>5.6</u>	<u>5.6</u>	
General Fund		89,264	113,590	117,130	
FTE					
Cash Funds Exempt		322,713	334,882	347,947	
FTE					
Appellate Unit - GF	1,734,246	1,857,271	2,062,584	2,187,501	
FTE	24.8	25.1	28.0	28.0	
Medicaid Fraud Grant	950,559	928,786	1,065,816	1,284,703	
FTE	<u>10.8</u>	<u>11.0</u>	<u>11.0</u>	<u>14.0</u>	
General Fund	235,757	236,137	266,408	321,176	
Federal Funds	714,802	692,649	799,408	963,527	
Capital Crimes Prosecution Unit - GF	332,230	330,535	350,255	362,711	
FTE	3.9	3.9	4.0	4.0	
Peace Officers Standards and Training Board Support	1,184,048	1,155,937	1,155,202	1,245,425	DI #3
FTE	<u>6.0</u>	<u>6.0</u>	<u>6.0</u>	<u>6.0</u>	
General Fund	0	0	0	80,912	
Cash Funds	1,056,218	1,144,444	1,155,202	1,164,513	
Cash Funds Exempt	127,830	11,493	0	0	

	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	Change
	Actual	Actual	Appropriation	Request	Requests
Victims Assistance	62,660	65,718	67,697	69,521	
FTE	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>	
Cash Funds Exempt	46,449	65,718	67,697	69,521	
Federal Funds	16,211	0	0	0	
Indirect Cost Assessment	<u>144,104</u>	<u>141,503</u>	<u>158,262</u>	<u>158,262</u>	
Cash Funds	81,185	76,396	91,512	91,512	
Cash Funds Exempt	62,919	65,107	66,750	66,750	
SUBTOTAL - Criminal Justice and Appellate	5,866,885	6,119,826	6,994,298	7,566,111	8.2%
FTE	<u>61.9</u>	<u>66.4</u>	<u>75.0</u>	<u>79.0</u>	<u>4.0</u>
General Fund	3,089,254	3,335,798	3,662,856	4,061,914	10.9%
Cash Funds	1,316,981	1,404,926	1,442,510	1,460,670	1.3%
Cash Funds Exempt	729,637	686,453	1,089,524	1,080,000	-0.9%
Federal Funds	731,013	692,649	799,408	963,527	20.5%

(4) WATER AND NATURAL RESOURCES

Primary Functions are comprised of investigative duties and legal services associated with environmental lawsuits.

Federal and Interstate Water Unit - GF	382,140	404,926	422,445	483,640	DI #8
FTE	4.8	4.6	5.0	5.5	
Defense of Arkansas River Compact	<u>135,967</u>	<u>140,000</u>	<u>140,000</u>	<u>0</u>	DI #8
General Fund	95,000	68,667	68,667	0	
Cash Funds Exempt	40,967	71,333	71,333	0	
Defense of Republican River Compact	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	
General Fund	0	0	0	0	
Cash Funds Exempt	0	0	0	0	

	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	Change
	Actual	Actual	Appropriation	Request	Requests
Defense of the Colorado River Basin Compact - CFE	n/a	10,307	758,880	758,880	
FTE		0.5	4.0	4.0	
Consultant Expenses - GF	20,426	0	0	50,000	DI #8
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)	410,262	412,100	439,286	453,280	
FTE	<u>4.8</u>	<u>4.8</u>	<u>4.8</u>	<u>4.8</u>	
General Fund	102,374	30,129	413,286	427,329	
Cash Funds Exempt	307,888	381,971	26,000	25,951	
CERCLA Contracts	<u>597,204</u>	<u>736,850</u>	<u>600,000</u>	<u>600,000</u>	
General Fund	35,934	0	175,000	175,000	
Cash Funds Exempt	561,270	736,850	425,000	425,000	
Natural Resource Damage Claims at Rocky Mountain Arsenal - GF	n/a	n/a	742,312	2,665,007	DI #1
FTE			2.0	2.0	
Indirect Cost Assessment - CFE	48,712	46,205			
SUBTOTAL - Water and Natural Resources	1,594,711	1,750,388	3,102,923	5,010,807	61.5%
FTE	<u>9.6</u>	<u>9.9</u>	<u>15.8</u>	<u>16.3</u>	<u>0.5</u>
General Fund	635,874	503,722	1,821,710	3,800,976	108.6%
Cash Funds Exempt	958,837	1,246,666	1,281,213	1,209,831	-5.6%

	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	Change
	Actual	Actual	Appropriation	Request	Requests
(5) CONSUMER PROTECTION					
<i>Primary Functions include investigative duties and legal services associated with consumer protection and anti-trust litigation as well as enforcement of statutes related to collection agencies and the uniform consumer credit code.</i>					
Consumer Protection and Anti-Trust	1,189,949	1,273,739	1,358,593	1,485,455	DI #2
FTE	<u>14.8</u>	<u>15.8</u>	<u>16.0</u>	<u>17.0</u>	
General Fund	677,664	680,423	729,353	844,004	
Cash Funds	62,746	63,605	64,737	65,984	
Cash Funds Exempt	449,539	529,711	564,503	575,467	
Collection Agency Board	170,412	186,236	232,612	286,287	DI #7
FTE	<u>3.4</u>	<u>3.5</u>	<u>4.5</u>	<u>5.2</u>	
Cash Funds	170,412	142,118	232,612	238,718	
Cash Funds Exempt	0	44,118	0	47,569	
Uniform Consumer Credit Code (UCCC)	709,352	718,844	807,699	875,717	DI #7
FTE	<u>8.7</u>	<u>8.9</u>	<u>10.5</u>	<u>11.3</u>	
Cash Funds	292,802	718,844	752,560	823,772	
Cash Funds Exempt	416,550	0	55,139	51,945	
Indirect Cost Assessment	<u>182,667</u>	<u>182,894</u>	<u>215,322</u>	<u>215,322</u>	
Cash Funds	142,075	140,890	172,258	172,258	
Cash Funds Exempt	40,592	42,004	43,064	43,064	
SUBTOTAL - Consumer Protection	2,252,380	2,361,713	2,614,226	2,862,781	9.5%
FTE	<u>26.9</u>	<u>28.2</u>	<u>31.0</u>	<u>33.5</u>	<u>2.5</u>
General Fund	677,664	680,423	729,353	844,004	15.7%
Cash Funds	668,035	1,065,457	1,222,167	1,300,732	6.4%
Cash Funds Exempt	906,681	615,833	662,706	718,045	8.4%

	FY 2004-05 Actual	FY 2005-06 Actual	FY 2006-07 Appropriation	FY 2007-08 Request	Change Requests
(6) SPECIAL PURPOSE					
<i>Primary Functions are comprised of the investigation and legal services associated with various special purpose programs especially large, one-time lawsuits. Funding also includes the State subsidy for district attorney salaries.</i>					
District Attorneys' Salaries - GF	1,298,887	1,301,835	1,310,681	1,313,037	
Litigation Management and Technology Fund - CFE	273,657	325,000	325,000	325,000	
Statewide HIPAA Legal Services - GF	25,076	27,596	20,331	20,331	
Trinidad Correction Facility Construction Litigation - CFE	387,893	0	0	0	
HMO Lawsuit Expenses - CFE	0	0	0	0	
Arkansas River Litigation Damage Award - CFE	34,615,146	0	0	0	
Tobacco Litigation	n/a	221,411	0 a/	225,000	
General Fund		221,411	0	100,000	
Cash Funds Exempt		0	0	125,000	
Federal Reimbursement for Illegal Immigration Costs (S.B. 06S-1014) - GF	n/a	n/a	45,822	45,822	
FTE			0.5	0.5	
Fraudulent Documents (S.B. 06-1010) - CF	n/a	n/a	68,879	65,874	
FTE			1.0	1.0	

	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	Change
	Actual	Actual	Appropriation	Request	Requests
SUBTOTAL - Special Purpose	36,600,659	1,875,842	1,770,713	1,995,064	12.7%
FTE	<u>0.0</u>	<u>0.0</u>	<u>1.5</u>	<u>1.5</u>	<u>0.0</u>
General Fund	1,323,963	1,550,842	1,376,834	1,479,190	7.4%
FTE	0.0	0.0	0.5	0.5	0.0
Cash Funds	0	0	68,879	65,874	-4.4%
FTE	0.0	0.0	1.0	1.0	0.0
Cash Funds Exempt	35,276,696	325,000	325,000	450,000	38.5%
FTE	0.0	0.0	0.0	0.0	0.0

a/ In June 2006, the Department received a \$225,000 emergency 1331 supplemental appropriation for this line, comprised of \$100,000 GF and \$12. from excess earnings in the Legal Services to State Agencies program during FY 2005-06.

DEPARTMENT OF LAW					
TOTAL FUNDS	67,866,455	35,488,628	39,490,933	44,321,428	12.2%
FTE	<u>325.0</u>	<u>327.4</u>	<u>359.2</u>	<u>369.4</u>	<u>10.2</u>
General Fund	6,831,542	7,344,733	8,980,883	11,864,929	32.1%
Cash Funds	2,704,221	3,699,331	3,924,568	4,073,962	3.8%
Cash Funds Exempt	57,533,383	23,599,189	25,703,616	27,299,386	6.2%
Federal Funds	797,309	845,375	881,866	1,083,151	22.8%

**FY 2007-08 JBC BUDGET BRIEFING
DEPARTMENT OF LAW
FOOTNOTE UPDATE**

- 2 All Departments, Totals** -- The General Assembly requests that copies of all reports requested in other footnotes contained in this act be delivered to the Joint Budget Committee and the majority and minority leadership in each house of the General Assembly. Until such time as the Secretary of State publishes the code of Colorado regulations and the Colorado register in electronic form pursuant to section 24-4-103 (11) (b), C.R.S., each principal department of the state is requested to produce its rules in an electronic format that is suitable for public access through electronic means. Such rules in such format should be submitted to the Office of Legislative Legal Services for publishing on the Internet. Alternatively, the Office of Legislative Legal Services may provide links on its internet web site to such rules. It is the intent of the General Assembly that this be done within existing resources.

Comment: The Department has complied with this footnote. Copies of all reports requested in other footnotes have been submitted to the Joint Budget Committee and the majority and minority leadership in each house of the General Assembly. Further, the Department's rules and regulations are available on the State's Internet site at the following address: http://www.state.co.us/gov_dir/leg_dir/olls/HTML/rules.htm.

- 3 All Departments, Totals** – Every Department is requested to submit to the Joint Budget Committee information on the number of additional federal and cash funds exempt FTE associated with any federal grants or private donations that are applied for or received during FY 2006-07. The information should include the number of FTE, the associated costs (such as workers' compensation, health and life benefits, need for additional space, etc.) that are related to the additional FTE, the direct and indirect matching requirements associated with the federal grant or donated funds, the duration of the grant, and a brief description of the program and its goals and objectives.

Comment: *The Governor vetoed this footnote on the grounds that it violates the separation of powers by dictating the format of the executive budget submission.* The Department has complied with this footnote. All federal moneys received by the Department of Law are related to the Medicaid Fraud Grant program in the Criminal Justice and Appellate section.

- 91 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 \$70.54 per hour for attorneys and not exceed \$56.18 per hour for paralegals, which equates to a blended rate of \$67.77 per hour.

Comment: The Department is utilizing these rates.

- 92 Department of Law, Legal Services to State Agencies** -- The Department of Law is requested to make available as necessary to the Joint Budget Committee or other agencies

of the executive branch, data regarding operating expenses for individual cases that exceed \$500 and are, thus, charged back to the applicable departments.

Comment: The Department has been complying with this footnote.

- 93 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, 2006.

Comment: The report was submitted as requested. The report states that Medicaid fraud, waste and abuse has been estimated at 10 percent nationally. In contrast, the report reiterates the findings of a July 1999 Medicaid Fraud and Abuse Programs Performance Audit, which estimated fraud and abuse in Colorado at about 1.8 percent. The Medicaid Fraud Control Unit (MFCU) is responsible for monitoring the financial integrity of more than \$3.4 billion worth of payments made to 10,318 Medicaid providers all over the State on behalf of 446,341 program recipients.

During FY 2005-06, the Fraud Unit was responsible for convictions and settlements that generated approximately \$1.1 million in restitution. Of this amount, nearly \$940,000 was returned to the State, with the remainder going to the Federal Government. The Fraud Unit also cooperates with federal agencies and with other states to investigate and prosecute multi-jurisdictional Medicaid fraud cases. During FY 2005-06, the State received \$757 thousand of restitution from three global settlement cases, money that is included in the \$1.1 million restitution total.

During FY 2005-06, 23 Colorado health care providers whom the Fraud Unit referred to the U.S. Department of Health and Human Services' Office of the Inspector General were banned from Medicare and Medicaid for periods ranging from 5 to 60 years.

- 94 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, which arise during FY 2006-07, as well as information technology decision items approved by the General Assembly that require General Fund or smaller amounts of other funding sources. 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.

FY 2007-08 JBC BUDGET BRIEFING
DEPARTMENT OF LAW
Department of Law Performance Measures

ISSUE:

Department of Law Performance Measures

DISCUSSION:

Department Mission

Mission Statement:

It is the mission of the Attorney General's Office to provide professional, ethical, and independent legal services to the State of Colorado and its citizens, to promote respect for and access to the justice system, to ensure the fair and open exercise of government, and to advance the public interest.

Goals and Performance Measures

The Department's budget submission, which is titled "Strategic Plan and Budget Request" does not contain a mission statement, nor does it include an overall strategic plan for the Department. The Department provided the above mission statement separately, in response to a JBC staff request. When asked about the Department's strategic plan, staff of the Attorney General's office indicated that the Department has a strategic plan, but it was formulated during the administration of former Attorney General Ken Salazar that was deliberately omitted from the current budget submission. The Department indicates that, coincident with the inauguration of Attorney General Suthers to his first elected term as Attorney General, the Department will hold some strategic planning sessions that are designed to develop a Departmental strategy for the next four years. The sessions will also focus on goals, objectives and measures for the individual programs in the Department.

The Department indicates that, for the present, its strategic plan is its 90-page 2005 Annual Report, which is contained in the Department's budget submission, along with the prioritized objectives for the Department's many programs.

The Annual Report begins with an outline of the Department's major initiatives and then reviews the principal programs that Department undertakes and the accomplishments of those programs during calendar year 2005. The major initiatives are a "Safe Surfing" program designed to protect children who use the Internet, a task force on sexually violent predators, a safe school program, an elder watch program designed to protect Colorado's Seniors from fraud, a mortgage and foreclosure fraud task force, and a program to defend state sovereignty by filing friend of the court briefs in various cases across the country. Recently filed briefs for the latter program

- argued that police officers should be given wider latitude to investigate suspicious behavior while on patrol,
- argued that errors in jury instructions with regard to sentencing should be deemed harmless where evidence of guilt is overwhelming, and
- defended state laws that define marriage as a union between a man and a woman against constitutional challenges.

The remainder of the annual report outlines the accomplishments of the Department's major units, such as the Consumer Protection units, the Natural Resources and Water units, the Business and Licensing units, and the Civil Litigation and Employment units. These sections describe the type of work done by each highlighted unit, and enumerate the unit's accomplishments, usually in a narrative, as opposed to a quantitative, fashion. For example, the Professional Boards Unit lists a number of cases in which it was involved, including the case of the pharmacist who lost his license after stealing controlled substances from his employers and an individual who operating a reading and vision therapy program and was practicing optometry without a license.

Staff Analysis

Joint Budget Committee staff reviewed the Department's performance measures submitted in the budget. Staff assessed these performance measures using the following common checklist:

1. Do the goals and performance measures correspond to the program's directives provided in statute?
2. Are the performance measures meaningful to stakeholders, policymakers, and managers?
3. Does the Department use a variety of performance measures (including input, output, efficiency, quality, outcome)?
4. Do the performance measures cover all key areas of the budget?
5. Are the data collected for the performance measures valid, accurate, and reliable?
6. Are the performance measures linked to the proposed budget base?
7. Is there a change or consequence if the Department's performance targets are not met?

Taken as a whole, the Department's goals, objectives, and performance measures:

1. Directly correspond with the Department's statutory duties.
2. Are generally quantitative, are reasonably objective, and can be measured in a reasonably accurate fashion.
3. Cover virtually all areas of the budget where Departmental performance matters. A typical unit has several objectives and at least twice that number of measures.
4. Are not expressly linked to the proposed budget request. However, several of the Department's decision items suggest that there is a link between shortfalls in unstated performance measures and

the Department's request for additional funding for select programs.

5. Do not appear to be linked to negative consequences when a performance target is not met; though it is possible that there are internal consequences in such cases.

Staff believes that these goals, objectives, and performance measures, taken as a whole, are reasonably well designed and provide a reasonable overview of department performance. However, there are some areas in which the objectives, and performance measures could be improved.

Laudable but vague objectives. Some unit objectives are laudable but are either difficult to measure or could be measured more effectively.

Example: The Financial Unit in the Legal Services to State Agencies Division represents the Insurance and Securities Commissioners, as well as the Divisions of Banking and Financial Services in the Department of Regulatory Agencies. It also serves several Agriculture Department divisions, boards, and commissions, such as the State Fair. The Unit's list of Prioritized Objective and Performance Measures has two objectives

- 1.1 Aggressively prosecute and resolve new regulatory actions.
- 2.1 Effectively and efficiently serve the interest of clients.

The corresponding performance measures for each objective indicate that the unit scored 100% on both accounts in FY 2004-05 and FY 2005-06. A footnote indicates that this evaluation is based upon "predominantly positive feedback of the Units clients", but no further information is provided. While informal client feedback is very important, it is possible to go further and conduct formal of client satisfaction surveys. The results of such a survey would then provide a more objective measure of performance.

Lack of sufficient comparative data: Many units include quantitative measures of performance, but those measures can be difficult to analyze because (1) only two years of data are presented, making it hard to see patterns and trends, and making it hard to compare the current year's performance with prior years performance, and (2) there are no benchmarks for comparison, such as benchmarks proposed by a professional organization or performance measures for similar offices doing similar work in other states. In some cases, such as the Medicaid Fraud unit, similar offices exist in many states. In other cases the comparison office may be further from the mark, but still can prove useful.

Example: The complex crimes unit prosecutes cases that are referred to the Attorney General because of the Office's specialized Knowledge or because the cases are multi-jurisdictional. Among it's objectives, the unit lists the following:

- 1.1 To utilize the Statewide Grand Jury to a greater extent and obtain at least 10 felony indictments.
- 2.1 To open 40 new investigation files, file 25 new cases in court and obtain at least 15 felony convictions.

3.1 To obtain restitution, fines and cost recoveries in appropriate cases.

In each case, the unit employs quantitative performance measures for each objective. The measures for objective 1.1, for example, are the number of grand jury investigations and the number of grand jury indictments obtained each year. The measures for objective 2.1 are the number of new investigations opened, the number of new cases filed, the number of felony convictions obtained, the number of misdemeanor convictions obtained and the number of cases closed. All are reasonable measures, but it is sometimes hard to evaluate them in the abstract.

Unstated performance measures may exist. One suspects, when reviewing the budget request, that unstated performance measures are driving some of the Department's decision items. For example, Decision Items 2 and 7 affect three lines in the Department's section of the Long Bill: Consumer Protection and Anti-Trust, the Collection Agency Board, and the Uniform Consumer Credit Code (UCCC) line. In the case of Decision Item 2, the Department asserts the statutory duties have grown dramatically with little increase in staffing levels. In the case of Decision Item 7, the request is a consequence of the rapid growth in an industry, rather an expansion of statutory duties. One would expect to see a deterioration in at least some of the performance measures for the related units, but one does not. Instead one sees two years of quantitative data, too little to observe deteriorations that have apparently been years long trends and no benchmarks for comparison with other states.

Questions for Department

Staff recommends that the Committee discuss the following questions with the Department during the FY 2007-08 budget hearing:

1. How do your performance measures influence department activities and budgeting?
2. To what extent do the performance outcomes reflect appropriation levels?
3. To what extent do you believe that appropriation levels in your budget could or should be tied to specific performance measure outcomes?
4. As a department director, how do you judge your department's performance? What key measures and targets do you used?

**FY 2007-08 JBC BUDGET BRIEFING
DEPARTMENT OF LAW
Major Litigation Pending Against the State**

ISSUE:

A summary of the potential General Fund liabilities that could result from major lawsuits pending against the State.

SUMMARY:

- This issue summarizes six large active cases involving the state and three recently concluded cases.

RECOMMENDATION:

There is no staff recommendation regarding this issue. It is designed to provide the Committee and the General Assembly with pertinent information related to potential significant liabilities that would be paid from the General Fund. This is not an exhaustive compilation of all litigation to which the State is a party.

DISCUSSION:

Status of Current Litigation

This is a list of unresolved cases for which the final outcome is not yet known and there is a possibility that the state will be required to pay \$1 million or more from the General Fund in excess of any amounts that have already been paid.

Lobato, et al v. State of Colorado. School districts in the San Luis Valley as well as students in the districts' schools and their parents have challenged the constitutionality of Colorado's K-12 funding scheme. Plaintiffs seek attorneys' fees and costs and they 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 \$5-10 billion. The State won in District Court. Plaintiffs appealed the case to the Court of Appeals, which has not yet scheduled the case.

Thompson v. Colorado. Plaintiffs allege that a fee that the Department of Revenue formerly charged for disabled parking permits violated the Americans with Disabilities Act. The plaintiffs seek \$1 to \$2 million in damages. The State lost in District Court but won in 2001 on an Appeal to the Tenth Circuit. The case has long been inactive, but it recently sprang back to life when plaintiffs argued that the Tenth Circuit implicitly reversed its 2001 ruling when it decided a similar case in 2004.

Cendant Corp v. Department of Revenue. Cendant wants to file an amended corporate tax return that would result in an \$8 million refund and would reduce General Fund revenues. The case has been heard by the Executive Director of the Department of Revenue, who has not yet ruled on the matter. If Cendant wins, that will be the end of the matter. If Cendant loses, it can appeal to the courts.

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 individuals assert, in a class action lawsuit, that the state should pay a portion of their attorney fees because the state benefited from their expenditure. Class certification has been granted, the case will go to trial in December. Potential damages could range as high as \$6 million.

Barber v. Owens. Between FY 2001-02 and FY 2003-04, the General Assembly enacted several pieces of legislation authorizing cash fund transfers of \$442.6 million to maintain a balanced budget and to reduce the need for budget cuts. The plaintiffs assert that these transfers turned program fees into taxes and thus violated Article X, Section 20 of the Colorado Constitution (more commonly known as 'TABOR'). Plaintiffs seek the establishment of a constructive trust to replenish the applicable cash funds, as well as a declaratory judgment regarding the alleged constitutional violations. The State prevailed on its motion for summary judgment in Denver District Court and the case was dismissed. The plaintiffs appealed to the Colorado Court of Appeals, where the case was argued last June, but no opinion has been issued.

Arkansas River Compact (Kansas vs. Colorado). The State has already been found liable for violations of the Arkansas River Compact related to excessive groundwater pumping and has paid Kansas \$34.6 million in compensation. The Special Master who oversees the case recently ordered Colorado to pay \$1.4 million to Kansas as reimbursement for costs that Kansas incurred when pursuing its case. Kansas had sought \$10 million. Kansas could appeal the Special Master's ruling.

Recently Resolved Cases

McLane Western vs. Department of Revenue. The plaintiff asserted that the Department of Revenue did not properly rebate taxes on the sale of tobacco products during the 1990's. The state prevailed in Denver District Court, in the Colorado Court of Appeals and in the Colorado Supreme Court.

Thorpe vs. State of Colorado and Fred Fisher. The plaintiffs asserted that part-year residents were excluded from receiving proportional TABOR and sales tax-related refunds even though the Department of Revenue collects taxes from these parties. The State won a summary judgment in District Court, which was upheld by the Court of Appeals. The plaintiff's petition for certiorari was denied by the Colorado Supreme Court and a subsequent petition for certiorari was also denied at the U.S. Supreme Court. All of plaintiff's appeals have been exhausted.

Mandy R., et al vs. Bill Owens, et al. Plaintiffs asserted a statutory claim for residential services of the developmentally disabled. The state prevailed in District court and in the Tenth Circuit Court of Appeals.

FY 2007-08 JBC BUDGET BRIEFING
DEPARTMENT OF LAW
Appropriations for Rocky Mountain Arsenal Litigation

ISSUE:

Increased Appropriations for the Recovery of Natural Resource Damages at Rocky Mountain Arsenal

SUMMARY:

- The Attorney General is currently pursuing "Natural Resources Damage" claims against the U.S. Army and Shell Oil Company for pollution damages at the Rocky Mountain Arsenal. Damages are being claimed under the provisions of the Comprehensive, Environmental Response, Compensation, and Liability (CERCLA) Act. The claims may be worth more than \$100 million.
- During the 2005 and 2006 legislative session, the General Assembly approved two prior decision items, totaling \$884,142 per year, that provided the Attorney General with funding to pursue these claims.
- Decision Item #1 in the Department's FY 2007-08 budget submission requests another \$1,922,695 for FY 2007-08 to pursue these claims.

RECOMMENDATION:

Staff recommends that the Joint Budget Committee ask the Department of Law to respond to the following questions at its hearing:

1. Will the appropriations contained in this decision item be sufficient to bring this action to a successful conclusion if the case goes to trial? Under what circumstances would the Department, in future years, require additional appropriations to support its natural resource damage action against the U.S. Army and Shell Oil Company?
2. Please assess candidly the state's prospect of prevailing in the natural resource damage action against the Army and Shell. Given the apparent lack of case law in this area, what is basis for your assessment.
3. The Department appears to have decided upon Stratus Consulting to perform the natural resource damage action. Why was Stratus picked? Were competing bids received from other consultants?

DISCUSSION:

Rocky Mountain Arsenal History. The U.S. Army established the Rocky Mountain Arsenal during World War II to produce chemical weapons and other munitions in support of the war effort. After World War II, the Army realized that it had excess capacity at the Arsenal and began leasing a portion of the site to private chemical companies for the production of pesticides and other commercial chemical products. In the early 1950's Shell Oil Company became the major commercial chemical operator at the Arsenal. The Army continued to use the site for weapons production and later for weapons decommissioning until the early 1980's; Shell also continued its chemical production activities at the site until the early 1980's.

During the 40 years that the Arsenal operated, the Army and the private chemical manufacturers employed waste disposal practices that caused extensive contamination of structures, soil, surface water, sediment, and groundwater at the Arsenal and in surrounding areas into which contaminated groundwater seeped.

CERCLA legal actions: Since 1982, the Army, Shell, the Environmental Protection Agency (EPA) and the State of Colorado have been involved in enforcement and legal actions designed to clean up the Arsenal under the provisions of the Federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which was enacted in 1980. Legal action in this case, as in most other CERCLA cases, has been divided into two phases that are handled in separate legal proceedings. The first phase focuses on remediation -- the disposal and treatment of hazardous substances at a site. The second phase focuses on compensation for the environmental degradation that remains after a site has been "cleaned up."

Though it has been known for years that environmental damage would remain at the Arsenal after remediation efforts concluded, the extent of the residual damage, termed "natural resource damages" by CERCLA, could not be evaluated until a substantial part of the cleanup was completed and cleanup effectiveness could be assessed. In 1983 the Attorney General filed a claim against the Army and Shell Oil Company (the "defendants") for natural resource damages, but the claim was placed on administrative hold while Arsenal clean-up activities continued. Remediation has now progressed to the point where residual environmental damages can be reasonably quantified.

The Department's CERCLA unit, which handles this and other CERCLA cases, believes that the state now has a strong claim for Natural Resource Damages based on injuries to groundwater and wildlife at the Arsenal. The state may also have viable claims for injuries to surface water and air. Taken together, these claims have a value that the CERCLA unit believes to be in the range of several tens of millions of dollars to well over \$100 million. Note, however, that under CERCLA's rules, any natural resource damage recovery must be spent on the restoration, replacement or acquisition of equivalent natural resources; the state could not, for example, use the damages to support the General Fund.

The state's natural resource damages claim will be resolved in a two stage process that is delineated in detail in CERCLA and in supporting Federal Regulations:

1. Assessment. An assessment of damages must be compiled. The Department believes this work is best left to an experienced contractor who will undertake a study that will set a monetary value on damages.

2. Litigation. The assessment will serve as the central evidence in a subsequent trial in which a judge will determine damages. If the state prevails, the judge will order the defendants to pay damages, perhaps in kind, and will, in all likelihood, also order the defendants to pay a significant portion of the cost of the state's damage assessment study. The state's litigation costs are not recoverable, however. There is a reasonable possibility that the judge's order will be appealed if the State prevails.

Either step of this process could be avoided or could terminate abruptly if the state, Shell, and the Army agree to an out-of-court settlement. In the past, the Department has tried unsuccessfully to negotiate with the defendants in an effort to reach such a settlement, but has been rebuffed. The Department recently observed a slight increase in the defendants' willingness to negotiate, which it attributes to the defendants' perception that the state is starting to get serious about litigation. The Department believes that the defendants are unlikely to negotiate seriously without a credible threat that the State will prevail in this action.

This is the third successive year in which the Department has presented the Committee with an Arsenal-related decision item. During the 2005 legislative session, the Committee approved a \$137,500 cash-funds-exempt CERCLA decision item that allowed the Department to hire technical experts to collect and assemble preliminary data needed for the pursuit of natural resource damages at the Arsenal.

During the 2006 legislative session, the Department submitted a second decision item that requested additional General Fund and FTE for the CERCLA unit. At that time, the Department indicated that additional appropriations would be needed in subsequent years to support continued negotiations and litigation. The Department estimated that the costs of ongoing settlement discussions and the pursuit of related litigation would probably cost \$10 million over ten years. (To put this in perspective, California spent over \$20 million litigating a natural resource damage case against a pesticide plant while New Jersey spent \$12 million over two years preparing a natural resource damage case for trial.) In response to the Department's decision item request, the Committee approved an extra appropriation of \$746,642 General Fund and 2.0 FTE for FY 2006-07 and subsequent years. To facilitate tracking, the Committee created a new Long Bill line titled "Natural Resource Damage Claims at Rocky Mountain Arsenal". The Department is using this appropriation to begin serious preparation for litigation and natural resource damage assessment. It has begun identifying and working on legal issues that need research and briefing and it is identifying experts who could testify at a trial. The Department has also hired two attorneys who work on the case full-time.

This year's decision item, the third in as many years, requests a further \$1,922,695 General Fund and 2.0 FTE for the new Natural Resource Damage Claims at Rocky Mountain Arsenal line item for FY 2007-08. The requested increase in FY 2008-09 and subsequent years equals \$461,530 and 0.0 FTE.

1. The \$1,922,695 of additional funding for FY 2007-08 will allow the Department to engage Stratus Consulting, a Boulder-based environmental consulting firm to conduct the damage assessment. Stratus will conduct a one-year study that will place a dollar value on the damages at the Arsenal and will propose compensation. Because of the technical, expert-driven nature of the state's claims, the large sums involved, and the lack of case law (especially for groundwater claims),

Stratus will develop multiple lines of evidence to support the state's claim. The Department believes that a high-quality assessment is critical for successful litigation and that a high quality study will enhance the prospects for a negotiated settlement.

2. The continuing funding of \$461,530 in subsequent years, when combined with the preexisting \$742,312 base appropriation level will allow the state to litigate its claim in federal district court. Assuming that a negotiated settlement remains out of reach, the Department anticipates that litigation will begin in FY 2008-09 and will continue through FY 2009-10, though it cautions that the trial could last longer if the defendants employ delaying tactics. Once the trial is concluded, the required appropriation will drop to a substantially lower level, probably in the range of several hundred thousand dollars annually if the case is appealed.

The Department believes that this Decision Item, if approved, will provide adequate funding for the Department's Natural Resource Damages action until it reaches its conclusion. The Department does not foresee the need for further decision items related to Rocky-Mountain-Arsenal natural resource damages.

**FY 2007-08 JBC BUDGET BRIEFING
DEPARTMENT OF LAW
Inadequate Fiscal Support for S.B. 06-110**

ISSUE:

There appears to be inadequate fiscal support for the enforcement program created by S.B. 06-110.

SUMMARY:

- During the 2006 legislative session, the General Assembly enacted S.B. 06-110 which imposed substantial financial penalties on those who produce or provide false employment verification documents. The bill has two potential fiscal problems. (1) The appropriation in the bill may not be adequate to support a reasonable enforcement program. (2) The bill's funding source, the Judicial Stabilization Cash Fund, has insufficient revenues to provide funding for the program.

RECOMMENDATION:

Staff recommends that the Committee ask the Department to respond to the following question at its hearing:

1. Does the Department plan to establish an enforcement program for S.B. 06-110?
2. Assuming an adequate funding source can be located, could the Department run an adequate enforcement program for S.B. 06-110 with an appropriation of \$68,879 and 1.0 FTE?
3. Is there any prospect that fine revenues will ever support this program?

Staff also recommends that the Committee consider funding the enforcement program for S.B. 06-110 with a General Fund appropriation, with the understanding that General Fund appropriations may be required indefinitely in the future.

DISCUSSION:

Passage of S.B. 06-110. Senate Bill 06-110, as it emerged from the Senate Judiciary Committee last March, imposed a fine of not less than \$50,000 on those who knowingly forge, counterfeit, alter, or falsely make or provide any of the documents listed in Title 8, Section 274a.2 (b)(1)(v) of the Code of Federal Regulations. Such documents are generally used for employment-verification purposes. The bill directed fine revenue to the Judicial Stabilization Cash Fund, a fund that was established three years earlier by S.B. 03-186, a JBC bill that increased court docket fees in order to offset reduced General Fund appropriations to the court system. Revenues from the increased docket fees are deposited in the Judicial Stabilization Cash Fund and are then appropriated to the Judicial Department.

The corresponding Legislative Council Staff Fiscal Note for the Senate-Judiciary-Committee version of S.B. 06-110, dated February 8, 2006, indicated that the bill had no fiscal impact, reflecting the fact that it did not direct any agency of state government to enforce its provisions.

The Senate Appropriations Committee heard S.B. 06-110 on March 17, 2006. It adopted an amendment stating that civil actions to enforce the bill's provisions *may* be brought by the Attorney General on behalf of the Department of Labor and Employment and stating that the Attorney General's costs may also be recovered. The amendment further specified that moneys in the Judicial Stabilization Cash fund shall be subject to annual appropriation by the General Assembly to the Office of the Attorney General to pay for this enforcement activity. The amendment added an appropriation clause that provided \$172,197 and 2.5 FTE to the Attorney General for enforcement. This appropriation was consistent with cost information provided to JBC staff by the Attorney General's office. A revised Legislative Council Staff Fiscal Note appeared the next month which also identified a \$172,197, 2.5 FTE cost for implementation. The Fiscal Note added that the revenues generated by the bill were expected to be minimal because those convicted of violating the bill's provisions were likely to have few financial resources.

The bill continued unamended through the legislative process until it reached House Appropriations in late April. The Appropriations Committee adopted an amendment that reduced the bill's appropriation from \$172,197 and 2.5 FTE to \$69,000 and 1.0 FTE. The amendment did not change any of the bill's other provisions and thus did not alter the amount of work necessary to enforce the bill.

The bill made its way through the remainder of the legislative process without further amendment.

Current status of S.B. 06-110 enforcement and funding:

Senate Bill 06-110 is not currently being enforced by the Attorney General's office and the office has no current plans to hire the 1.0 FTE authorized by the bill. The Office does not believe that the bill's enforcement provisions can be implemented with 1.0 FTE. No civil actions have been brought under the bill's provisions and no fines have been collected. Staff in the AG's Office, who are familiar with the type of defendants likely to be charged with violating S.B. 06-110's provisions believe that revenues from enforcement will be minimal and that there is little likelihood that fines will ever cover the cost of an enforcement program.

On Sept. 11, 2006, the Office of the State Court Administrator, which controls the Judicial Stabilization Cash Fund, sent a letter to the Attorney General's Office which stated that Stabilization fund "revenues are fully appropriated to fund court staff" and that any payment from the fund to the Attorney General's office would reduce the Judicial Department's case-processing resources. The Administrator's Office indicated that it would provide the Attorney General's office with any fine revenues that arrived as a result of S.B. 06-110. Please note, however, that nothing in S.B. 06-110 limits the appropriation to the Attorney General's Office to the amount of revenue collected as a result of actions brought by the Attorney General under S.B. 06-110. Thus there is currently no money to implement S.B. 06-110.