

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



**FY 2013-14 STAFF FIGURE SETTING
DEPARTMENT OF LAW**

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

**Prepared By:
Carolyn Kampman, JBC Staff
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For Further Information Contact:

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

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DEPARTMENT OF LAW

Department Overview

The Attorney General is one of five independently elected constitutional officers of the State. As the chief executive officer of the Department of Law, the Attorney General represents and defends the legal interests of the people of the State of Colorado and serves as the legal counsel and advisor to state agencies. The Department's FY 2012-13 appropriation represents 0.3 percent of statewide operating appropriations and 0.1 percent of statewide General Fund appropriations.

DEPARTMENT REQUEST AND RECOMMENDATION SUMMARY

Executive Request

The Department's request reflects an increase of \$4,276,521 total funds (7.4 percent) compared to the adjusted FY 2012-13 appropriation, including a \$2,067,245 (20.8 percent) increase in General Fund appropriations. The requested increase in total funds is primarily related to increases in employee salaries and the state contribution for employee benefits, and the Department's recent relocation to the Ralph L. Carr Colorado Judicial Center. The requested increase in General Fund is also impacted by the Department's four decision item requests (R-1, R-2, R-3, and R-4).

Committees of Reference SMART Act Recommendations

The House Judiciary Committee did not send a letter to the Joint Budget Committee concerning the Department's FY 2013-14 budget request.

Senate Judiciary Committee

Received January 24, 2013

Recommendations

The Senate Judiciary Committee did not provide a recommendation on the Department's FY 2013-14 budget.

Staff Recommendation

The staff recommendation is \$14,115 lower than the Department's request. This difference is a combination of the following:

- lower recommended funding for R-1 (-\$22,764) and R-2 (-\$60,354);
- a staff-initiated reduction of \$49,384 related to savings that will result from the library consolidation project; and
- higher funding for employee salaries and benefits based on the Committee's common policies (\$118,387).

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The staff recommendation is summarized in the table below, followed by a brief description of each incremental change.

Department of Law						
Summary of Staff Recommendations						
	Total Funds	General Fund	Cash Funds	Reappropriated Funds	Federal Funds	FTE
FY 2012-13 Appropriation:						
HB 12-1335 (Long Bill)	57,000,607	9,887,386	10,583,286	34,953,770	1,576,165	427.1
Other legislation	250,523	8,799	196,677	45,047	0	2.1
Mid-year appropriation changes	517,918	40,207	0	477,711	0	3.5
TOTAL	\$57,769,048	\$9,936,392	\$10,779,963	\$35,476,528	\$1,576,165	432.7
FY 2013-14 Recommended Appropriation:						
FY 2012-13 Appropriation	\$57,769,048	\$9,936,392	\$10,779,963	\$35,476,528	\$1,576,165	432.7
R-1: Add Appellate FTE	531,436	531,436	0	0	0	5.5
R-2: Add Special Prosecution FTE	238,552	155,160	41,696	41,696	0	1.9
R-3: Refinance tobacco litigation efforts	0	676,952	(676,952)	0	0	0.0
R-4: Refinance Public Information Officer	89,277	20,351	(95,071)	160,400	3,597	0.0
NPI-1: Risk management adjustment	3,284		0	3,284	0	0.0
BA-1: Additional POST Grant Spending Authority	282,700		282,700	0	0	0.0
Employee benefits/common changes	2,539,646	183,814	201,724	2,053,554	100,554	0.0
Relocation to Carr Center	1,652,678	416,935	237,157	950,063	48,523	0.0
Change in anticipated grant funding	43,159		0	43,159	0	0.5
Annualize 2012 session bills	19,431		(18,423)	37,854	0	0.5
Consolidate funding for Carr Center	0	0	0	0	0	0.0
Reverse mid-year adjustment	(477,711)		0	(477,711)	0	(3.5)
Tobacco litigation expense reduction	(380,000)		(380,000)	0	0	0.0
Annualize prior year budget actions	(230,662)	0	(220,896)	(9,766)	0	0.0
Library consolidation project savings	(49,384)		0	(49,384)	0	0.0
TOTAL	\$62,031,454	\$11,921,040	\$10,151,898	\$38,229,677	\$1,728,839	437.6
Increase/(Decrease)	\$4,262,406	\$1,984,648	(\$628,065)	\$2,753,149	\$152,674	4.9
Percentage Change	7.4%	20.0%	(5.8%)	7.8%	9.7%	1.1%
FY 2013-14 Executive Request:	\$62,045,569	\$12,003,637	\$10,139,938	\$38,180,486	\$1,721,508	437.6
Request Above/(Below) Recommendation	\$14,115	\$82,597	(\$11,960)	(\$49,191)	(\$7,331)	0.0

Description of Incremental Changes

R-1: Add Appellate FTE: The recommendation includes \$531,436 General Fund and 5.5 FTE to add six Assistant Attorneys General to address the growing backlog of criminal appeals cases.

R-2: Add Special Prosecution FTE: The recommendation includes \$238,552 total funds (including \$155,160 General Fund) and 1.9 FTE to support the efforts and workload needs of the Special Prosecution Unit. The recommendation would allow the Department to: (1) add a First Assistant Attorney General to assist in the supervision and management of the Unit; (2) fill a vacant Criminal Investigator position; and (3) add a Program Assistant to provide clerical support to all the attorneys and investigators in the Unit.

R-3: Refinance tobacco litigation efforts: The recommendation includes \$676,952 General Fund to support the Department's litigation and enforcement efforts related to the tobacco master settlement agreement. Please note, however, that the Committee has introduced a bill (H.B. 13-

1180) that would transfer a portion of tobacco settlement moneys to replenish the Tobacco Settlement Defense Account of the Tobacco Litigation Settlement Cash Fund. Passage of this bill would allow the Committee to continue to appropriate cash funds from the Defense Account to support these efforts in lieu of General Fund. Staff will advise the Committee if H.B. 13-1180 is enacted before the Long Bill is introduced in order to adjust Long Bill appropriations (prior to introduction) accordingly.

R-4: Refinance Public Information Officer: The recommendation reflects a change in fund sources that support the Department's Public Information Officer. This position is currently supported by custodial moneys that the Department receives as a result of consumer protection efforts. The recommendation supports this position in the same manner as other general administrative positions, with a combination of indirect cost recoveries and General Fund. The recommendation reflects an \$89,277 increase in appropriations because indirect cost recoveries appear twice in the budget: once in the program area where recoveries are collected from various fund sources, and a second time as reappropriated funds in the line item where the recoveries are anticipated to be spent.

NPI-1: Employee engagement service adjustment: This packet reflects the request for \$3,284 reappropriated funds to support the Department's share of a survey to gauge employees' attitudes toward their work and their work environment, their overall satisfaction, and trends developing within the workforce. The Committee is not scheduled to take action on this statewide request until March 1, 2013.

BA-1: Additional POST Grant Spending Authority: The recommendation includes \$282,700 cash funds from the Peace Officers Standards and Training (P.O.S.T.) Board Cash Fund to allow the P.O.S.T. Board to develop and provide additional peace officer training, expand the availability of online training, and improve the functionality of its website.

Employee benefits/common changes: The recommendation includes an increase of \$2,539,646 total funds for employee benefits and other statewide common policy adjustments. Please note that the Committee has not yet acted on several centrally appropriated line items. For purposes of this packet, staff has reflected the requested amount for any pending line items.

Relocation to Carr Center: This packet reflects the request for an increase of \$1,652,678 total funds (including \$416,935 General Fund) related to the Department's relocation to the new Ralph L. Carr Colorado Judicial Center. Staff will ultimately reflect the amounts approved by the Committee when it considers the Judicial Branch budget request related to the Carr Center and the Department of Public Safety's budget request for State Patrol Services.

Change in anticipated grant funding: The recommendation reflects an increase of \$43,159 reappropriated funds and 0.5 FTE due to an increase in the amount of funding transferred from the Department of Public Safety to support the Department of Law's efforts to investigate and prosecute multi-jurisdictional auto theft.

Annualize 2012 session bills: The recommendation includes an increase of \$19,431 total funds and 0.5 FTE to reflect the FY 2013-14 impact of legislation that was passed in 2012, including

the following acts: S.B. 12-110; H.B. 12-1110; H.B. 12-1300; H.B. 12-1303; H.B. 12-1311; and H.B. 12-1330.

Consolidate funding for Carr Center: This packet reflects the consolidation of line item appropriations for leased space and security services at the Carr Center.

Reverse mid-year adjustment: The recommendation reflects a decrease of \$477,711 reappropriated funds and 3.5 FTE to reverse mid-year adjustments that were recently approved to allow the Department of Law to receive additional funds from the Departments of Public Safety, Public Health and Environment, and Regulatory Agencies in FY 2012-13. Should the Committee ultimately take action to continue these adjustments in FY 2013-14, staff will adjust the spending authority for the Department of Law accordingly.

Tobacco litigation expense reduction: The recommendation includes a reduction of \$380,000 cash funds due to a projected decrease in the cost of outside counsel and other expenses related to the ongoing arbitration concerning the State's diligent enforcement of tobacco Master Settlement Agreement provisions concerning nonparticipating tobacco manufacturers.

Annualize prior year budget actions: The recommendation includes a decrease of \$230,662 total funds to reflect the FY 2013-14 impact of several FY 2012-13 budget decisions, including the following five requests (R) and a budget amendment (BA):

- R-1: Consumer protection enhancement (decrease of \$34,410 cash funds)
- R-2: Consumer credit unit – unlicensed entities compliance effort (decrease of \$9,766 cash funds)
- R-3: Case management system (decrease of \$157,254 cash and reappropriated funds)
- R-4: Add Deputy Attorney General (decrease of \$6,882 reappropriated funds)
- BA-1: Lowry Range Legal Services and Litigation expenses (decrease of \$22,350 cash funds)

INITIATIVES AFFECTING MULTIPLE LINE ITEMS

Request R-3: Refinance Tobacco Litigation Efforts

- The Department requests \$676,952 General Fund to support its tobacco litigation efforts because moneys are no longer anticipated to be available in the Tobacco Settlement Defense Account within the Tobacco Litigation Settlement Cash Fund.

- Staff recommends approving the request. Please note, however, that the Committee has introduced a bill (H.B. 13-1180) that would transfer a portion of tobacco settlement moneys to the Defense Account. Passage of this bill would allow the Committee to continue to appropriate cash funds from the Defense Account rather than General Fund. Staff will advise the Committee if H.B. 13-1180 is enacted before the Long Bill is introduced in order to adjust Long Bill appropriations accordingly.

Request: The Department proposes changing the sources of funds used to support its tobacco litigation efforts. Specifically, the Department projects that the balance available in the Tobacco Settlement Defense Account of the Tobacco Litigation Settlement Cash Fund will be exhausted by the end of FY 2012-13, so it requests a total of \$676,952 General Fund for tobacco litigation efforts for FY 2013-14.

The Department's tobacco litigation efforts include two components:

- The Department's Antitrust, Tobacco, and Consumer Protection Unit includes an attorney (1.0 FTE) who is responsible for enforcing the tobacco Master Settlement Agreement (MSA) and related tobacco laws. This individual monitors compliance with the numerous injunctive terms, ensures that Colorado's interests are protected under the payment calculation provisions, and works with the Department of Revenue to enforce escrow payment obligations of non-participating tobacco manufacturers.
- The Department contracts with outside counsel to represent Colorado in the arbitration proceedings related to the non-participating manufacturers (NPM) adjustment (this adjustment is described below). Due to the above-described Department attorney's involvement in developing and monitoring the Department of Revenue's NPM enforcement program, he can be called to testify during the arbitration proceeding. Thus, the Department is required to utilize outside counsel.

To date, the above litigation efforts have been funded from the Tobacco Settlement Defense Account (this account is described more fully below). This account is projected to be exhausted by the end of FY 2012-13, so the Department is requesting General Fund to continue to litigation efforts on behalf of the State. The following table details the requested adjustments, by line item and fund source. The proposal does not result in any overall change in state appropriations.

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Department of Law						
Summary of R-3: Refinance Tobacco Litigation Efforts						
Division and Line Item	TOTAL FUNDS	General Fund	Cash Funds	Reapprop. Funds	Federal Funds	FTE
Administration						
Health, Life, and Dental	0	6,064	(6,064)			0.0
Short-term Disability	0	160	(160)			0.0
S.B. 04-257 Amortization Equalization	0	3,025	(3,025)			0.0
S.B. 06-235 Supplemental Amortization	0	2,731	(2,731)			0.0
Salary Survey for Exempt Employees	0	1,225	(1,225)			0.0
Performance-based Pay Awards for Exempt Employees	0	1,153	(1,153)			0.0
Workers' Compensation	0	175	(175)			0.0
Attorney Registration and Continuing Legal	0	375	(375)			0.0
Information Technology Asset Maintenance	0	1,049	(1,049)			0.0
Ralph L. Carr Colorado Judicial Center	0	6,871	(6,871)			0.0
Security for State Services Building	0	329	(329)			0.0
Subtotal	0	23,157	(23,157)	0	0	0.0
Consumer Protection						
Consumer Protection and Antitrust	0	153,795	(153,795)			0.0
Subtotal	0	153,795	(153,795)	0	0	0.0
Special Purpose						
Tobacco Litigation	0	500,000	(500,000)	0	0	0.0
Subtotal	0	500,000	(500,000)	0	0	0.0
TO TAL	\$0	\$676,952	(\$676,952)	\$0	\$0	0.0

Background Information – Payment Dispute Concerning Non-Participating Manufacturers

When the tobacco MSA was signed in 1998, participants recognized that the extra costs that the settlement imposed on participating manufacturers would place them at a competitive disadvantage when compared with manufacturers that had not joined the agreement. In an effort to level the playing field, the MSA required states to enact "qualifying statutes" that force non-participating manufacturers (NPM) to make payments into escrow accounts that are comparable to what they would have paid had they participated in the agreement. House Bill 99-1208 added the qualifying statute to Colorado law. The MSA requires states to "diligently enforce" their qualifying statutes. If certain preconditions are met, settlement payments to states that do not diligently enforce are reduced.

Since 2006, Colorado and the other states have been involved in a legal dispute with the participating manufacturers, who allege that the states are not diligently enforcing their NPM laws. Due to this dispute, some tobacco companies have withheld a portion of their settlement payments, placing them in escrow. When a diligent enforcement question arises, it is settled by a panel of arbitrators who must decide the issue in a unified national proceeding in which a separate decision will be made on the diligent enforcement efforts of each participating state. Thus the arbitrators might decide that one state should receive a reduced payment because it failed to diligently enforce, while another state diligently enforced and is entitled to its full payment.

This lengthy multi-state arbitration process currently concerns tobacco settlement payments in 2003. Colorado's state-specific hearing occurred in December 2012, and final resolution of the 2003 arbitration is likely to be in late 2013 or early 2014. Following a decision for the 2003 adjustment, the arbitration process will be repeated for 2004 and subsequent years. Depending upon the results of this legal dispute for Colorado, the outcome related to 2003 disputed payments could range from:

- Receipt of an additional \$10.9 million (payout of amounts withheld); to
- Loss of the entire 2003 tobacco allocation for the State (\$86.1 million).

The State faces similar potential additional payouts and financial risks related to 2004 and subsequent years. Pursuant to S.B. 12-114, if the dispute is resolved in the State's favor, the additional revenue would be deposited to the General Fund. If the State is penalized as a result of the dispute, staff anticipates negotiations on *when* the penalty would be applied. Fiscal impacts could be spread across multiple years.

Background Information – Tobacco Litigation Settlement Cash Fund Defense Account

The Tobacco Settlement Defense Account of the Tobacco Litigation Settlement Cash Fund [created in Section 24-22-115 (2) (a), C.R.S.] is to be used by the Department of Law “to defend the state in lawsuits arising out of challenges or arising under the provisions of the master settlement agreement...to enforce and defend all rights and obligations of the state under said settlement agreements...and to resolve any dispute with any participating manufacturer...or nonparticipating manufacturer...”. The statute specifies that any moneys received to compensate the state for attorney fees, court costs, or other expenses incurred by the State in obtaining the settlement, and all interest earned on these funds, is deposited in this account.

The Account initially received \$4.0 million in FY 2000-01 (including \$3.83 million from the Agreement for attorney fees, plus interest earned). The General Assembly began appropriating moneys from the Defense Account to the Department of Law in FY 2001-02. From FY 2001-02 through FY 2011-12, the Department spent a total of \$4,066,330 from the Defense Account, with annual expenditures ranging from a low of \$66,096 in FY 2006-07 to a high of \$1,139,303 in FY 2010-11. A balance of \$1,025,710 remained in the Defense Account at the beginning of the current fiscal year. If the Department fully expends its appropriation for FY 2012-13, the Account balance will be exhausted.

Recommendation: Staff recommends approving the request. Please note that it is possible that the dollar amounts of the adjustments to centrally appropriated line items and indirect cost assessment line items may change as the result of the Committee's actions on various common policies. **Staff requests permission to adjust these amounts as necessary to properly implement all of the Committee's common policies.**

Please note that the Committee has introduced a bill (H.B. 13-1180) that would transfer a total of \$3,792,244 of tobacco settlement moneys to the Defense Account over the next two years (including \$1,792,244 prior to July 1, 2013, and \$1,000,000 in each of the next two fiscal years). Passage of this bill would allow the Committee to continue to appropriate cash funds from the Defense Account rather than General Fund. Staff will advise the Committee if H.B. 13-1180 is

enacted before the Long Bill is introduced in order to modify Long Bill appropriations accordingly. If H.B. 13-1180 is not enacted before the Long Bill is introduced, the bill will require an appropriation clause to adjust the relevant Long Bill appropriations (thus reducing General Fund appropriations by an estimated \$676,952).

Analysis: As reflected in the Defense Account statute, the General Assembly has always anticipated a need for ongoing legal work related to the MSA. Even if active litigation were to end, staff anticipates that ongoing funding for the 1.0 FTE in Consumer Protection and Antitrust and related benefits and indirect costs would need to be continued indefinitely (\$176,952 requested for FY 2013-14). Based on past history, staff also assumes that future funding for active litigation will also be required, although the specific amount needed in any year can apparently fluctuate from \$0 to \$1.0 million. The current NPM legal dispute has high financial stakes for the State, and ceasing or substantially limiting financial support for litigation efforts at this point appears unwise.



Request R-4: Refinance Public Information Officer

- The Department proposes adjusting fund sources that support the Public Information Officer position so that it is financed in the same manner as other general administrative positions.
- Staff recommends approving the request.

Request: The Department proposes changing the sources of funds used to support the Public Information Officer position. This position is currently reflected in the Consumer Protection section of the Long Bill, and it is entirely supported by custodial moneys that the Department receives as a result of consumer protection efforts. The Department proposes reflecting this position in the Administration section of the Long Bill, and funding it in the same manner as the other general administrative and management positions. Specifically, the salary expenses for the position (along with the associated PERA and Medicare contributions) would be funded through departmental indirect cost recoveries (reappropriated funds), and the other employee benefits would be supported by direct General Fund appropriations.

The following table details the requested adjustments, by line item and fund source. The proposal requires an overall increase in appropriations (estimated to total \$89,277) because indirect cost recoveries are reflected twice in the Long Bill: once at the division level where they are assessed, and a second time where they are applied as a revenue source. The overall increase is estimated to total \$89,277, comprised of: an increase of \$20,351 General Fund, a decrease of \$95,071 cash funds, an increase of \$160,400 reappropriated funds, and an increase of \$3,597 federal funds.

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Department of Law						
Summary of R-4: Refinance Public Information Officer						
Division and Line Item	TOTAL FUNDS	General Fund	Cash Funds	Reapprop. Funds	Federal Funds	FTE
Administration						
Personal Services	\$89,284	\$0	\$0	\$89,284	\$0	1.0
Health, Life, and Dental	0	6,064	(6,064)	0	0	0.0
Short-term Disability	0	144	(144)	0	0	0.0
S.B. 04-257 Amortization Equalization Disbursement	0	2,923	(2,923)	0	0	0.0
S.B. 06-235 Supplemental Amortization Equalization Disbursement	0	2,639	(2,639)	0	0	0.0
Salary Survey for Exempt Employees	0	1,200	(1,200)	0	0	0.0
Workers' Compensation	0	175	(175)	0	0	0.0
Ralph L. Carr Colorado Judicial Center Leased Space	0	6,871	(6,871)	0	0	0.0
Security for State Services Building	0	329	(329)	0	0	0.0
Subtotal	89,284	20,345	(20,345)	89,284	0	1.0
Legal Services to State Agencies						
Indirect Cost Assessment	67,610	0	0	67,610	0	0.0
Subtotal	67,610	0	0	67,610	0	0.0
Criminal Justice and Appellate						
Appellate Unit	0	6	0	(6)	0	0.0
Indirect Cost Assessment	10,196	0	4,928	1,671	3,597	0.0
Subtotal	10,196	6	4,928	1,665	3,597	0.0
Water and Natural Resources						
Indirect Cost Assessment	991	0	0	991	0	0.0
Subtotal	991	0	0	991	0	0.0
Consumer Protection						
Consumer Protection and Antitrust	(89,284)	0	(89,284)	0	0	(1.0)
Indirect Cost Assessment	10,480	0	9,630	850	0	0.0
Subtotal	(78,804)	0	(79,654)	850	0	(1.0)
TOTAL	\$89,277	\$20,351	(\$95,071)	\$160,400	\$3,597	0.0

Background Information - Custodial Funds

Pursuant to Section 24-31-108, C.R.S., "custodial moneys" are those funds received by the Attorney General:

- that originate from a source other than the State of Colorado;
- that are awarded or otherwise provided to the State for a particular purpose; and
- for which the State is acting as a custodian or trustee to carry out a particular purpose for which the moneys have been provided¹.

¹ Please note that this provision specifically excludes from the definition of custodial moneys funds in the Tobacco Litigation Settlement Cash Fund and the Tobacco Litigation Settlement Trust Fund.

Custodial moneys are not subject to annual appropriation by the General Assembly. The Attorney General is required to direct the State Treasurer in writing to place the custodial moneys in a separate account, to set forth the basis for the determination that the moneys are custodial, and to specify the manner in which the moneys will be expended. The Attorney General is to provide a copy of this written direction to the Joint Budget Committee. The Department of Law is also required to provide, with its annual budget request, an accounting of how custodial moneys have been or will be expended. Finally, this provision indicates that the expenditure of such moneys may be indicated in the annual Long Bill for informational purposes.

While the Department does not require legislative approval to spend custodial moneys, it does make budgetary and FTE requests for custodial moneys that support state FTE, and these requests are reviewed by the legislature and articulated in the Long Bill. The Department's intent is to maintain transparency with the legislature on the resources and FTE necessary to run Department programs.

Recommendation: **Staff recommends approving the request.** This position supports all of the Department's program areas, and should thus be supported by all of the fund sources that support these program areas.

Please note that it is possible that the dollar amounts of the adjustments to centrally appropriated line items and indirect cost assessment line items may change as the result of the Committee's actions on various common policies. **Staff requests permission to adjust these amounts as necessary to properly implement all of the Committee's common policies.**

Analysis: While many of the press releases issued by the Department's Public Information Officer relate to lawsuits and actions by the Department that result in the receipt of custodial moneys (*e.g.*, settlements and fines resulting from the efforts of the Department's consumer protection units), press releases are also issued related to the other Department activities and program areas. For example, recent press releases have provided information about:

- criminal charges filed by the Special Prosecutions Unit related to drug trafficking, sex trafficking, and auto theft conspiracy cases;
- criminal convictions resulting from actions of the Medicaid Fraud Control unit;
- an appellate decision in a criminal case involving first-degree murder and child abuse resulting in death;
- the status of cases in which the Department represents a state agency or elected official;
- a criminal conviction in an environmental case resulting from actions of the Department's Water and Natural Resources section;
- the allocation of settlement funds received by the State for natural resources damages at the Rocky Mountain Arsenal; and
- activities related to the Peace Officers Standards and Training program.

This position should be supported by the funding sources that support all of the Department's programs and units, rather than simply being funded out of custodial funds.

(1) Administration

The Administration section of the Long Bill includes central appropriations for the entire Department, including funding for employee benefits, facilities, vehicles, and information technology. This section also includes funding for the following Department sections:

- *Office of the Attorney General* - includes the Attorney General, the Chief Deputy Attorney General, the Solicitor General, the Director of Legal Policy and Federal-State Issues, and associated administrative staff;
- *Human Resources* - hires new employees, manages employee benefits, and consults with employees and managers regarding applicable state and federal personnel laws and regulations;
- *Financial Services/ Budgeting* - includes accounting, financial reporting, payroll, and budgeting functions;
- *Information Technology Services* - handles the Department's computer needs including maintenance, computer training, and operation of the Attorney General's website; and
- *Legal Support Services* - produces a significant number of the Department's documents including legal briefs and other court-related manuscripts, distributes mail, oversees the Department's vehicle fleet, files materials with courts, and manages general office documents.

The above sections are supported by General Fund and by indirect cost assessments that are collected from the Department's various sections and transferred as reappropriated funds to this section. The central appropriations that relate to the entire department reflect the same funding sources that support each section within the Department.

The following table details the types of employees that are supported by this line item.

Staffing Summary Administration	FY 11-12 Actual	FY 12-13 Approp.	FY 13-14 Request	FY 13-14 Recommend.
Office of the Attorney General	8.7	9.0	9.0	9.0
Human Resources	3.5	3.5	3.5	3.5
Financial Services/ Budgeting	7.3	7.5	7.5	7.5
Information Technology Services	14.6	16.2	16.2	16.2
Legal Support Services	5.0	5.5	5.5	5.5
Public Information Officer (R-4)	<u>0.0</u>	<u>0.0</u>	<u>1.0</u>	<u>1.0</u>
Total	39.1	41.7	42.7	42.7

Personal Services

This line item provides funding to support personal services expenditures in the Administration section. Like all subsequent personal services appropriations in this document, this appropriation funds salaries of regular employees, as well as the associated state contribution to the Public Employees Retirement Association (PERA) and the state share of federal Medicare taxes. Also included are wages of temporary employees, payments for contracted services, and termination/retirement payouts for accumulated vacation and sick leave.

Request: The Department requests \$3,139,121 reappropriated funds and 42.7 FTE for FY 2013-14. The request is impacted by R-4 (Refinance Public Information Officer).

Recommendation: Staff recommends approving the request, which is essentially a continuation level of funding and is consistent with the Committee's common policy. The following table details the calculation of the recommended funding.

Administration, Personal Services					
	Total Funds	General Fund	Cash Funds	Reappropriated	FTE
FY 2012-13 Appropriation:					
HB 12-1335 (Long Bill)	3,049,837	14,072	0	3,035,765	41.7
TOTAL	\$3,049,837	\$14,072	\$0	\$3,035,765	41.7
FY 2013-14 Recommended Appropriation:					
FY 2012-13 Appropriation	\$3,049,837	\$14,072	\$0	\$3,035,765	41.7
R-4: Refinance Public Information Officer	89,284	0	0	89,284	1.0
Indirect Cost Assessment adjustment	0	(14,072)	0	14,072	0.0
TOTAL	\$3,139,121	0	\$0	\$3,139,121	42.7
Increase/(Decrease)	\$89,284	(\$14,072)	\$0	\$103,356	1.0
Percentage Change	2.9%	(100.0%)	0.0%	3.4%	2.4%
FY 2013-14 Executive Request:	\$3,139,121	\$0	\$0	\$3,139,121	42.7
Request Above/(Below) Recommendation	\$0	\$0	\$0	\$0	0.0

Health, Life, and Dental

This line item provides funding for the employer's share of the cost of group benefit plans providing health, life, and dental insurance for state employees.

Request: The Department requests \$2,875,286 for FY 2013-14. The request is impacted by R-3 (Refinance Tobacco Litigation Efforts) and R-4 (Refinance Public Information Officer).

Recommendation: Staff recommends appropriating \$2,850,112 for FY 2013-14, consistent with Committee policy with respect to employer contribution rates². As detailed in the following table, the recommended sources of funds reflect both R-3 and R-4.

² Employer contribution rates approved by the Committee include the following: \$434.10 (employee), \$762.60 (employee + spouse), \$795.66 (employee + children), and \$1,080.90 (employee + family) for health benefits; \$25.92 (employee), \$42.62 (employee + spouse), \$46.44 (employee + children), and \$62.22 (employee + family) for dental benefits; and \$8.76 for life benefits.

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Administration, Health, Life, and Dental						
	Total Funds	General Fund	Cash Funds	Reappropriated	Federal Funds	FTE
FY 2012-13 Appropriation:						
HB 12-1335 (Long Bill)	2,620,363	712,358	307,246	1,497,893	102,866	0.0
TOTAL	\$2,620,363	\$712,358	\$307,246	\$1,497,893	\$102,866	0.0
FY 2013-14 Recommended Appropriation:						
FY 2012-13 Appropriation	\$2,620,363	\$712,358	\$307,246	\$1,497,893	\$102,866	0.0
R-3: Refinance tobacco litigation efforts	0	6,064	(6,064)	0	0	0.0
R-4: Refinance Public Information Officer	0	6,064	(6,064)	0	0	0.0
Employee benefits/common changes	229,749	24,029	(19,149)	199,861	25,008	0.0
TOTAL	\$2,850,112	748,515	\$275,969	\$1,697,754	\$127,874	0.0
Increase/(Decrease)	\$229,749	\$36,157	(\$31,277)	\$199,861	\$25,008	0.0
Percentage Change	8.8%	5.1%	(10.2%)	13.3%	24.3%	0.0%
FY 2013-14 Executive Request:	\$2,875,286	\$757,853	\$280,953	\$1,708,446	\$128,034	0.0
Request Above/(Below) Recommendation	\$25,174	\$9,338	\$4,984	\$10,692	\$160	0.0

Short-term Disability

This line item provides funding for the employer's share of state employees' short-term disability insurance premiums.

Request: The Department requests \$57,762 for FY 2013-14. The request is impacted by R-3 (Refinance Tobacco Litigation Efforts) and R-4 (Refinance Public Information Officer).

Recommendation: Staff recommends an appropriation of \$58,002, consistent with the Committee's common policy to apply a rate of 0.19 percent of employee salaries. As detailed in the following table, the recommended sources of funds reflect both R-3 and R-4.

Administration, Short-term Disability						
	Total Funds	General Fund	Cash Funds	Reappropriated	Federal Funds	FTE
FY 2012-13 Appropriation:						
HB 12-1335 (Long Bill)	49,196	13,008	4,457	30,127	1,604	0.0
TOTAL	\$49,196	\$13,008	\$4,457	\$30,127	\$1,604	0.0
FY 2013-14 Recommended Appropriation:						
FY 2012-13 Appropriation	\$49,196	\$13,008	\$4,457	\$30,127	\$1,604	0.0
R-3: Refinance tobacco litigation efforts	0	160	(160)	0	0	0.0
R-4: Refinance Public Information Officer	0	144	(144)	0	0	0.0
Employee benefits/common changes	8,806	1,637	1,540	4,879	750	0.0
TOTAL	\$58,002	14,949	\$5,693	\$35,006	\$2,354	0.0
Increase/(Decrease)	\$8,806	\$1,941	\$1,236	\$4,879	\$750	0.0
Percentage Change	17.9%	14.9%	27.7%	16.2%	46.8%	0.0%
FY 2013-14 Executive Request:	\$57,762	\$14,930	\$5,662	\$34,828	\$2,342	0.0
Request Above/(Below) Recommendation	(\$240)	(\$19)	(\$31)	(\$178)	(\$12)	0.0

S.B. 04-257 Amortization Equalization Disbursement (AED)

Pursuant to S.B. 04-257, this line item provides additional funding to increase the state contribution for Public Employees' Retirement Association (PERA).

Request: The Department requests \$1,165,243 for FY 2013-14. The request is impacted by R-3 (Refinance Tobacco Litigation Efforts) and R-4 (Refinance Public Information Officer).

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Recommendation: Staff recommends an appropriation of \$1,167,093 for FY 2013-14, consistent with Committee's common policy. The common policy is to apply the relevant rates [3.4 percent of base salaries for CY 2013 and 3.8 percent of base salaries for CY 2014] to base salaries (including salary survey and merit pay increases, and adjusted for the pay date shift). As detailed in the following table, the recommended sources of funds reflect both R-3 and R-4.

Administration, S.B. 04-257 Amortization Equalization Disbursement						
	Total Funds	General Fund	Cash Funds	Reappropriated	Federal Funds	FTE
FY 2012-13 Appropriation:						
HB 12-1335 (Long Bill)	965,510	271,731	93,597	559,668	40,514	0.0
TOTAL	\$965,510	\$271,731	\$93,597	\$559,668	\$40,514	0.0
FY 2013-14 Recommended Appropriation:						
FY 2012-13 Appropriation	\$965,510	\$271,731	\$93,597	\$559,668	\$40,514	0.0
R-3: Refinance tobacco litigation efforts	0	3,025	(3,025)	0	0	0.0
R-4: Refinance Public Information Officer	0	2,923	(2,923)	0	0	0.0
Employee benefits/common changes	201,583	21,251	26,311	147,481	6,540	0.0
TOTAL	\$1,167,093	\$298,930	\$113,960	\$707,149	\$47,054	0.0
Increase/(Decrease)	\$201,583	\$27,199	\$20,363	\$147,481	\$6,540	0.0
Percentage Change	20.9%	10.0%	21.8%	26.4%	16.1%	0.0%
FY 2013-14 Executive Request:	\$1,165,243	\$301,266	\$113,381	\$703,769	\$46,827	0.0
Request Above/(Below) Recommendation	(\$1,850)	\$2,336	(\$579)	(\$3,380)	(\$227)	0.0

S.B. 06-235 Supplemental Amortization Equalization Disbursement (SAED)

Pursuant to S.B. 06-235, this line item provides additional funding to increase the state contribution for PERA.

Request: The Department requests \$1,051,954 for FY 2013-14. The request is impacted by R-3 (Refinance Tobacco Litigation Efforts) and R-4 (Refinance Public Information Officer).

Recommendation: Staff recommends an appropriation of \$1,052,692 for FY 2013-14, consistent with Committee's common policy. The common policy is to apply the relevant rates [3.0 percent of base salaries for CY 2013 and 3.5 percent of base salaries for CY 2014] to base salaries (including salary survey and merit pay increases, and adjusted for the pay date shift). As detailed in the following table, the recommended sources of funds reflect both R-3 and R-4.

Administration, S.B. 06-235 Supplemental Amortization Equalization Disbursement						
	Total Funds	General Fund	Cash Funds	Reappropriated	Federal Funds	FTE
FY 2012-13 Appropriation:						
HB 12-1335 (Long Bill)	828,618	232,402	80,435	480,964	34,817	0.0
TOTAL	\$828,618	\$232,402	\$80,435	\$480,964	\$34,817	0.0
FY 2013-14 Recommended Appropriation:						
FY 2012-13 Appropriation	\$828,618	\$232,402	\$80,435	\$480,964	\$34,817	0.0
R-3: Refinance tobacco litigation efforts	0	2,731	(2,731)	0	0	0.0
R-4: Refinance Public Information Officer	0	2,639	(2,639)	0	0	0.0
Employee benefits/common changes	224,074	31,162	27,815	157,435	7,662	0.0
TOTAL	\$1,052,692	\$268,934	\$102,880	\$638,399	\$42,479	0.0
Increase/(Decrease)	\$224,074	\$36,532	\$22,445	\$157,435	\$7,662	0.0
Percentage Change	27.0%	15.7%	27.9%	32.7%	22.0%	0.0%
FY 2013-14 Executive Request:	\$1,051,954	\$271,976	\$102,357	\$635,347	\$42,274	0.0
Request Above/(Below) Recommendation	(\$738)	\$3,042	(\$523)	(\$3,052)	(\$205)	0.0

Background Information – Salaries for Classified and Exempt Employees. The Department of Law employs both classified and non-classified or "exempt" employees. Classified employees are governed by state personnel rules and procedures; exempt employees are not. The Department employs about 240 attorneys, who collectively make up about 55 percent of the Department's staff. These attorneys are all exempt employees, and the remaining 45 percent of the Department's staff are classified employees.

Salary Survey and Merit Pay for classified employees, when provided, are set by common policy. Thus, the following recommendations for Salary Survey and Merit Pay increases for classified employees are calculated in the same manner as all other classified employees, and thus include salary range adjustments for selected job classifications³.

The Department of Personnel's "Annual Compensation Survey Report" does not include compensation data related to attorneys. In order to evaluate the compensation for its attorneys, the Department annually contracts with an independent compensation research and consulting firm to assess market compensation practices for attorneys in comparable positions in Colorado public sector attorney organizations. In both 2010 and 2012 the Department cooperated with the Office of the State Public Defender to contract with the same consultant to assess market compensation practices for attorneys.

The latest survey, prepared by Fox Lawson & Associates (FLA), was published in October 2012. This study utilized data reported as of May/June 2011 for a "primary market" that includes:

- Front Range City Attorney Offices (participants included the cities of: Arvada, Aurora, Boulder, Denver, Lakewood, Littleton, Westminster, Broomfield, Colorado Springs, Greeley, and Longmont)
- Front Range County Attorney Offices (participants included the counties of: Boulder, Douglas, and El Paso); and
- The U.S. Office of the Attorney General.

This study also utilized data as of March 2012 (which was then "aged" to July 2012) for a "supplementary market" that includes:

- Front Range Judicial Districts (participants included the following districts: 1st (Jefferson and Gilpin counties); 2nd (Denver); 4th (El Paso and Teller); 10th (Pueblo); 18th (Arapahoe and Douglas); 20th (Boulder); and 21st (Mesa); and
- The Office of the State Public Defender.

³ For the Department of Law, the salary range adjustments for classified positions affect the following positions: (1) a Systems Maintenance Study revised salary ranges for various information technology positions, and these adjustments were applied prior to the salary survey (1.5 percent) and merit pay increases; and (2) salary range adjustments for Legal Assistants, Program Assistants, and Administrative Assistants were applied after the salary survey (1.5 percent) and merit pay increases.

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The study compares the Department's actual attorney salaries and salary ranges as of July 2012 to the primary market data (which reflects survey participants' salary data as of May/June 2011). Thus, to the extent that the study's primary market data is used to determine Department salaries as of July 2013, such salaries will lag the market by two years.

The 2012 FLA survey study concludes that, overall, the Department's *average attorney salaries* are 16.8 percent below attorney salaries in the primary market; these gaps range from 7.0 percent for Assistant Attorneys General (the entry level position) to 23.3 percent for 1st Assistant Attorneys General (the third of four classifications).

The FLA survey study also includes a comparison of *salary ranges* for each of the four attorney classifications. Overall, the midpoints of the Department's existing pay ranges are 12.1 percent below those of the primary market; these gaps in pay range midpoints range from 4.5 percent for Assistant Attorneys General to 14.9 percent for Senior Attorneys General (the second of four classifications).

The following table details these two types of salary gaps, based on the 2012 FLA study for each attorney classification.

2012 Fox Lawson & Associates Salary Survey Report for the Department of Law						
Benchmark Title	Average Actual Salaries			Salary Range Midpoints		
	Dept. Average	Primary Market Average	Percent Difference	Dept. Average	Primary Market Average	Percent Difference
Deputy Attorney General	\$124,134	\$143,807	-15.8%	\$129,180	\$139,684	-8.1%
1st Assistant Attorney General	100,378	123,757	-23.3%	109,476	123,388	-12.7%
Senior Attorney General	88,774	105,460	-18.8%	92,776	106,646	-14.9%
Assistant Attorney General	72,846	77,952	-7.0%	78,624	82,197	-4.5%
Salary Gap for All Attorneys			-16.8%			-12.1%

The Department's FY 2013-14 budget request is based on the implementation of one of two options recommended in the FLA study. Similar to the Executive Branch's proposed salary range adjustments, this option adjusts ranges for each classification based on the magnitude of the gap between the Department's existing salary range and the market salary range. This option thus aligns the Department's attorney pay ranges for each of the four classifications based on the midpoint of each range (*i.e.*, each of the ranges would be adjusted by the percentage in the far right column in the above table).

In order to implement this recommendation, the Department has requested Salary Survey and Merit Pay increases consistent with the Governor's proposal for classified staff. In addition, the Department's request includes additional funding to ensure that every attorney's salary is increased to at least the minimum of the new salary range. The Department's methodology for implementing these attorney salary range adjustments and the Governor's proposed salary adjustments (1.5 percent salary survey and 1.6 percent merit pay) is similar to that used for classified staff. The only difference in the Department's request is that the 1.6 percent merit pay

increase for attorneys is applied after, rather than before, the adjustments to reach the range minimum.

With respect to attorneys, the Department is requesting the following amounts for salary increases in FY 2013-14:

- \$335,246 to increase existing salaries by 1.5 percent;
- \$228,532 to add funding for those adjusted salaries that fall below the new range minimum;
- \$367,907 for 1.6 percent merit increases on adjusted salaries (including adjustments to reach new range minimum).

Please note that for purposes of calculating the dollar amount of its request, the Department assumes that every attorney will receive a 1.6 percent merit pay increase. However, in practice, the Department will allocate the amount appropriated for merit pay based on individual employee performance.

Salary Survey for Classified Employees

The Department uses this line item to pay for salary increases for *classified* employees.

Request: The Department requests \$264,303 for FY 2013-14.

Recommendation: Staff recommends an appropriation of \$339,441 for FY 2013-14. This amount is different than the Department's request because, pursuant to the Committee's common policy: (1) General Fund amounts have been adjusted to reflect the pay date shift; and (2) it includes an additional 0.5 percent across-the-board increase on base salaries.

Administration, Salary Survey for Classified Employees						
	Total Funds	General Fund	Cash Funds	Reappropriated	Federal Funds	FTE
Employee benefits/common changes	339,441	73,571	70,627	167,876	27,367	0.0
TOTAL	\$339,441	73,571	\$70,627	\$167,876	\$27,367	0.0
Increase/(Decrease)	\$339,441	\$73,571	\$70,627	\$167,876	\$27,367	0.0
Percentage Change	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
FY 2013-14 Executive Request:	\$264,303	\$64,048	\$54,723	\$123,984	\$21,548	0.0
Request Above/(Below) Recommendation	(\$75,138)	(\$9,523)	(\$15,904)	(\$43,892)	(\$5,819)	0.0

Salary Survey for Exempt Employees

The Department uses this line item to pay for salary increases for employees who are *exempt from the state personnel system*.

Request: The Department requests \$563,778 for FY 2013-14. The request is impacted by R-3 (Refinance Tobacco Litigation Efforts) and R-4 (Refinance Public Information Officer).

Recommendation: Staff recommends an appropriation of \$641,548 for FY 2013-14, consistent with Committee's common policy and including the Department's requested increase to implement new attorney salary ranges that are aligned with the primary market and ensure that each attorney's salary does not fall below the new range minimum. This amount is different than the Department's request because, pursuant to the Committee's common policy: (1) General Fund

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amounts have been adjusted to reflect the pay date shift; and (2) it includes an additional 0.5 percent across-the-board increase on base salaries.

As detailed in the following table, the recommended sources of funds reflect both R-3 and R-4.

Administration, Salary Survey for Exempt Employees						
	Total Funds	General Fund	Cash Funds	Reappropriated	Federal Funds	FTE
R-3: Refinance tobacco litigation efforts	0	1,225	(1,225)	0	0	0.0
R-4: Refinance Public Information Officer	0	1,200	(1,200)	0	0	0.0
Employee benefits/common changes	641,548	156,316	18,761	461,559	4,912	0.0
TOTAL	\$641,548	158,741	\$16,336	\$461,559	\$4,912	0.0
Increase/(Decrease)	\$641,548	\$158,741	\$16,336	\$461,559	\$4,912	0.0
Percentage Change	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
FY 2013-14 Executive Request:	\$563,778	\$145,152	\$14,289	\$400,653	\$3,684	0.0
Request Above/(Below) Recommendation	(\$77,770)	(\$13,589)	(\$2,047)	(\$60,906)	(\$1,228)	0.0

Note Concerning Pay Compression. Please note that while the Department's proposal will align its salary ranges with the market, it will not fully address the larger gaps between the Department's actual attorney salaries and those in the primary market. Thus, the request does not address pay compression issues, and attorney salaries will continue to cluster at the bottom end of each pay range. At staff's request, the Department prepared the following matrix to illustrate the distribution of attorney salaries within each classification. Please note that the matrix is based on the assumption that each attorney would receive a 1.6 percent merit pay increase. The Department's plan to provide merit increases on a differential basis should help to better distribute attorney salaries throughout the new ranges.

Distribution of Attorney Salaries: Estimates for FY 2013-14				
Benchmark Title	Quartile 1: Between Min and 25% of range	Quartile 2: Between 25% and 50% of range	Quartile 3: Between 50% and 75% of range	Quartile 4: Between 75% and Max% of range
Deputy Attorney General	40.00%	60.00%	0.00%	0.00%
1st Assistant Attorney General	84.21%	13.16%	2.63%	0.00%
Senior Attorney General	71.19%	27.12%	1.69%	0.00%
Assistant Attorney General	49.66%	34.23%	9.40%	6.71%

In contrast, the budget request submitted by the Office of the State Public Defender (OSPD) for FY 2013-14 begins by closing the gap in *actual average salaries* for each attorney classification, as identified in the FLA study for OSPD attorneys. The across-the-board salary survey increase of 1.5 percent, and merit increases of 1.6 percent are then applied on top of the adjusted salaries to address the two year lag in market comparison data. If the Department of Law were to use this same approach, it would require an additional \$3,660,822⁴ (including \$834,100 General Fund) for salary increases in FY 2013-14.

⁴ Please note that while this figure includes the associated PERA and Medicare amounts, it excludes the associated expenses for supplemental PERA payments (AED and SAED) and Short-term Disability.

Merit Pay for Classified Employees

This line item funds pay increases relating to employee performance evaluations for *classified* employees.

Request: The Department requests \$165,278 for FY 2013-14.

Recommendation: Staff recommends an appropriation of \$153,103 for FY 2013-14. This amount is different than the Department's request because, pursuant to the Committee's common policy, General Fund amounts have been adjusted to reflect the pay date shift. [Please note that staff asked the Department to allocate the total amount approved by the Committee for merit increases between this line item and the next. The Department's allocation reflects the full impact of the pay date shift adjustment in this line item.]

Administration, Merit Pay for Classified Employees						
	Total Funds	General Fund	Cash Funds	Reappropriated	Federal Funds	FTE
Employee benefits/common changes	153,103	47,536	27,435	65,178	12,954	0.0
TOTAL	\$153,103	47,536	\$27,435	\$65,178	\$12,954	0.0
Increase/(Decrease)	\$153,103	\$47,536	\$27,435	\$65,178	\$12,954	0.0
Percentage Change	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
FY 2013-14 Executive Request:	\$165,278	\$59,712	\$27,434	\$65,178	\$12,954	0.0
Request Above/(Below) Recommendation	\$12,175	\$12,176	(\$1)	\$0	\$0	0.0

Merit Pay for Exempt Employees

This line item funds pay increases relating to employee performance evaluations for employees who are *exempt from the state personnel system*.

Request: The Department requests \$367,907 for FY 2013-14. The request is impacted by R-3 (Refinance Tobacco Litigation Efforts).

Recommendation: Staff recommends an appropriation of \$367,907 for FY 2013-14. This amount, combined with the above line item, is consistent with the Committee's common policy. As detailed in the following table, the recommended sources of funds reflect R-3.

Administration, Merit Pay for Exempt Employees						
	Total Funds	General Fund	Cash Funds	Reappropriated	Federal Funds	FTE
R-3: Refinance tobacco litigation efforts	0	1,153	(1,153)	0	0	0.0
Employee benefits/common changes	367,907	86,402	10,037	267,460	4,008	0.0
TOTAL	\$367,907	87,555	\$8,884	\$267,460	\$4,008	0.0
Increase/(Decrease)	\$367,907	\$87,555	\$8,884	\$267,460	\$4,008	0.0
Percentage Change	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
FY 2013-14 Executive Request:	\$367,907	\$87,555	\$8,884	\$267,460	\$4,008	0.0
Request Above/(Below) Recommendation	\$0	\$0	\$0	\$0	\$0	0.0

Workers' Compensation

This line item is used to pay the Department's estimated share for inclusion in the state's workers' compensation program for state employees. This program is administered by the Department of Personnel and Administration.

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Request: The Department requests \$74,366 for FY 2013-14. The request is impacted by R-3 (Refinance Tobacco Litigation Efforts) and R-4 (Refinance Public Information Officer).

Recommendation: Staff’s recommendation for this line item is pending. Staff will ultimately reflect the amount approved by the Committee when the common policy for Workers’ Compensation is established.

Attorney Registration and Continuing Legal Education

This line item provides funding for the Department to cover the annual registration fee for each attorney (\$225) and to provide some funding for required continuing legal education fee expenses (\$150 per attorney). This line item was established in FY 2008-09 in response to a request from the Department, and it is designed to make the salary and benefit package offered by the Department more competitive with other public sector law firms.

Request: The Department requests a continuation level of funding (\$99,263) for FY 2013-14. The request is impacted by R-3 (Refinance Tobacco Litigation Efforts).

Recommendation: Staff recommends approving the request for \$99,263 for FY 2013-14. As detailed in the following table, the recommended sources of funds reflect R-3.

Administration, Attorney Registration and Continuing Legal Education						
	Total Funds	General Fund	Cash Funds	Reappropriated	Federal Funds	FTE
FY 2012-13 Appropriation:						
HB 12-1335 (Long Bill)	99,263	21,769	3,000	72,525	1,969	0.0
TOTAL	\$99,263	\$21,769	\$3,000	\$72,525	\$1,969	0.0
FY 2013-14 Recommended Appropriation:						
FY 2012-13 Appropriation	\$99,263	\$21,769	\$3,000	\$72,525	\$1,969	0.0
R-3: Refinance tobacco litigation efforts	0	375	(375)	0	0	0.0
TOTAL	\$99,263	22,144	\$2,625	\$72,525	\$1,969	0.0
Increase/(Decrease)	\$0	\$375	(\$375)	\$0	\$0	0.0
Percentage Change	0.0%	1.7%	(12.5%)	0.0%	0.0%	0.0%
FY 2013-14 Executive Request:	\$99,263	\$22,144	\$2,625	\$72,525	\$1,969	0.0
Request Above/(Below) Recommendation	\$0	\$0	\$0	\$0	\$0	0.0

Operating Expenses

This line item provides funding for operating expenses of the Administration section.

Request: The Department requests \$190,629 reappropriated funds for FY 2013-14. The request reflects the elimination of \$2,884 in one-time funding that was provided in FY 2012-13 for capital outlay expenses associated with 1.0 FTE IT professional that was added to implement and manage the new case management system.

Recommendation: Staff recommends approving the request.

Administrative Law Judge Services

This line item provides funding for the Department to purchase Administrative Law Judge services from the Department of Personnel and Administration.

Request: The Department requests \$4,315 cash funds for FY 2013-14.

Recommendation: Staff's recommendation for this line item is pending. Staff will ultimately reflect the amount approved by the Committee when the common policy for Administrative Law Judge Services is established.

Purchase of Services from Computer Center

This line item provides funding for the Department's share of statewide computer services provided by the Governor's Office of Information Technology.

Request: The Department requests \$53,855 reappropriated funds for FY 2013-14.

Recommendation: Staff's recommendation for this line item is pending. Staff will ultimately reflect the amount approved by the Committee when the common policy for this service is established.

Multiuse Network Payments

This line item provides funding for the Department's share of the costs of the State's data, voice, video, text, and graphics communication services.

Request: The Department requests \$118,313 reappropriated funds for FY 2013-14.

Recommendation: Staff's recommendation for this line item is pending. Staff will ultimately reflect the amount approved by the Committee when the common policy for these payments is established.

Payment to Risk Management and Property Funds

This line item provides funding for the Department's share of the statewide costs for two programs operated by the Department of Personnel and Administration: (1) the liability program, and (2) the property program. The state's liability program is used to pay liability claims and expenses brought against the State. The property program provides insurance coverage for state buildings and their contents.

Request: The Department requests \$130,115 reappropriated funds for FY 2013-14.

Recommendation: Staff's recommendation for this line item is pending. Staff will ultimately reflect the amount approved by the Committee when the common policy for Risk Management and Property Funds is established.

Vehicle Lease Payments

This line item provides funding for annual payments to the Department of Personnel and Administration for the cost of administration, loan repayment, and lease-purchase payments for new and replacement motor vehicles [see Section 24-30-1117, C.R.S.]. The current appropriation covers costs associated with a total of 30 vehicles, including 14 that are used by the Criminal Justice and Appellate Division, nine that are used by the Legal Services for State

Agencies Division, six that are used by the Consumer Protection Division, and one that is used by the Attorney General.

Request: The Department requests \$63,819 for FY 2013-14, which represents a decrease of \$6,466 relative to the FY 2012-13 appropriation. The Department's request includes funding to replace one vehicle, a 2002 full-size sedan.

Recommendation: Staff recommends approving the request for funding to replace one vehicle (License # 503DHS). While this vehicle is not eligible for replacement based on mileage (projected to reach 104,717 by July 2014), the maintenance costs for this vehicle are 235 percent higher than average (\$0.238 per mile compared to \$0.071 per mile). Staff's overall recommendation for this line item is pending. Staff will ultimately reflect the amount approved by the Committee when the common policy for Vehicle Lease Payments is established.

ADP Capital Outlay

The ADP Capital Outlay line item funds one-time expenditures for personal computers, office equipment, and other items that are needed when new staff positions are authorized. The appropriations on this line are one-time expenditures.

Request: The Department requests \$0 for FY 2013-14. The request reflects the elimination of \$154,370 in one-time funding that was provided in FY 2012-13 to purchase a case management system.

Recommendation: Staff recommends approving the request.

IT Asset Maintenance

This appropriation funds the maintenance and replacement of computer equipment as well as software maintenance and licensing agreements. The requested amount provides for the replacement of the Department's information technology according to a regular schedule in accord with guidelines established by the Governor's Office of Information Technology. New computer purchases are included on the ADP Capital Outlay line. Note that there is relatively little General Fund on this line; the Department pays much of its General Fund IT asset maintenance costs out of the Litigation Management and Technology Fund appropriation, which will be discussed later in this document.

Request: The Department requests a continuation level of funding (\$445,807) for FY 2013-14. The request is impacted by R-3 (Refinance Tobacco Litigation Efforts).

Recommendation: Staff recommends approving the request. As detailed in the following table, the recommended sources of funds reflect R-3.

JBC Staff Figure Setting: FY 2013-14
Staff Working Document – Does Not Represent Committee Decision

Administration, Information Technology Asset Maintenance						
	Total Funds	General Fund	Cash Funds	Reappropriated	Federal Funds	FTE
FY 2012-13 Appropriation:						
HB 12-1335 (Long Bill)	445,807	21,754	63,299	359,373	1,381	0.0
TOTAL	\$445,807	\$21,754	\$63,299	\$359,373	\$1,381	0.0
FY 2013-14 Recommended Appropriation:						
FY 2012-13 Appropriation	\$445,807	\$21,754	\$63,299	\$359,373	\$1,381	0.0
R-3: Refinance tobacco litigation efforts	0	1,049	(1,049)	0	0	0.0
TOTAL	\$445,807	22,803	\$62,250	\$359,373	\$1,381	0.0
Increase/(Decrease)	\$0	\$1,049	(\$1,049)	\$0	\$0	0.0
Percentage Change	0.0%	4.8%	(1.7%)	0.0%	0.0%	0.0%
FY 2013-14 Executive Request:	\$445,807	\$22,803	\$62,250	\$359,373	\$1,381	0.0
Request Above/(Below) Recommendation	\$0	\$0	\$0	\$0	\$0	0.0

Leased Space

This appropriation pays for 3,286 square feet of off-site document storage space at a location that the Department prefers not to disclose for security reasons.

Request: The Department requests \$27,789 for FY 2013-14. The Department anticipates that in the next year or so it will relocate these documents to the Carr Center.

Recommendation: Staff recommends approving the request to cover scheduled leased space payments for FY 2013-14. If the Department relocates the documents in this space to the Carr Center in FY 2013-14 and it will not require the full appropriation, staff assumes that the Department will submit a request next January to adjust this appropriation accordingly.

Capitol Complex Leased Space

Prior to January 2013, the Department leased 101,685 square feet of Capitol Complex space in the State Services Building at 1525 Sherman Street. On January 22, 2013, all Department staff moved to the Ralph L. Carr Colorado Judicial Center. The Department now occupies 133,836 square feet in the Carr Center⁵. For FY 2012-13, this appropriation was based on a full 12 months of lease payments for the space at 1525 Sherman Street. The Department of Law will not be required to make lease payments for its space in the Carr Center until July 1, 2013.

Request: The Department requests that this line item be replaced with a new line item that references the Carr Center for FY 2013-14. The Department requests \$2,926,487 total funds for this new line item for FY 2013-14. The request is impacted by R-3 (Refinance Tobacco Litigation Efforts) and R-4 (Refinance Public Information Officer).

Recommendation: Staff recommends the following for FY 2013-14:

- replacing this line item with a new line item titled, "Ralph L. Carr Colorado Judicial Center Leased Space";

⁵ This square footage figure reflects "usable" square feet to provide a comparable figure to the space at 1525 Sherman Street. The Department's space in the Carr Center totals 200,017 "rentable" square feet.

- consolidating the funding for leased space and State Patrol security services (the next line item) in this new line item; and
- ensuring that the Department's share of security services is based on its share of space in the Carr Center.

Staff's recommendation for the dollar amount of this appropriation is pending. Staff will ultimately reflect the amounts approved by the Committee when it considers the Judicial Branch budget request related to the Carr Center and the Department of Public Safety's budget request for State Patrol Services.

Security for State Services Building

This appropriation currently pays for State Patrol security at the State Services Building, the Capital Complex facility that previously housed the Department of Law. For FY 2013-14, the Department's request relates to State Patrol services that are provided at the Carr Center.

Request: The Department requests \$140,000 for FY 2013-14. It is staff's understanding that the requested amount is simply a rounded dollar amount of the FY 2012-13 appropriation, and does not reflect a calculation of the Department's relative share of security services provided in the Carr Center. The request is impacted by R-3 (Refinance Tobacco Litigation Efforts) and R-4 (Refinance Public Information Officer).

Recommendation: Staff recommends that this appropriation be consolidated with the above line item, and that the amount appropriated for State Patrol security services be based on the Department's share of space in the Carr Center. Staff's recommendation for the dollar amount of this appropriation is pending. Staff will ultimately reflect the amounts approved by the Committee when it considers the Judicial Branch budget request related to the Carr Center and the Department of Public Safety's budget request for State Patrol Services.

Communications Services Payments

This line item provides funding to pay the Governor's Office of Information Technology for the Department's share of the costs associated with operating the public safety communications infrastructure.

Request: The Department requests \$8,205 for this purpose for FY 2013-14.

Recommendation: Staff's recommendation for this line item is pending. Staff will ultimately reflect the amount approved by the Committee when the common policy for these payments is established.

COFRS Modernization

This line item provides the Department's share of funding for replacement of the statewide accounting system (COFRS) used by the Office of the State Controller to record all state revenues and expenditures.

Request: The Department requests \$46,431 for this purpose for FY 2013-14.

Recommendation: Staff's recommendation for this line item is pending. Staff will ultimately reflect the amount approved by the Committee when the common policy for this project is established.

Attorney General Discretionary Fund

Section 24-9-105 (1) (c), C.R.S., authorizes the General Assembly to appropriate \$5,000 of discretionary funds to the Attorney General to use for official business purposes.

Request: The Department requests continuation of the \$5,000 General Fund appropriation.

Recommendation: Staff recommends approving the request.

(2) Legal Services to State Agencies

The Legal Services to State Agencies (LSSA) section of the Long Bill provides appropriations to the Department to allow it to spend moneys received from other state agencies for the provision of legal services as required by Section 24-31-101, C.R.S. Since 1973, the General Assembly has appropriated moneys for legal services to the various state agencies, which in turn purchase services from the Department of Law at hourly rates. The Department of Law collects payments from these agencies when it provides legal services. In order to spend the money it receives to pay salaries and related expenses, the Department of Law also requires an appropriation. Thus, whenever the General Assembly makes an appropriation to a state agency for legal services, an equal appropriation must be made to the Department of Law so it can spend the money it receives. For example, for FY 2012-13, the General Assembly has authorized the Department of Law to spend up to \$28.9 million providing legal services to state agencies (including associated central appropriations).

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

Please note that FTE that are funded through this section of the Long Bill have been organized into seven sections based on subject matter expertise and the need to separate staff where ethical conflicts of interest exist. Seven Deputy Attorneys General oversee each of these sections. Five of the seven Deputy Attorneys General are funded through this Long Bill section; the remaining two are funded through the Criminal Justice and Appellate, and Consumer Protection sections of the Long Bill.

The following table details the types of employees that are supported by this section.

JBC Staff Figure Setting: FY 2013-14
Staff Working Document – Does Not Represent Committee Decision

Staffing Summary	FY 11-12	FY 12-13	FY 13-14	FY 13-14
Legal Services to State Agencies	Actual	Approp.*	Request	Recommend.
Attorneys	169.2	176.4	176.8	176.8
Legal Assistants	33.0	34.1	34.2	34.2
Administrative Staff	<u>24.0</u>	<u>27.5</u>	<u>27.5</u>	<u>27.5</u>
Total	226.2	238.0	238.5	238.5

* Excludes 3.5 FTE appropriated in S.B. 13-094.

LINE ITEM DETAIL

Personal Services

The appropriation in the Long Bill for personal services in the LSSA section is a reflection of the State's need for legal services. The LSSA section has two types of employees who bill client agencies: attorneys and legal assistants. Each "billing" attorney and legal assistant provides 1,800 hours of legal services annually⁶. All attorneys bill at a uniform hourly attorney rate, and all legal assistants bill at a uniform hourly legal assistant rate. The "blended" legal rate is a weighted average of these two rates, which is used to compute the appropriations to other state agencies for the purchase of legal services.

The following table summarizes the estimated change in the demand for legal services from FY 2012-13 and FY 2013-14.

Estimated Change in Demand for Legal Services Hours	Legal Hours
Legal services appropriations specifically designated in the FY 2012-13 Long Bill, plus additional hours of legal services anticipated to be purchased by other agencies (primarily higher education institutions)	373,883
FY 2012-13 legal services appropriations in legislation other than Long Bill (including S.B. 13-094, the supplemental bill for the Department of Law)	<u>6,795</u>
Total legal services for FY 2012-13	380,678
Estimated number of hours for specifically designated line items the FY 2013-14 Long Bill (including out-year impacts of prior legislation and decision items), plus additional hours of legal services anticipated to be purchased by other agencies	377,335
Change from FY 2012-13 to FY 2013-14	(3,344)

Once the Committee has acted on all state agencies' requests for legal services hours for FY 2013-14, staff will present a memorandum that describes the calculation of the hourly rates applicable for FY 2013-14. Staff will ask the Committee at that time to approve a blended hourly rate that will then be used to calculate Long Bill appropriations for the purchase of legal

⁶ When annual leave and state holidays are taken into account, an individual needs to bill 7.5 hours/day to bill a total of 1,800 hours per year. The Department's personnel evaluations are based, in part, on the number of hours billed. The Department indicates that most attorneys work more than eight hours per day or periodically work on weekends or holidays to achieve this billing objective.

JBC Staff Figure Setting: FY 2013-14
Staff Working Document – Does Not Represent Committee Decision

services for FY 2013-14. Based on the Department of Law's budget request and the common policies adopted by the Committee to date concerning increases for employee salaries and in the state contributions for insurance and retirement benefits, the blended hourly rate is projected to increase to \$87.98 (13.9 percent). This increase is primarily driven by employee-related common policies and the increased leased space costs associated with the Department's relocation to the Carr Center.

Request: The Department requests \$20,584,910 and 238.5 FTE for FY 2013-14. The request is impacted by annualization of funding provided for FY 2012-13.

Recommendation: As detailed in the following table, **staff recommends appropriating \$20,535,526 and 238.5 FTE. Staff's recommendation is \$49,384 lower than the request.** Staff recommends this reduction **to reflect the cost savings that will be experienced by the Department due to library consolidation project.** Specifically, the Department has been working with the Supreme Court Law Library to consolidate their print and electronic library resources and, ultimately, to share the Law Library once both agencies relocate to the Carr Center. This project has resulted in a joint contract for online legal resources that has reduced the Department's annual contract expenses by \$65,193 (40 percent). These savings are partially offset by a small increase (\$15,809) in the costs of library staff. Rather than contracting with its own librarian, the Department will be transferring funds to the Judicial Branch to pay a share of the costs of Supreme Court Library Staff.

Please note that staff will revise this recommendation, if necessary, once the demand for legal services for FY 2013-14 is finalized. **Staff thus requests authorization to adjust this amount, if necessary, based on changes in the number of hours of legal services approved by the Committee.**

Legal Services to State Agencies, Personal Services					
	Total Funds	General Fund	Cash Funds	Reappropriated	FTE
FY 2012-13 Appropriation:					
HB 12-1335 (Long Bill)	20,510,299		253,320	20,256,979	237.9
Other legislation	40,542		0	40,542	0.1
Mid-year appropriation changes	429,940		0	429,940	3.5
TOTAL	\$20,980,781		\$253,320	\$20,727,461	241.5
FY 2013-14 Recommended Appropriation:					
FY 2012-13 Appropriation	\$20,980,781		\$253,320	\$20,727,461	241.5
Annualize 2012 session bills	34,069		0	34,069	0.5
Reverse mid-year adjustment	(429,940)		0	(429,940)	(3.5)
Library consolidation project savings	(49,384)		0	(49,384)	0.0
TOTAL	\$20,535,526		\$253,320	\$20,282,206	238.5
Increase/(Decrease)	(\$445,255)		\$0	(\$445,255)	(3.0)
Percentage Change	(2.1%)	0.0%	0.0%	(2.1%)	(1.2%)
FY 2013-14 Executive Request:	\$20,584,910		\$253,320	\$20,331,590	238.5
Request Above/(Below) Recommendation	\$49,384		\$0	\$49,384	0.0

In addition, staff recommends that the Committee authorize staff to assume the following numbers of hours for certain state agencies that purchase legal services from the Department of Law. The Long Bill does not include specific appropriations to these agencies in the annual Long Bill to purchase legal services. However, staff needs to make an assumption about the number of hours that will be required by these agencies for purposes of calculating the costs of the LSSA section and the corresponding hourly legal rate.

- *Higher Education Institutions: 10,900 hours* – Based on recent billing information provided by the Department of Law, staff recommends reducing the number of hours anticipated to be needed from 13,006 to 10,900 to more accurately reflect the number of hours likely to be utilized.
- *PERA: 29 hours* – Staff recommends maintaining the assumption that PERA will need 29 hours of legal services in FY 2013-14.

Operating and Litigation

This line item supports operating and litigation expenses related to the provision of legal services to state agencies.

Request: The Department requests \$1,672,128 for FY 2013-14. The request is impacted by annualization of funding provided for FY 2012-13, and annualization of a FY 2012-13 decision item R-4 (Add Deputy Attorney General).

Recommendation: Staff recommends approving the request. The following table details staff’s overall recommendation for the line item. Please note that staff will revise this recommendation, if necessary, once the demand for legal services for FY 2013-14 is finalized. Staff thus requests authorization to adjust this amount, if necessary, based on changes in the number of hours of legal services approved by the Committee.

Legal Services to State Agencies, Operating and Litigation					
	Total Funds	General Fund	Cash Funds	Reappropriated	FTE
FY 2012-13 Appropriation:					
HB 12-1335 (Long Bill)	1,670,720		27,256	1,643,464	0.0
Other legislation	4,505		0	4,505	0.0
Mid-year appropriation changes	47,771		0	47,771	0.0
TOTAL	\$1,722,996		\$27,256	\$1,695,740	0.0
FY 2013-14 Recommended Appropriation:					
FY 2012-13 Appropriation	\$1,722,996		\$27,256	\$1,695,740	0.0
Annualize 2012 session bills	3,785		0	3,785	0.0
Annualize prior year budget actions	(6,882)		0	(6,882)	0.0
Reverse mid-year adjustment	(47,771)		0	(47,771)	0.0
TOTAL	\$1,672,128		\$27,256	\$1,644,872	0.0
Increase/(Decrease)	(\$50,868)		\$0	(\$50,868)	0.0
Percentage Change	(3.0%)	0.0%	0.0%	(3.0%)	0.0%
FY 2013-14 Executive Request:	\$1,672,128		\$27,256	\$1,644,872	0.0
Request Above/(Below) Recommendation	\$0		\$0	\$0	0.0

Indirect Cost Assessment

Indirect cost assessments are charged to cash and federally-funded programs for departmental and statewide overhead costs. The indirect assessments for this department are based upon the number of cash and federally funded FTE who work in each division. The source of funds for this line item is revenue collected from other State agencies for legal services provided by the Department of Law.

Request: The Department requests an appropriation of \$3,253,100 reappropriated funds for FY 2013-14. The request is impacted by R-4 (Refinance Public Information Officer).

Recommendation: **Staff recommends approving the request. However, staff requests permission to adjust these amounts as necessary once the Committee has finalized all common policies and the demand for legal services for FY 2013-14 has been determined.** Staff will utilize the indirect cost assessment methodology that was described in detail in Appendix D of the FY 2013-14 Staff Budget Briefing, dated November 26, 2012.

(3) Criminal Justice and Appellate

This section provides funding for department staff who:

- investigate and prosecute certain complex and multi-jurisdictional cases, environmental crimes, election fraud, tax fraud, and foreign fugitives;
- investigate and prosecute Medicaid provider fraud and patient abuse;
- investigate and prosecute securities, insurance, and workers' compensation fraud;
- provide investigative and prosecutorial support to local District Attorneys in complex homicides, cold cases, human trafficking cases, and large-scale drug conspiracies;
- represent the State in criminal appeal cases in state and federal courts; and
- assure that the constitutional and statutory rights of victims are preserved in criminal cases being prosecuted or defended by the Department.

This section also provides funding to support the Peace Officers Standards and Training (P.O.S.T.) Board and the Safe2Tell program.

Cash fund sources include moneys paid by insurance companies for the investigation and prosecution of insurance fraud, fees paid by peace officers for P.O.S.T. Board certification, and a statewide vehicle registration fee to support training for peace officers. Reappropriated fund sources include departmental indirect cost recoveries, moneys transferred from the Department of Public Safety from the Colorado Auto Theft Prevention Cash Fund and from the Victims Assistance and Law Enforcement (VALE) Fund, and moneys transferred from the Department of Regulatory Agencies from fees paid by regulated entities for the investigation and prosecution of securities fraud. Federal moneys help support the Medicaid Fraud Control Unit.

Please note that organizationally, the Deputy Attorney General who oversees the Criminal Justice section oversees the activities of the staff who are funded through this Long Bill section, as well as those who are funded through the Legal Services to State Agencies (LSSA) Long Bill section and provide legal services to the Department of Public Safety. The funding that supports this Deputy is appropriated in the Special Prosecutions Unit line item in this section of the Long Bill.

LINE ITEM DETAIL

Special Prosecutions Unit

This unit investigates and prosecutes crimes in a number of areas, under the general authorization of Section 24-31-105, C.R.S., and other specific provisions of statute. This unit prosecutes cases through direct filings as well as the use of the statewide grand jury. This line item is supported by General Fund, cash funds, and reappropriated funds, as described below.

General Fund supports the investigation and prosecution of a wide range of crimes and activities, described below.

- *Complex Crimes and Multi-jurisdictional Cases* – These cases would be difficult or impossible for local law enforcement personnel to pursue because local units lack the authority to investigate and prosecute crimes that occur outside of their jurisdiction. This includes a wide variety of criminal activity including: racketeering; domestic terrorism; identity theft; large check and credit card fraud schemes; methamphetamine rings; auto theft rings; mortgage and bank fraud; tax fraud; and human trafficking cases.
- *Criminal Activity by Gangs* – These are cases brought under the Colorado Organized Crime Control Act (which is similar to federal racketeering laws).
- *Environmental Crimes* – These cases involve environmental crimes related to hazardous waste, hazardous substances, water, and air.
- *Foreign Prosecutions* – A foreign national who commits murder or other crimes in Colorado and subsequently flees to Mexico may be prosecuted, convicted, and sentenced to prison in Mexico. These prosecutions require specialized knowledge and resources that are usually lacking in the offices of local District Attorneys. This unit also assists in returning victims and witnesses from Mexico to Colorado to testify in court.

General Fund also supports the *Homicide Assistance Team*, which provides investigative and prosecutorial support to local District Attorneys for active, cold-case, and death penalty-eligible homicides. The assistance must be requested by a local District Attorney, and approved by the Attorney General. Requests for assistance generally exceed the Department's available resources, and cases are prioritized based on complexity and the unique expertise that the Department may provide. The team also handles appeals of death penalty convictions in both state and federal appellate courts, and provides training concerning complex homicide prosecutions and cold cases for prosecutors and investigators.

JBC Staff Figure Setting: FY 2013-14
Staff Working Document – Does Not Represent Committee Decision

Cash funds provide exclusive support for the investigation and prosecution of *insurance and workers' compensation fraud*. Funding for the program comes from the Insurance Fraud Cash Fund. Reappropriated funds transferred from the Department of Regulatory Agencies' Division of Securities support the investigation and prosecution of *securities fraud*.

The following table details the types of employees that are supported by this line item.

Staffing Summary Special Prosecutions Unit	FY 11-12 Actual	FY 12-13 Approp.*	FY 13-14 Request	FY 13-14 Recommend.
Attorneys (R-2)	12.0	13.0	14.0	14.0
Criminal Investigators	11.8	12.7	12.7	12.7
Legal Assistants	3.8	4.3	4.3	4.3
Auditor	1.0	1.0	1.0	1.0
Administrative Staff (R-2)	1.0	1.5	2.4	2.4
Total	29.6	32.5	34.4	34.4

*Includes 1.0 FTE Assistant Attorney General and 1.0 Criminal Investigator per S.B. 12-110.

Request: The Department requests \$3,293,688 and 34.4 FTE for FY 2013-14. The request is impacted by R-2 (Add Special Prosecution FTE).

Recommendation: Staff recommends an appropriation of \$3,233,334 and 34.4 FTE for FY 2013-14, as detailed in the following table. Staff's recommendation is \$60,354 lower than the request based on several modifications to amount requested through R-2.

Criminal Justice and Appellate, Special Prosecutions Unit					
	Total Funds	General Fund	Cash Funds	Reappropriated	FTE
FY 2012-13 Appropriation:					
HB 12-1335 (Long Bill)	2,816,528	1,391,287	870,476	554,765	30.5
Other legislation	196,677		196,677	0	2.0
TOTAL	\$3,013,205	\$1,391,287	\$1,067,153	\$554,765	32.5
FY 2013-14 Recommended Appropriation:					
FY 2012-13 Appropriation	\$3,013,205	\$1,391,287	\$1,067,153	\$554,765	32.5
R-2: Add Special Prosecution FTE	238,552	155,160	41,696	41,696	1.9
Annualize S.B. 12-110	(18,423)		(18,423)	0	0.0
TOTAL	\$3,233,334	1,546,447	\$1,090,426	\$596,461	34.4
Increase/(Decrease)	\$220,129	\$155,160	\$23,273	\$41,696	1.9
Percentage Change	7.3%	11.2%	2.2%	7.5%	5.8%
FY 2013-14 Executive Request:	\$3,293,688	\$1,602,519	\$1,092,567	\$598,602	34.4
Request Above/(Below) Recommendation	\$60,354	\$56,072	\$2,141	\$2,141	0.0

➔ Request R-2: Add Special Prosecution FTE

- The Department requests a total of \$298,909 (including \$211,235 General Fund) and 1.9 FTE for FY 2013-14 to support the efforts and workload needs of the Special Prosecution Unit. The request would allow the Department to: (1) add a First Assistant Attorney General to assist in the supervision and management of the Unit; (2) fill a vacant Criminal Investigator position; and (3) add a Program Assistant to provide clerical support to all the attorneys and investigators in the Unit.
- Staff recommends approving \$238,552 and 1.9 FTE.

Request: The Department requests a total of \$298,909 (including \$211,235 General Fund) and 1.9 FTE for FY 2013-14 to support the efforts and workload needs of the Special Prosecution Unit. The request would allow the Department to add two new positions and fill an existing vacant position, as described below:

- An **additional First Assistant Attorney General** would assist with the supervision and management of the Special Prosecutions Unit. There are currently two First Assistant Attorneys General in the Unit who supervise 29.5 FTE. This request is designed to reduce the supervisory workload for these attorneys and allow them to more effectively carry a full caseload. This portion of the request includes a total of \$131,642 and 1.0 FTE, including: \$43,968 General Fund, \$43,837 cash funds from the Insurance Fraud Cash Fund, and \$43,837 reappropriated funds transferred from the Division of Securities.
- An **additional Program Assistant** would provide clerical support to all the attorneys and investigators in the Special Prosecutions Unit. This portion of the request includes \$63,491 General Fund and 0.9 FTE.
- Additional funding would allow the Department to **fill a vacant Criminal Investigator position II**. Following the retirement of a long-term employee, the Department indicates that it was unable to fill the position with available resources. Instead, the Department added 0.5 FTE capacity of a Legal Assistant in an effort to address the lack of support staff. If the vacant position is filled, the Investigator would support all of the Unit's efforts, but the focus would be on human trafficking and election fraud. This portion of the request includes \$103,776 General Fund.

The Department indicates that approval of this request would allow the Department to better protect Colorado citizens in the investigation and prosecution of complex criminal conspiracies, environmental crimes, and gang activities.

Recommendation: **Staff recommends approving the request, with several modifications. Staff's overall recommendation is \$60,354 lower than the request** (and \$53,834 lower in subsequent fiscal years), and the recommended components and fund sources are summarized in the following table.

JBC Staff Figure Setting: FY 2013-14
Staff Working Document – Does Not Represent Committee Decision

Department of Law				
Summary of Staff Recommendation for R-2: Additional FTE for Special Prosecution Unit				
Description	FY 2013-14		FY 2014-15	
	General Fund	FTE	General Fund	FTE
Total Request:				
Personal Services	217,976		228,525	
Operating Expenses	20,574		7,860	
TOTAL FUNDS	\$238,550	1.9	\$236,385	2.0
General Fund	155,160		157,229	
Cash Funds (Insurance Fraud Cash Fund)	41,696		39,578	
Reappropriated Funds (transfer from DORA from Division of Securities Cash Fund)	41,695		39,578	

Analysis: Staff discusses each of the three components of the request below.

- **Staff recommends providing a total of \$125,211 and 1.0 FTE for FY 2013-14 to add First Assistant Attorney General** to assist with the supervision and management of the Special Prosecutions Unit. This line item supports the Deputy Attorney General for the Criminal Justice and Appellate section. However, the Deputy oversees a total of 90.5 FTE within this section, as well as staff who are funded through the Legal Services to State Agencies section and who provide legal services to the Department of Public Safety. The Deputy also oversees the Statewide Grand Jury and serves as the Attorney General's designee on numerous task forces and working groups dedicated to criminal justice issues.

There are currently two First Assistant Attorneys General in the Special Prosecutions Unit who supervise the remaining 29.5 FTE supported by this line item. This request is designed to reduce the supervisory workload for these attorneys to a level that is more consistent with other Department units, resulting in a much more manageable and effective span of control (a reduction from 14.75 FTE per supervising attorney to 9.8 FTE).

Staff's recommendation is \$6,431 lower than the request for FY 2013-14 (and \$5,906 lower in subsequent fiscal years) for two reasons. First, staff applies a monthly salary of \$8,359, which will be the range minimum for a First Assistant Attorney General in FY 2013-14. **Staff recommends that the Committee approve an exception to its common policy of using the minimum of the *current* salary range for this position because the Department plans to increase the salary range for this classification by 12.7 percent in FY 2013-14.** Staff does not recommend approving the Department's request \$8,800, which is above the minimum of the new salary range.

Second, the Department requests \$3,998 per FTE for office equipment (cubicle/workstation). Staff's recommendation is based on the Committee's common policy of \$3,473 per FTE.

The following table details staff's recommendation for this portion of the request, including the ongoing expenses for FY 2014-15. Recommendations that differ from are shaded.

JBC Staff Figure Setting: FY 2013-14
Staff Working Document – Does Not Represent Committee Decision

Department of Law				
Summary of Staff Recommendation for R-2: Additional FIE for Special Prosecution Unit				
Description	FY 2013-14		FY 2014-15	
	General Fund	FTE	General Fund	FTE
Add First Assistant Attorney General				
Personal Services:				
One First Assistant Attorney General (\$8,359 per month, based on minimum of FY 2013-14 salary range)	\$100,308	1.0	\$100,308	1.0
PERA (10.15%)	10,181		10,181	
Medicare (1.45%)	<u>1,454</u>		<u>1,454</u>	
Subtotal	111,944	1.0	111,944	1.0
Operating Expenses:				
Supplies (\$500/FTE)	500		500	
Computer (\$2,489/FTE)	2,489		0	
Office Suite Software (\$395/FTE)	395		0	
Office Equipment (\$3,473/FTE)	3,473		0	
Telephone (\$450/FTE)	450		450	
Cell Phone (\$80/month)	960		960	
Litigation Expenses (\$5,000)	<u>5,000</u>		<u>5,000</u>	
Subtotal	13,267		6,910	
SUBTOTAL: First Assistant Attorney General	\$125,211	1.0	\$118,854	1.0
General Fund	41,820		39,697	
Cash Funds (Insurance Fraud Cash Fund)	41,696		39,578	
Reappropriated Funds (transfer from DORA from Division of Securities Cash Fund)	41,695		39,578	

- **Staff recommends providing a total of \$54,680 General Fund and 0.9 FTE for FY 2013-14 to add a Program Assistant I** to provide clerical support to the Special Prosecutions Unit. The Unit currently has 4.3 FTE Legal Assistants and 1.5 FTE Administrative Assistants to support 13.0 FTE attorneys, 12.7 FTE Criminal Investigators, and 1.0 FTE Auditor – a support staff ratio of 1 to 4.6. In FY 2011-12, other Department Units that consist of more than five FTE and provide prosecution or client representation had support staff ratios of:
 - 1 to 3.0 (Legal Services to State Agencies);
 - 1 to 3.3 (Consumer Protection and Antitrust);
 - 1 to 4.3 (Federal and Interstate Water Unit); and
 - 1 to 7.3 (Medicaid Fraud Unit).

Approval of this request would reduce the support staff ratio for this Unit to 1 to 4.1. The Program Assistant would provide clerical and logistical support (*e.g.*, managing and archiving documents, acquiring equipment, etc.), thus allowing the attorneys, investigators, and auditor to spend their time more effectively.

Staff's recommendation is \$8,811 lower than the request for FY 2013-14 (and \$9,040 lower in subsequent fiscal years) for two reasons. First, staff applies a monthly salary of \$3,859, which will be the range minimum for a Program Assistant I in FY 2013-14. **Staff recommends that the Committee approve an exception to its common policy of using the minimum of the *current* salary range for this position because the Department of**

Personnel plans to increase the salary range for this classification by 24.4 percent in FY 2013-14. Staff does not recommend approving the Department's request for the range mid-point of the new salary range (\$4,534), as this amount is higher than what the Department anticipates paying any of its existing Program Assistants I or II in FY 2013-14.

Second, the Department requests \$3,998 per FTE for office equipment (cubicle/workstation). Staff's recommendation is based on the Committee's common policy of \$3,473 per FTE.

The following table details staff's recommendation for this portion of the request, including the ongoing expenses for FY 2014-15. Recommendations that differ from are shaded.

Department of Law				
Summary of Staff Recommendation for R-2: Additional FTE for Special Prosecution Unit				
Description	FY 2013-14		FY 2014-15	
	General Fund	FTE	General Fund	FTE
Add Program Assistant				
Personal Services:				
One Program Assistant I (\$3,859 per month for 11 months, based on minimum of FY 2013-14 salary range)	\$42,449	0.9	\$46,308	1.0
PERA (10.15%)	4,309		4,700	
Medicare (1.45%)	616		671	
Subtotal	47,373	0.9	51,680	1.0
Operating Expenses:				
Supplies (\$500/FTE)	500		500	
Computer (\$2,489/FTE)	2,489		0	
Office Suite Software (\$395/FTE)	395		0	
Office Equipment (\$3,473/FTE)	3,473		0	
Telephone (\$450/FTE)	450		450	
Subtotal	7,307		950	
SUBTOTAL: Program Assistant	\$54,680	0.9	\$52,630	1.0
General Fund	54,680		52,630	

- **Staff recommends providing a total of \$58,660 for FY 2013-14 to assist the Department in filling a vacant Criminal Investigator position II and to address an ongoing funding shortfall.**

At the end of FY 2011-12 a long-term employee retired. The General Assembly provided a one-time appropriation of \$29,814 General Fund to cover the unanticipated expenditures related to this retirement; this appropriation was deemed necessary as the retirement occurred in the last month of the fiscal year and the Department did not have the resources available to cover the required payout. The Department indicates that it was unable to fill this position in FY 2012-13 with available resources due to various across the board funding reductions that have occurred in recent years. The Department chose to use a portion of its existing resources to add 0.5 FTE Legal Assistant to address a lack of support staff within the Unit. The difference between the amount the Department paid for the retiring Criminal Investigator position in FY 2011-12 and the amount it is spending for the new 0.5 FTE Legal Assistant in FY 2012-13 is \$86,465 (including salary, benefits, and operating expenses).

This request addresses what appears to be an ongoing funding shortfall for this Unit. The Department indicates that it has approximately \$23,000 of unallocated General Fund in the current fiscal year after funding the newly added a 0.5 FTE Legal Assistant. This level of funding is insufficient to fill the vacant Criminal Investigator II position. However, the Department could utilize this unallocated funding in FY 2012-13 to cover the requested \$7,543 to purchase equipment for the individual who is hired into the vacant position (e.g., a digital portable radio, a Glock pistol and holster, a protective vest, etc.). In FY 2013-14, this unallocated funding would be sufficient to cover the \$13,063 in ongoing operating expenses associated with the vacant position and approximately \$10,000 of the salary expenses in FY 2013-14.

Staff's recommendation is \$45,116 lower than the request for FY 2013-14 (and \$38,892 lower in subsequent fiscal years) for two reasons. First, staff applies a monthly salary of \$5,593, which is the minimum of the *current* salary range for a Criminal Investigator II (consistent with Committee policy). The Department of Personnel plans to decrease the salary ranges for the Criminal Investigator II and III classifications in FY 2013-14 by 5.3 percent and 3.7 percent, respectively. The Department's request is based on a monthly salary of \$6,775, which would place the salary at the 67th percentile within the new salary range for FY 2013-14. The Department does not have any existing employees in the Criminal Investigator I classification, and the average salaries paid to those in the Criminal Investigator II and III classifications are projected to be at the 73rd and 65th percentiles of the new ranges, respectively. While the requested salary would allow the Department to pay the newly hired Investigator at the higher end of the salary range (similar to existing employees), staff does not have enough compelling data to recommend continuing this practice with newly hired employees.

Second, as described above, staff's recommendation assumes that the Department will use the \$23,000 General Fund available within its existing budget to cover the one-time costs of purchasing new equipment (in FY 2012-13), and to cover the ongoing operating expenses associated with the position and a portion of the personal services expenses in FY 2013-14.

The following table details staff's recommendation for this portion of the request, including the ongoing expenses for FY 2014-15. Recommendations that differ from are shaded.

JBC Staff Figure Setting: FY 2013-14
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Department of Law				
Summary of Staff Recommendation for R-2: Additional FTE for Special Prosecution Unit				
Description	FY 2013-14		FY 2014-15	
	General Fund	FTE	General Fund	FTE
Fill Existing Criminal Investigator Position				
Personal Services:				
One Criminal Investigator II (\$5,593 per month for 11 months, based on minimum of existing salary range)	\$61,523		\$67,116	
PERA (10.15%)	6,245		6,812	
Medicare (1.45%)	892		973	
Subtotal	68,660		74,901	
LESS: Existing resources available to pay a portion of Personal Services expenses	(10,000)		(10,000)	
Operating Expenses:				
Supplies (\$500/FTE)	500		500	
Computer (\$2,489/FTE)	0		0	
Office Suite Software (\$395/FTE)	0		0	
Telephone (\$450/FTE)	450		450	
Cell Phone (\$80/month)	960		960	
Mileage use on state vehicle (12,000 miles at \$0.212/mile)	2,544		2,544	
Lodging (2 overnight hotel stays per month at \$75/night)	1,800		1,800	
Per Diem (2 nights per month at \$66/day)	1,584		1,584	
Various one-time expenses for equipment for a Criminal Investigator	0		0	
Range user fee	225		225	
Litigation Expenses (\$5,000)	5,000		5,000	
Subtotal	13,063		13,063	
LESS: Existing resources available to pay ongoing Operating expenses	(13,063)		(13,063)	
SUBTOTAL: Criminal Investigator II	\$58,660	0.0	\$64,901	0.0
General Fund	58,660		64,901	

Auto Theft Prevention Grant

This appropriation gives the Department the authority to spend a multi-year auto theft prevention grant that was awarded by the Colorado Automobile Theft Prevention Authority. The Authority's grants are supported by a \$1 annual fee on Colorado auto insurance policies. The Authority awards grants to a number of entities, including police and sheriff's offices for the creation of auto-theft task forces. Moneys available to the Authority are appropriated to the Department of Public Safety (e.g., \$5,213,420 and 3.0 FTE for FY 2012-13). This grant is thus reflected as reappropriated funds in the Department of Law's budget.

This grant supports a full time prosecutor and an investigator who are involved in several theft-prevention endeavors, including a multi-jurisdictional investigation and prosecution effort that combats auto theft. The Department's auto theft unit also helps increase public awareness of

auto theft and provides auto theft training and assistance to local law enforcement investigators and deputy district attorneys.

Request: The Department requests \$282,234 reappropriated funds and 2.5 FTE for FY 2013-14. The request reflects \$43,159 in additional grant funding that is available to the Department in the current fiscal year, and is anticipated to be available in FY 2013-14.

Recommendation: Staff recommends approving the request. The Department is using the additional moneys for a half-time Administrative Assistant and litigation-related expenses.

Appellate Unit

This unit handles *criminal appeals* for the Department, representing the prosecution when a defendant challenges his/her felony conviction before the state appellate court or the federal courts⁷. Most of the cases handled by this unit are in the Colorado Court of Appeals, with the remainder in the Colorado Supreme Court and the federal courts. This unit also prepares a weekly digest summarizing published cases to ensure that Appellate Unit attorneys and prosecutors throughout the state are informed about developments in criminal law and procedure. This portion of the Appellate Unit is funded by General Fund and indirect cost recoveries. In FY 2011-12, the 28 attorneys in this unit filed 894 briefs, and argued 115 cases before the appellate court.

Pursuant to Section 24-31-106, C.R.S., the Appellate Unit also employs a *Victims' Services Coordinator*, who assures compliance with Article II, Section 16a of the State Constitution, which states that crime victims have the "right to be heard when relevant, informed, and present at all critical stages of the criminal justice process." When the Department of Law is involved in a trial court prosecution or a criminal appeal, the Coordinator keeps victims informed about their cases, helps them understand the legal process, and sometimes accompanies them to court. The Coordinator position is supported by General Fund and the Victims Assistance and Law Enforcement (VALE) Fund⁸, which is administered by the Department of Public Safety's Division of Criminal Justice⁹. Currently, this position is supported by \$72,651 in VALE funds and \$10,203 General Fund.

The following table details the types of employees that are supported by this line item.

⁷ See Sections 16-12-101 and 24-31-101 (1) (a), C.R.S.

⁸ See Section 24-33.5-506 (1), C.R.S.

⁹ In addition to this state-level fund, each judicial district also has its own local VALE fund, which receives revenues from surcharges on fines imposed for felonies, misdemeanors, juvenile offenses, class 1 and 2 traffic offenses, and certain traffic infractions within the district. Pursuant to Section 24-4.2-105 (1), C.R.S., 13 percent of each district's surcharge revenue is transferred to the state-level VALE Fund. Section 24-33.5-506 (1) (c), C.R.S. mandates that a portion of the moneys in the state-level VALE fund be allocated to the Department of Law to pay for its Victims' Services Coordinator. The remainder of the fine-surcharge revenue collected by each judicial district is used by the district's local VALE Board to make grants to the local district attorney, local law enforcement, and local agencies for victim-service work within the district. The remainder of the revenue collected by the State VALE fund is used for administrative costs of the Division of Criminal Justice and to make statewide VALE grants.

JBC Staff Figure Setting: FY 2013-14
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Staffing Summary Appellate Unit	FY 11-12 Actual	FY 12-13 Approp.	FY 13-14 Request	FY 13-14 Recommend.
Attorneys (R-1)	27.0	28.0	33.5	33.5
Victims' Services Coordinator	1.0	1.0	1.0	1.0
Administrative Staff	<u>2.9</u>	<u>3.0</u>	<u>3.0</u>	<u>3.0</u>
Total	30.9	32.0	37.5	37.5

Request: The Department requests \$3,263,535 and 37.5 FTE for FY 2013-14. The request is impacted by R-1 (Add Appellate FTE) and R-4 (Refinance Public Information Officer).

Recommendation: Staff's overall recommendation for the line item is detailed below, including the impacts of R-1 and R-4. Please note that the recommendation also includes an indirect cost assessment adjustment based on the Department's estimate of the amount of indirect cost recoveries that will be available to offset General Fund expenditures. **Staff requests permission to modify this indirect cost assessment adjustment as necessary once indirect cost assessments and Administration appropriations are finalized.**

Criminal Justice and Appellate, Appellate Unit				
	Total Funds	General Fund	Reappropriated	FTE
FY 2012-13 Appropriation:				
HB 12-1335 (Long Bill)	2,703,455	2,189,829	513,626	32.0
Other legislation	5,880	5,880	0	0.0
TOTAL	\$2,709,335	\$2,195,709	\$513,626	32.0
FY 2013-14 Recommended Appropriation:				
FY 2012-13 Appropriation	\$2,709,335	\$2,195,709	\$513,626	32.0
R-1: Add Appellate FTE	531,436	531,436	0	5.5
R-4: Refinance Public Information Officer	0	6	(6)	0.0
Indirect Cost Assessment adjustment	0	(221,902)	221,902	0.0
TOTAL	\$3,240,771	2,505,249	\$735,522	37.5
Increase/(Decrease)	\$531,436	\$309,540	\$221,896	5.5
Percentage Change	19.6%	14.1%	43.2%	17.2%
FY 2013-14 Executive Request:	\$3,263,535	\$2,528,013	\$735,522	37.5
Request Above/(Below) Recommendation	\$22,764	\$22,764	\$0	0.0

➔ Request R-1: Add Appellate FTE

- The Department requests \$554,200 General Fund and 5.5 FTE for FY 2013-14 to add six Assistant Attorneys General to address the growing backlog of cases requiring responses from the Appellate Unit. The Department proposes that four of the additional positions would be temporary, and the remaining two would be ongoing.
- Staff recommends approving \$531,436 General Fund and 5.5 FTE.

Request: The Department requests \$554,200 General Fund and 5.5 FTE for FY 2013-14 to add six Assistant Attorneys General to address the growing backlog of cases requiring responses

from the Appellate Unit. The Department proposes that four of the additional positions would be temporary, and the remaining two would be ongoing. Specifically, the Department anticipates that one position would be eliminated in FY 2016-17 when the backlog has been reduced to a manageable level (68), and three more positions would be eliminated in FY 2017-18. The following table details the Department's projections of how the requested resources would affect the Appellate Unit backlog.

Projected Impact of Requested Resources				
Fiscal Year	Opening Briefs Received	Answer Briefs Filed	Cases Resolved in Other Ways /a	Fiscal Year-End Case Backlog
2011-12	1,171	894	67	608
2012-13	1,153	1,018	65	678
2013-14	1,153	1,250	65	516
2014-15	1,153	1,250	65	354
2015-16	1,153	1,250	65	192
2016-17	1,153	1,212	65	68
2017-18	1,153	1,095	66	60

a/ These figures include cases on the "expedited docket", which was implemented in March 2007, cases on the "experimental docket", which was implemented in March 2012, and cases that were transferred or dismissed.

The Department notes that delays in processing appeals are detrimental to all parties involved. When a case is reversed after many years, both the prosecution and the defense generally have difficulty preparing a case for retrial – witnesses may be gone, memories may fade; and evidence may be lost or misplaced. This does a disservice to everyone affected by that case -- most significantly victims and defendants. In addition, the Department indicates that there has been an increase in the number of instances in which a defendant seeks to have their conviction vacated because they have allegedly been denied their right to a speedy appeal. While the Colorado Court of Appeals has not been receptive to these claims to date, it is conceivable that there could come a point where the Court would agree with this argument and vacate an otherwise valid conviction. The Department indicates that the U.S. Court of Appeals for the 10th Circuit has concluded that, "delay in adjudicating a direct criminal appeal beyond two years from the filing of the notice of appeal gives rise to a presumption that the state appellate process is ineffective"¹⁰.

Due to the pay date shift, the request covers 11 months of salary expenses for FY 2013-14 and reflects only 5.5 FTE. The components of the request are detailed in the following table, along with continuation funding for FY 2014-15.

¹⁰ *Harris v. Champion*, 15 F.3d 1538, *1556 (10th Cir. 1994).

JBC Staff Figure Setting: FY 2013-14
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Department of Law
Summary of R-1: Add Appellate FIE

Description	FY 2013-14		FY 2014-15	
	General Fund	FTE	General Fund	FTE
Personal Services:				
Six Assistant Attorneys General (6.0 FTE for 11 months; \$6,552 per month, based on mid-point of existing salary range)	\$432,432	5.5	\$471,744	6.0
PERA (10.15%)	43,892		47,882	
Medicare (1.45%)	<u>6,270</u>		<u>6,840</u>	
Subtotal	482,594	5.5	526,466	6.0
Operating Expenses:				
Supplies (\$500/FTE)	3,000		3,000	
Computer (\$2,489/FTE)	14,934		0	
Office Suite Software (\$395/FTE)	2,370		0	
Office Equipment (\$7,267/FTE)	43,602		0	
Telephone (\$450/FTE)	2,700		2,700	
Litigation Expenses (\$5,000)	<u>5,000</u>		<u>5,000</u>	
Subtotal	71,606		10,700	
TOTAL	\$554,200	5.5	\$537,166	6.0

Background Information – Appellate Backlog

A case is officially "activated" when the Appellate Unit receives an Opening Brief from the defense or an order to show cause from the federal district court. In FY 2011-12, the Unit activated 1,171 new appeals; the sources of these appeals were as follows:

- 40.3 percent were filed by the Office of the State Public Defender;
- 31.7 percent were filed by private attorneys (including attorneys who are paid by the Office of the Alternate Defense Counsel; and
- 27.9 percent were filed by self-represented defendants.

These cases primarily involve felonies, including: homicide and attempted homicide; kidnapping; assault; sexual assault; completed and attempted aggravated robbery; and burglary and theft. For each case initiated by the defense, the Unit must review the trial court record compiled and the Opening Brief filed by the defense, perform legal research concerning the defendant's claims, and file an Answer Brief in response. Staff must monitor each case, file motions as necessary, and present oral arguments before the appellate court when necessary.

About 90 percent of the Unit's cases are affirmed on appeal. However, the Unit may seek *certiorari* review in the Colorado Supreme Court when: (a) the Court of Appeals issues an opinion that appears to be contrary to established law and/or would have an adverse impact on law enforcement; or (b) conflicting decisions from the Court of Appeals emphasize the need for clarification in particular areas of law. In the last three fiscal years, the Supreme Court has agreed to hear 28 cases in response to requests filed by the Unit. The Unit may also file a Petition for Rehearing with the Court of Appeals, asking that the court reconsider its action if the Unit believes that one or more issues were wrongly decided by the court.

The Appellate Unit backlog measures the number of cases in which the Unit has received Opening Briefs. The Colorado Appellate Rules provide that Answer Briefs are to be filed 35

days after the Opening Brief is served. Most of the Answer Briefs are delayed a minimum of 140 days beyond the original due date, with many of the larger cases delayed far beyond that. In November 2012, the Chief Judge of the Colorado Court of Appeals notified the Department's Appellate Unit and the Office of the State Public Defender that the Court would no longer grant extensions that exceed 18 months (540 days).

The Unit indicates that a backlog of less than 100 cases is manageable. As detailed in table, the Appellate Unit backlog increased from 258 in FY 2006-07 to 434 in FY 2009-10, and then decreased in FY 2010-11 to 398. However, the backlog has subsequently increased, reaching 608 by the end of FY 2011-12.

Appellate Unit - Case Statistics				
Fiscal Year	Opening Briefs Received	Answer Briefs Filed	Cases Resolved in Other Ways /a	Fiscal Year-End Case Backlog
2006-07	951	973	48	258
2007-08	979	865	102	270
2008-09	1,240	1,029	87	395
2009-10	1,152	1,054	62	434
2010-11	1,050	1,021	66	398
2011-12	1,171	894	67	608

a/ These figures include cases on the "expedited docket", which was implemented in March 2007, cases on the "experimental docket", which was implemented in March 2012, and cases that were transferred or dismissed.

Recommendation: Staff recommends approving the request with one modification, described below. Those state agencies that are involved in criminal appeals cases agree that delays in processing appeals are detrimental to all parties involved. In order to reduce the backlog to a reasonable level, the Department will need to hire and train additional attorneys. Since FY 2001-02, when the General Assembly last added resources for the Unit to address its case backlog, base attorney resources have been decreased by four. In addition, two of the five additional attorneys that were anticipated to be needed to address the workload increases resulting from the addition of three Court of Appeals judgeships have not been provided to date.

Please note that the request includes two items that are not consistent with the Committee's common policies concerning new FTE.

First, the Department's request includes funding sufficient to pay salaries at the *mid-point of the existing* salary range for Assistant Attorneys General. This approach adds a total of \$98,445 to the full-year costs of adding six attorneys (including salaries and the associated PERA and Medicare costs). **Staff recommends that the Committee approve this request as an exception to the common policy of using the minimum of the FY 2012-13 salary range in order to address a salary compression issue that is particularly acute in the Appellate Unit.** The Department proposes adjusting the salary ranges for its attorneys to align them with the

market. The salary levels used in this request would fall at the 38th percentile of the FY 2013-14 salary range for Assistant Attorneys General.

Second, the Department requests \$7,267 per FTE for office furnishings. Staff's recommendation is based on the Committee's common policy of \$3,473 per FTE, and is thus \$22,764 lower than the request for FY 2013-14.

In addition, at the end of this packet staff has recommended that the Committee request that the Department provide a report by November 1 concerning: (1) the Appellate Unit's progress in reducing its case backlog; and (2) the accomplishments and recommendations of the inter-agency working group that was established to review the procedures, rules, and practices for handling post conviction appeals. Staff recommends that a similar request be included annually to allow the Committee to monitor the effectiveness of adding six attorneys.

Analysis: The Appellate Unit backlog has been a concern for more than a decade. Prior to FY 2000-01, the General Assembly had authorized funding for contract attorneys to address the backlog. However, the Department determined that it is significantly less expensive and more effective to address the backlog by hiring additional staff, rather than using contract attorneys. In FY 2000-01 and FY 2001-02, the General Assembly significantly increased staffing for the Appellate Unit to address the growing caseload and the case backlog, adding nine attorneys and one support staff person. As a result, the FY 2001-02 appropriation supported 28 attorneys the three support staff; this staffing level was intended to handle an annual caseload of up to 1,000, and address a backlog of about 150 cases. In 2003 the number of attorneys was reduced by 5.0 FTE due to the economic downturn. One attorney position was restored at the end of FY 2005-06 due to concerns about the growing case backlog.

In 2006 and 2007, the General Assembly increased the number of judges, including adding a total of six judges to the Court of Appeals¹¹. To date, the Department's Appellate Unit has received funding to add four of the six attorneys anticipated to be required as a result of the 2006 and 2007 legislation. Specifically, the Legislative Council Staff Fiscal Note for H.B. 07-1054 anticipated that the Unit would require an additional 2.0 FTE in FY 2008-09 and another 3.0 FTE in FY 2009-10 to handle the accelerated pace at which cases would reach the appellate courts due to increases in the number of trial court judges. While the Unit did receive the additional 2.0 FTE in FY 2008-09 and 1.0 FTE in FY 2009-10, the Department proposed deferring the remaining 2.0 FTE until the state's fiscal situation recovers enough to support the required appropriation.

In summary and as detailed in the following table, base attorney resources for the Unit have decreased by four since FY 2001-02, and the Unit is currently two attorneys short of what was anticipated to be required as a result of H.B. 07-1054.

¹¹ House Bill 06-1028 added three judges to the Court of Appeals in FY 2006-07. House Bill 07-1054 added three judges to the Court of Appeals in FY 2008-09.

JBC Staff Figure Setting: FY 2013-14
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Appellate Unit - Staffing (Full Time Equivalent Positions)					
Fiscal Year	Attorneys 1/	Support Staff	Victims' Services	Total	Notes
2001-02	28.0	3.0		31.0	Over two year period, 9.0 FTE attorneys and 1.0 FTE support staff added due to case backlog
2002-03	26.8	3.0		29.8	Staff reduction due to downturn
2003-04	23.0	3.0		26.0	Staff reduction due to downturn
2004-05	23.0	3.0		26.0	
2005-06	23.3	3.0		26.3	1.0 FTE added mid-year to address backlog
2006-07	25.0	3.0		28.0	Annualization of 1.0 FTE staff added mid-year in FY 2005-06; 1.0 FTE (of 1.0 FTE total) added per H.B. 06-1028
2007-08	27.0	3.0		30.0	2.0 FTE (of 5.0 FTE total) added per H.B. 07-1054
2008-09	27.0	3.0		30.0	
2009-10	28.0	3.0		31.0	1.0 FTE added per H.B. 07-1054
2010-11	28.0	3.0	1.0	32.0	Victims' services funding consolidated with Appellate Unit
2011-12	28.0	3.0	1.0	32.0	
2012-13	28.0	3.0	1.0	32.0	

1/ The number of attorneys includes the Deputy Attorney General who leads the Appellate Unit.

In addition, as detailed in the next table, the Unit has experienced base funding reductions in four of the last five fiscal years. To date, all but two of these base reductions have been reversed, leaving a net base reduction of \$31,901.

Appellate Unit - Base Funding Reductions		
Fiscal Year	Total Staff	Notes
2007-08	(\$10,240)	0.5% base reduction
2008-09	(21,661)	1.0% base reduction
	(120,000)	Hiring freeze
2009-10	120,000	Reverse hiring freeze reduction to fill vacant positions
	(45,320)	1.82% base reduction
2010-11	45,320	Reverse base reduction
2011-12	(37,428)	1.5% base reduction
2012-13	37,428	Reverse base reduction
	(31,901)	Net base reduction since FY 2006-07

The Department notes that its ability to address the backlog is hampered by a relatively high turnover rate in the Appellate Unit. Specifically, since July 1, 2010, the Unit has lost eight of its

28 attorneys. This turnover is at least partly due to a disparity between the salaries paid by the Appellate Unit and the salaries paid by other units within the Department. Of the eight attorneys who have left the Appellate Unit since July 2010, three accepted positions in other sections of the Department, three went to the private sector, one accepted a position with the Office of Legislative Legal Services, and one retired.

Medicaid Fraud Control Unit

The Medicaid Fraud Control Unit, operational in Colorado since 1978, is mandated by federal law to assist in maintaining the financial integrity of the State's Medicaid program and the safety of patients in Medicaid-funded facilities. By federal law and Executive Order D1787, the Unit has statewide authority to *criminally* investigate and prosecute Medicaid provider fraud, as well as physical and financial abuse of residents in federally-funded long-term care facilities¹². The Colorado False Claims Act, adopted in May 2010, expanded the Unit's authority by allowing it to pursue *civil* recoveries and damages against providers for incidents of fraud and over billing.

Federal and state laws require that a state's fraud program be independent of the Department of Health Care Policy and Financing (HCPF), the "single state agency" that administers Colorado's Medicaid program. Federal rules also mandate that this program be kept separate from all other units at the Department of Law. The Unit cooperates and coordinates with several entities, including District Attorneys, HCPF, the Department of Public Health and Environment, the Department of Regulatory Agencies, and numerous federal agencies. In addition to recovering improperly received Medicaid funds, remedies include suspension, sometimes permanently, from the Medicaid program.

This program qualifies for an enhanced Medicaid matching rate; the federal government pays 75 percent of the Unit's operating costs and the State provides the remaining 25 percent. In FY 2011-12, the Unit's operating costs totaled \$1,742,279; the State paid 25 percent (\$435,570) of this amount.

Although the federal government pays 75 percent of the Unit's operating costs, the State retains at least 50 percent of the recovered funds¹³. Recovered funds are used to reduce the amount of General Fund that is appropriated for support of the Medicaid program in HCPF's Medical Services Premiums Division. During FY 2011-12, the Unit returned \$8,466,702 in restitution and recoveries, including \$8,224,418 in civil damages and penalties and \$242,284 in criminal recoveries. An additional \$2,993,183 was returned to the federal government to repay it for its financial contribution to these efforts.

The following table details the types of employees that are supported by this line item.

¹² Fraud committed by Medicaid clients is investigated by county departments of human services.

¹³ Under federal law, if a state's False Claims Act is approved by the federal Department of Health and Human Services' Office of the Inspector General as being compliant with the federal Deficit Reduction Act, that state is entitled to retain more than 50 percent of its civil Medicaid recoveries. The Department of Law indicates that Colorado's Act was not approved, so Colorado is entitled to 50 percent of its civil Medicaid recoveries.

JBC Staff Figure Setting: FY 2013-14
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Staffing Summary Medicaid Fraud Control Unit	FY 11-12 Actual	FY 12-13 Approp.	FY 13-14 Request	FY 13-14 Recommend.
Attorneys	3.0	3.0	3.0	3.0
Criminal Investigators	10.0	10.0	10.0	10.0
Auditor	0.8	1.0	1.0	1.0
Health Professional	0.8	1.0	1.0	1.0
Legal Assistants/ Administrative Staff	<u>2.0</u>	<u>2.0</u>	<u>2.0</u>	<u>2.0</u>
Total	16.6	17.0	17.0	17.0

Request: The Department requests \$1,579,511 and 17.0 FTE for FY 2013-14.

Recommendation: Staff recommends approving the request, which is a continuation level of funding and is consistent with the Committee's common policy.

Peace Officers Standards and Training (P.O.S.T.) Board

The P.O.S.T. Board was established as a result of the enactment of federal legislation requiring equal protection by jurisdictions that receive federal funding [Title VII of the Rehabilitation Act of 1973]. The P.O.S.T. Board consists of 20 appointed members, including the Attorney General, the Executive Director of the Colorado Department of Public Safety, the Special Agent in charge of the Denver Division of the Federal Bureau of Investigation, as well as representatives of local government, sheriffs, chiefs of police, peace officers, and the general public.

The P.O.S.T. Board is responsible for ensuring statewide consistency in the qualifications and training for peace officers. The Board thus certifies peace officers appointed by state and local law enforcement agencies, regulates peace officer training academies, and facilitates on-going training for all state peace officers by disbursing grants and providing training sessions specifically developed by P.O.S.T. board and staff [see Section 24-31-301 *et seq.*, C.R.S.]. The P.O.S.T. Board is supported by the P.O.S.T. Board Cash Fund, which consists of fees paid by applicants seeking certification as well as a \$0.60 vehicle registration fee, which provides funding for peace officer training programs.

Request: The Department requests \$2,966,320 and 7.0 FTE for FY 2013-14. The request is impacted by BA-1 (Additional POST Grant Spending Authority).

Recommendation: Staff recommends approving the request. The following table details staff's overall recommendation for the line item.

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Criminal Justice and Appellate, Peace Officers Standards and Training Board			
	Total Funds	Cash Funds	FTE
FY 2012-13 Appropriation:			
HB 12-1335 (Long Bill)	2,683,620	2,683,620	7.0
TOTAL	\$2,683,620	\$2,683,620	7.0
FY 2013-14 Recommended Appropriation:			
FY 2012-13 Appropriation	\$2,683,620	\$2,683,620	7.0
BA-1: Additional POST Grant Spending Authority	282,700	282,700	0.0
TOTAL	\$2,966,320	\$2,966,320	7.0
Increase/(Decrease)	\$282,700	\$282,700	0.0
Percentage Change	10.5%	10.5%	0.0%
FY 2013-14 Executive Request:	\$2,966,320	\$2,966,320	7.0
Request Above/(Below) Recommendation	\$0	\$0	0.0

➔ Request BA-1: Additional POST Grant Spending Authority

- The Department requests \$282,700 cash funds from the P.O.S.T. Board Cash Fund for FY 2013-14 to develop and provide additional peace officer training, expand the availability of online training, and improve the functionality of its website.
- Staff recommends approving the request.

Request: The Department requests \$282,700 cash funds from the P.O.S.T. Board Cash Fund for FY 2013-14 (reduced to \$190,700 in FY 2014-15 and subsequent fiscal years) to support the enhanced efforts and training needs of the P.O.S.T. Board. Specifically, the Department's request is intended to develop and offer additional training sessions, including the following:

- **School Resource Officer (SRO) Training.** P.O.S.T. has been mandated to develop a SRO training curriculum by January 2013. No funding was attached to the mandate. Requested funds would be used to bring stakeholders together, develop course curriculum, and provide training sessions.
- **Elder Abuse.** It is estimated that the implementation of mandatory reporting by doctors, nurses and first responders will increase the number of elder abuse cases by 15 percent in 2013. It will be necessary to provide training to detectives and patrol staff on how to recognize and properly investigate these cases.
- **Incident-driven training.** There have been events and incidents in Colorado and other states that provide learning opportunities for Colorado law enforcement. P.O.S.T. would like to develop and present incident-related training sessions.
- **Human Trafficking.** Human trafficking cases continue to rise, especially involving children. Continuous training in this area for first responders and detectives will improve their ability to identify and investigate cases of human trafficking.

- **Basic Dispatch Course.** There is currently no certified dispatch course in Colorado. Most dispatch training has been accomplished “on the job”. The position requires a foundation of training in interpersonal communication, introduction to laws, telecommunications and critical incident dispatching. P.O.S.T. would like to develop and offer a 40 hour (one week) course twice each year.

POST would also like to increase the availability of online training for first responders, and to improve the functionality of its website to provide a catalog of certified courses and course schedules and to improve the efficiency of data entry for P.O.S.T. and local agencies. Finally, P.O.S.T. would like to host two meetings per year for training agency directors, including one in the metro area and one on the Western Slope. There are 23 approved basic academies, seven reserve academies, and two refresher academies in Colorado. In addition, there are 15 law enforcement training agencies throughout the state that P.O.S.T. contracts with to develop curricula and provide training to Colorado peace officers. Funds would be used to pay travel, lodging, and per diem expenses for participants.

Background Information – P.O.S.T. Training Grant Program.

Pursuant to Section 24-31-310 (2), C.R.S., moneys in the P.O.S.T. Board Cash Fund are to be used to cover the costs of the P.O.S.T. Board and its staff, as well as, "to provide training programs for peace officers, especially peace officers in rural and smaller jurisdictions that have limited resources due to the size or location of such jurisdiction." The P.O.S.T. Board is authorized to make grants to local governments or to any college or university for the purpose of funding the training programs [see Section 24-31-303 (3), C.R.S.].

The P.O.S.T. Board established 10 training regions, which are based upon the state’s 22 judicial districts. Law enforcement agencies within each training region are encouraged to work collaboratively and each region is required to develop training programs through the use of regional law enforcement planning groups and multi-agency collaborative efforts. Each region annually submits a grant application to the P.O.S.T. Board. Applications are reviewed by the P.O.S.T. Peace Officer Training Project Sub-committee, which then makes grant award recommendations to the P.O.S.T. Board.

Recommendation: **Staff recommends providing the additional cash funds spending authority, as requested.** The requested funding will expand and enhance training available to peace officers statewide, and improve the Department's effectiveness in regulating peace officer training academies.

Analysis: From July 2009 through June 2012, the balance in the P.O.S.T. Board Cash Fund increased from \$115,530 to \$811,749. The fund balance has exceeded the statutory limit (16.5 percent of annual expenditures) for the last three fiscal years. The increase in the fund balance is primarily due to the passage of H.B. 09-1036, which increased the vehicle registration fee that supports the P.O.S.T. Board from \$0.25 to \$0.60 beginning with vehicles registered on or after July 1, 2009.

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The Department's request will utilize \$92,000 of the fund balance to pay for one-time costs related to course development and website enhancements, and it will utilize an additional \$190,700 on an ongoing basis to expand and enhance peace officer training opportunities. The following table details the Department's projections of the Fund balance based on approval of this request and taking into account increased personal services and operating expenses for the P.O.S.T. Board.

Description	P.O.S.T. Board Cash Fund					
	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 14-15
Beginning Balance	\$557,008	\$645,307	\$811,749	\$827,576	\$578,008	\$424,678
Total Revenues	2,736,776	2,866,245	2,894,908	2,923,857	2,953,095	2,982,626
Less: Expenditures/ Appropriation (with BA-1)	(2,648,477)	(2,699,803)	(2,879,081)	(3,173,425)	(3,106,425)	(3,131,425)
Ending Balance	645,307	811,749	827,576	578,008	424,678	275,879

Safe2Tell

The Safe2Tell program provides students and the community with a means to anonymously report information concerning unsafe, potentially harmful, dangerous, violent, or criminal activities – or the threat of these activities – to appropriate law enforcement and public safety agencies and school officials. The Safe2Tell hotline is operated by the Colorado State Patrol Denver Communications Center. Tips received through the hotline are relayed to the appropriate authority via fax or e-mail. Safe2Tell also makes presentations to youngsters around the state to educate youth about the dangers of the "Code of Silence" which often keeps kids from telling authorities of potential dangers.

Safe2Tell, which is based in Colorado Springs, is a 501(c)(3) not-for-profit organization. Safe2Tell was exclusively supported by private grants until FY 2008-09, when the General Assembly approved a request from the Department of Public Safety for \$97,186 General Fund and 1.0 FTE Program Director. Safe2Tell has a volunteer board and employs three other full time employees who are not state employees. In FY 2009-10, the General Assembly approved a request to transfer the program to the Department of Law. The Program Director manages the hotline and responses to Safe2Tell tips, provides training for students and teachers, speaks to community groups, and seeks support from state and local law enforcement and education officials.

Request: The Department requests \$100,686 and 1.0 FTE for FY 2013-14.

Recommendation: Staff recommends approving the request, which is a continuation level of funding and is consistent with the Committee's common policy.

Indirect Cost Assessment

Indirect cost assessments are charged to cash and federally-funded programs for departmental and statewide overhead costs. The indirect assessments for this department are based upon the number of cash and federally funded FTE who work in each division. The sources of funds for this line item include: fees paid by insurance companies for insurance fraud investigation and prosecution activities; the P.O.S.T. Board Cash fund; fees collected by the Division of Securities

within the Department of Regulatory Agencies; and the federal Medicaid Fraud Control Program.

Request: The Department requests an appropriation of \$490,622 for FY 2013-14. The request is impacted by R-4 (Refinance Public Information Officer).

Recommendation: Staff recommends approving the request. However, staff requests permission to adjust these amounts as necessary once the Committee has finalized all common policies and the demand for legal services for FY 2013-14 has been determined. Staff will utilize the indirect cost assessment methodology that was described in detail in Appendix D of the FY 2013-14 Staff Budget Briefing, dated November 26, 2012.

(4) Water and Natural Resources

This section provides funding for department staff who protect and defend the interests of the State and its citizens in all areas of natural resources law and environmental law, including:

- the use of surface and ground water;
- oil and gas development;
- mining and minerals;
- wildlife;
- the clean-up of contaminated sites (pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act or "CERCLA");
- the proper storage or disposal of hazardous waste; and
- protection of the state's air and water.

This section also advocates on behalf of the Colorado Natural Resource Trustees¹⁴ to recover damages for injuries to natural resources and to restore, replace, and acquire the equivalent of the natural resources injured.

Cash fund sources include the Colorado Water Conservation Board's Litigation Fund and moneys received by the Attorney General as an award of attorney fees or costs. Reappropriated funds are transferred from the Department of Public Health and Environment from the Hazardous Substance Response Fund.

Please note that organizationally, the Deputy Attorney General for Natural Resources and Environment oversees the activities of the staff who are funded through this Long Bill section, as well as those who are funded through the Legal Services to State Agencies (LSSA) Long Bill section and provide legal services to most program areas within the Department of Natural Resources, the environment-related programs within Department of Public Health and

¹⁴ The State Natural Resource Trustees were initially designated by Governor Roy Romer in 1990 pursuant to CERCLA. The Trustees include: the Attorney General, the Executive Director of the Department of Natural Resources, and the Executive Director of the Department of Public Health and Environment.

Environment, and any other state agency or official with a natural resource, water right, or environmental issue. The funding that supports this Deputy is appropriated in the LSSA section of the Long Bill.

LINE ITEM DETAIL

Federal and Interstate Water Unit

This unit protects the state's interests in the waters of interstate rivers, with respect to both interstate water allocation and federal environmental requirements, including, among others, the National Environmental Policy Act, the Endangered Species Act, and the Wild and Scenic Rivers Act. The major litigation currently within the unit involves the Rio Grande Compact, the Arkansas Compact, and the Republican River Compact. This unit also works with state water users to protect the state's interests in the timely and reasonable resolution of federal claims for water rights, including reserved water rights and claims for in-stream flows.

This line item supports 4.5 FTE attorneys and 1.0 FTE Legal Assistant.

Request: The Department requests a continuation level of funding (\$513,883 General Fund and 5.5 FTE) for FY 2013-14.

Recommendation: Staff recommends approving the request, which is consistent with the Committee's common policy

Defense of the Colorado River Basin Compact

The Department uses this appropriation to defend Colorado's interests in the 1922 Colorado River Compact [see Section 37-61-101, C.R.S.], which apportioned Colorado River water between Upper and Lower Basin states, and the 1948 Upper Colorado River Compact [see Section 37-62-101, C.R.S.], which apportioned upper basin water among Colorado, Utah, Wyoming, and New Mexico. The staff who are supported by this line item provide legal counsel and representation to the Department of Natural Resources, the Colorado Water Conservation Board, the State Engineer, and the Colorado Commissioner to the Upper Colorado River Commission on issues pertaining to the Colorado River and the related Compacts. The unit's major tasks include the following:

- Providing real-time counsel during interstate negotiations concerning reservoir operations including Glen Canyon and Hoover Dams, application of the 1944 Water Treaty with Mexico, and compliance with federal environmental laws ;
- Researching issues relevant to potential litigation;
- Preparing a litigation database of the voluminous documents relevant to the Colorado River;
- Assisting the State Engineer in preparing rules for any in-state curtailment of water rights resulting from a Colorado River Compact call.

This line item supports 2.0 FTE attorneys and 1.0 FTE Legal Assistant.

Request: The Department requests a continuation level of funding (\$335,198 cash funds and 3.0 FTE) for FY 2013-14

Recommendation: Staff recommends approving the request, which is consistent with the Committee's common policy. The fund source is the Colorado Water Conservation Board's Litigation Fund, or payments received from New Mexico, Wyoming, and Utah.

The Colorado Water Conservation Board was established to aid in the protection and development of state waters for the benefit of Colorado's present and future citizens. The Board's budget is located in the Department of Natural Resources. The Colorado Water Conservation Board's Litigation Fund [Section 37-60-121 (2.5) (a) (III), C.R.S.] was created to support the State in water-related litigation involving the federal government or other states. The fund derives from periodic appropriations and transfers by the General Assembly to the Fund. Moneys in the Litigation Fund are continuously appropriated to the Board and all expenditures from the Fund must be approved by the Board. The Attorney General may request moneys from the Litigation Fund to defend and protect Colorado's allocations of water in interstate streams and rivers with respect to specifically identified lawsuits.

The Department has indicated that it probably will be necessary to provide General Fund support for this line item at some point in the future.

Defense of the Republican River Compact

The Republican River Compact between Colorado, Kansas, and Nebraska governs the use of water in the Republican River Basin, which lies in northeastern Colorado, southwestern Nebraska and northwestern Kansas [see Section 37-67-101, C.R.S.]. In 1998, Kansas sued Nebraska and Colorado, alleging overuse of river water. In 2003, the three states entered into a settlement decree to resolve the dispute, but in 2007 Kansas began legal action against Nebraska, claiming that state was not doing enough to comply.

Request: The Department requests a continuation level of funding (\$110,000 cash funds) for FY 2013-14.

Recommendation: Staff recommends approving the request. This line item is supported by the Colorado Water Conservation Board's Litigation Fund.

Additional Information – Additional CWCB Grant. Please note that last March the Attorney General requested an increase in funding from the Colorado Water Conservation Board for FY 2012-13 to defend and protect Colorado's interests in the Republican River. Specifically, the Attorney General requested an additional \$110,000 for expenditures associated with ongoing negotiations with Kansas related to the Compact Compliance Pipeline, as well as expenditures associated with the appointment of a Special Master to hear Kansas' current petition. In May 2012 the Board approved the request. Any portion of the additional \$110,000 that was made available that is not expended in FY 2012-13 will be available in FY 2013-14. Pursuant to H.B. 12-1248, the Department of Law is authorized to expend these grant funds without an increase in this line item appropriation.

Consultant Expenses

This line item provides funding for private counsel that represents Colorado in litigation with Kansas concerning the Arkansas River Compact.

In 1985 Kansas filed a complaint with the U.S. Supreme Court, which had original jurisdiction, asserting that Colorado was violating the 1948 Arkansas River Compact by consuming too much river water. In 1994, a Supreme Court appointed Special Master concluded that Colorado had violated the Compact by pumping too much water from wells near the River. The Supreme Court agreed with the Special Master's findings, and in 2005 Colorado paid Kansas \$34 million in damages for violations dating back to the 1950's. In 2006 Colorado paid another \$1.1 million for Kansas' legal costs, an amount that the Supreme Court upheld in 2009 following a Kansas challenge. In the wake of the Supreme Court's 1994 ruling, Kansas and Colorado worked jointly with the Special Master to develop a decree, finalized in 2009, that implemented the Supreme Court's decision. The decree includes a complex Hydrologic-Institute Model which is used to determine compact compliance.

Since the beginning of the dispute, Colorado has relied on outside counsel for legal work. The most difficult parts of the case have now been resolved and the Department has been shifting the work in-house. However, outside council is still required when complex issues arise.

Request: The Department requests a continuation level of funding (\$400,000 cash funds) for FY 2013-14.

Recommendation: Staff recommends approving the request. This line item is supported by \$350,000 from the Colorado Water Conservation Board's Litigation Fund and \$50,000 from the Attorney Fees and Costs Account.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

This line item provides funding for the Department's CERCLA Litigation Unit, which handles the legal work for sites that have been seriously contaminated by hazardous substances (known as "Superfund" sites), most of which are being cleaned up under consent decrees by those who contaminated them. Most CERCLA cases can be 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 pollution site. The second phase focuses on compensation for the environmental degradation that remains after remediation.

During the first phase of a CERCLA case, this unit works closely with the Colorado Department of Public Health and Environment (CDPHE), providing legal advice helping CDPHE to induce the responsible party, via negotiation or litigation, to undertake appropriate cleanup measures. In some cases this unit is also able to recover costs that the State incurred while dealing with the polluted site and the polluter.

During the second phase of a CERCLA case, the Department tries to win compensation from the polluter for natural resource damages ("NRDs") – the environmental degradation that remains after remediation – on behalf of the State's Natural Resource Trustees. Under CERCLA rules, any recovery that the State receives must be spent on the restoration, replacement, or acquisition

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of equivalent natural resources. This unit serves the Trustees by negotiating or litigating to recover NRDs, and assisting the Trustees in determining how to allocate the NRDs to restore or replace the injured natural resources such as ground water, wildlife habitat, and fish populations.

The following table details the types of employees that are supported by this line item.

Staffing Summary CERCLA	FY 11-12 Actual	FY 12-13 Approp.	FY 13-14 Request	FY 13-14 Recommend.
Attorneys	3.2	2.6	2.6	2.6
Legal Assistants	0.0	0.3	0.3	0.3
Administrative Staff	<u>0.6</u>	<u>0.6</u>	<u>0.6</u>	<u>0.6</u>
Total	3.8	3.5	3.5	3.5

Request: The Department requests a continuation level of funding (\$460,629 reappropriated funds and 3.5 FTE) for FY 2013-14.

Recommendation: Staff recommends approving the request, which is consistent with the Committee's common policy. This appropriation is supported by a transfer from DPHE from the Hazardous Substance Response Fund.

CERCLA Contracts

This line item provides funding for contractors who support the work of the CERCLA Litigation Unit. These contractors include expert witnesses, scientists knowledgeable about hazardous waste, hydrologists knowledgeable about the movement of polluted ground water, and economists knowledgeable about the value to be placed on natural resource damages.

Request: The Department requests a continuation level of funding (\$425,000 reappropriated funds) for FY 2013-14.

Recommendation: Staff recommends approving the request. As with the previous line item, this appropriation is supported by a transfer from the DPHE from the Hazardous Substance Response Fund.

Natural Resource Damage Claims at Rocky Mountain Arsenal

In 2008 the Department of Law and the State Natural Resource Trustees settled their natural resource damage case against Shell Oil Company and the U.S. Army over pollution at the Rocky Mountain Arsenal. The Trustees are now expending the \$27.4 million settlement on projects to restore, rehabilitate or replace natural resources damaged by the release of hazardous substances from the Arsenal. The appropriation for this line item pays an outside contractor who helps the Trustee staff evaluate proposed projects, ensure compliance with statutory requirements, and maximize the natural resource benefits from the settlement moneys.

Request: The Department requests a continuation level of funding (\$50,000 reappropriated funds) for FY 2013-14.

Recommendation: Staff recommends approving the request. As with the previous line item, this appropriation is supported by a transfer from the DPHE from the Hazardous Substance Response Fund.

Indirect Cost Assessment

Indirect cost assessments are charged to cash and federally-funded programs for departmental and statewide overhead costs. The indirect assessments for this department are based upon the number of cash and federally funded FTE who work in each division. The source of funds for this line item is moneys in the Hazardous Substance Response Fund that are transferred from the Department of Public Health and Environment.

Please note that the Department has not historically charged an indirect cost assessment to the Colorado Water Conservation Board's Litigation Fund. This fund supports the appropriations for the Defense of the Republican River Compact and the Defense of the Colorado River Compact. Staff recommends that this practice continue for two reasons: (1) the Water Conservation Board allocated these moneys believing that they would not be charged overhead; and (2) the Department of Law has never charged overhead to special litigation line items.

Request: The Department requests \$47,699 reappropriated funds for FY 2013-14. The request is impacted by R-4 (Refinance Public Information Officer).

Recommendation: Staff recommends approving the request. However, staff requests permission to adjust these amounts as necessary once the Committee has finalized all common policies and the demand for legal services for FY 2013-14 has been determined. Staff will utilize the indirect cost assessment methodology that was described in detail in Appendix D of the FY 2013-14 Staff Budget Briefing, dated November 26, 2012.

(5) Consumer Protection

This Long Bill section provides funding for Department staff that protect Colorado consumers against fraud and maintain a competitive business environment by enforcing state and federal laws regarding consumer protection, antitrust, consumer lending, mortgage fraud, predatory lending, debt collection, rent-to-own, and credit repair. This section also provides funding to support one attorney who is responsible for enforcing provisions of the tobacco Master Settlement Agreement.

Please note that organizationally, the Deputy Attorney General for Consumer Protection oversees the activities of the staff who are funded through this Long Bill section, as well as those who are funded through the Legal Services to State Agencies (LSSA) Long Bill section and provide legal services to the Office of the Consumer Counsel. The funding that supports this Deputy is appropriated in the Consumer Protection and Antitrust line item in this section of the Long Bill.

LINE ITEM DETAIL

Consumer Protection and Antitrust

This line item supports two units that enforce provisions of the Colorado Consumer Protection Act [Section 6-1-101, *et seq.*, C.R.S.]. The Consumer Fraud Unit investigates and prosecutes traditional consumer protection matters such as fraudulent trade, and false advertising practices in a variety of areas, such as automobile repossession, health clubs, and manufactured homes. This unit also brings cases under the Charitable Solicitations Act and the Motor Vehicle Repair Act. With respect to Colorado cases, the Attorney General shares enforcement responsibilities with locally elected District Attorneys. In addition, the staff in this unit also participate in national or multi-state enforcement activities with their counterparts in Attorney General offices in other states and with the Federal Trade Commission.

The Antitrust, Tobacco, and Consumer Protection Unit handles several specialized consumer protection provisions, including enforcement violations of the No-Call List Act [Section 6-1-901, *et seq.*, C.R.S.] and all of the consumer protection laws designed to address mortgage and foreclosure rescue fraud¹⁵. This unit is also responsible for exercising the Attorney General's exclusive jurisdiction to enforce civil and criminal provisions of the Colorado Antitrust Act [Article 4 of Title 6, C.R.S.]. This unit thus investigates and prosecutes price fixing, bid rigging, and mergers that would unreasonably restrain fair competition. This unit also participates in merger reviews in conjunction with the Federal Trade Commission where the industry at issue implicates statewide interests of concern to Colorado. Finally, pursuant to Section 24-31-402, C.R.S., this unit is responsible for enforcing the tobacco Master Settlement Agreement (MSA) and related tobacco laws [Section 39-28-201, *et seq.*, C.R.S.]. This unit thus monitors compliance with the numerous MSA injunctive terms and ensures that Colorado's interests are protected under the payment calculation provisions. This unit works with the Department of Revenue to enforce escrow payment obligations of non-participating tobacco manufacturers.

Finally, this line item currently supports the Deputy Attorney General for the Consumer Protection section, and the Department's Public Information Officer (PIO). [The Department proposes moving funding for the PIO to the Administration section of the budget and supporting the position from indirect cost recoveries rather than custodial funds. See the description for R-4 at the beginning of this packet for further information about this request and staff's recommendation.]

The cash funds for this line item derive from:

- various court-ordered awards that the Department has received as the result of its enforcement work and other;
- the Defense Account of the Tobacco Litigation Settlement Cash Fund for non-participating-tobacco manufacturer enforcement work;
- the Public Utilities Commission for work supporting Colorado's no call list; and
- the Building Regulation Fund for consumer protection work on mobile homes.

¹⁵ The Department of Regulatory Agencies is responsible for handling licensing and disciplinary issues, while this Department handles false advertising and litigation issues.

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The reappropriated funds for this line item are transferred from Department of Regulatory Agencies' Division of Real Estate from the Mortgage Brokers Cash Fund; these funds support consumer protection activities related to mortgage brokers. The authority for this appropriation and the related transfer are found in Section 12-61-904.5, C.R.S.

The following table details the types of employees that are supported by this line item.

Staffing Summary	FY 11-12	FY 12-13	FY 13-14	FY 13-14
Consumer Protection and Antitrust	Actual	Approp.	Request	Recommend.
Attorneys	9.7	11.0	11.0	11.0
Legal Assistants	1.5	4.0	4.0	4.0
Compliance and Criminal Investigators	3.1	5.0	5.0	5.0
Public Information Officer (R-4)	1.0	1.0	0.0	0.0
Administrative Staff	4.0	5.0	5.0	5.0
Total	19.3	26.0	25.0	25.0

Request: The Department requests \$2,046,520 and 25.0 FTE for FY 2013-14. The request is impacted by R-3 (Refinance Tobacco Litigation Efforts) and R-4 (Refinance Public Information Officer).

Recommendation: Staff recommends approving the request, which is essentially a continuation level of funding and is consistent with the Committee's common policy. The following table details the calculation of the recommended funding.

Consumer Protection, Consumer Protection and Antitrust					
	Total Funds	General Fund	Cash Funds	Reappropriated	FTE
FY 2012-13 Appropriation:					
HB 12-1335 (Long Bill)	2,167,295	928,104	997,710	241,481	26.0
Other legislation	2,919	2,919	0	0	0.0
TOTAL	\$2,170,214	\$931,023	\$997,710	\$241,481	26.0
FY 2013-14 Recommended Appropriation:					
FY 2012-13 Appropriation	\$2,170,214	\$931,023	\$997,710	\$241,481	26.0
R-3: Refinance tobacco litigation efforts	0	153,795	(153,795)	0	0.0
R-4: Refinance Public Information Officer	(89,284)		(89,284)	0	(1.0)
Eliminate one-time capital outlay funding (R-1 for FY 12-13)	(34,410)	0	(34,410)	0	0.0
TOTAL	\$2,046,520	1,084,818	\$720,221	\$241,481	25.0
Increase/(Decrease)	(\$123,694)	\$153,795	(\$277,489)	\$0	(1.0)
Percentage Change	(5.7%)	16.5%	(27.8%)	0.0%	(3.8%)
FY 2013-14 Executive Request:	\$2,046,520	\$1,084,818	\$720,221	\$241,481	25.0
Request Above/(Below) Recommendation	\$0	\$0	\$0	\$0	0.0

Consumer Credit Unit

This appropriation supports the enforcement of eight state laws relating to consumer credit and debt collections. Pursuant to Section 5-6-103, C.R.S., the Attorney General designates an

attorney to act as the Uniform Consumer Credit Code (UCCC) Administrator. Any legal action filed in court is brought in the Administrator's name, and she is the final adjudicator in any administrative disciplinary action initially assigned to the Office of Administrative Courts. Staff supported by this line item are organized into two functional groups.

With respect to *consumer credit*, this unit enforces the UCCC [Title 5, C.R.S.]. Important components of the UCCC include the following:

- the Deferred Deposit Loan Act [Article 3.1], which applies to payday lenders;
- the Consumer Equity Protection Act [Article 3.5], which restricts certain terms in high-cost loans; and
- the Rental Purchase Agreement Act [Article 10], which governs rent-to-own agreements.

This unit protects borrowers from abusive lender practices, such as interest rates that exceed legal limits, prepayment penalties, inadequate disclosure of the cost of credit, fraudulent rent-to-own schemes, abusive repossessions, and unreasonable collection costs.

Lenders who are subject to the UCCC are licensed by the Department and are known as "supervised lenders". In 2011, the Department supervised 798 licensed lenders consisting of: mortgage companies (45 percent); payday lenders (42 percent); finance companies (12 percent); and small installment/other lenders (2 percent). License fees, which are established by the Administrator pursuant to Sections 5-6-203 (5), 5-10-805 (3), and 12-14.5-205 (b) (1), C.R.S., and are deposited in the *Uniform Consumer Credit Code Cash Fund* established in Section 5-6-204 (1), C.R.S., cover the cost of operating the program. These fees are adjusted annually by the Administrator, and are set at levels that cover the cost of operating the unit.

This unit also enforces the Credit Services Organization Act, which limits "credit repair" services, and the Uniform Debt Management Services Act, which regulates debt management services [see Article 14.5 of Title 12, C.R.S.].

With respect to *debt collection*, this unit enforces the Colorado Fair Debt Collection Practices Act [Article 14 of Title 12, C.R.S.] and the related Colorado Child Support Collection Consumer Protection Act [Article 14.1 of Title 12, C.R.S.]. These laws protect: (1) creditor firms that engage collection agencies to collect debts on their behalf; and (2) the debtor consumers who are the subject of the collection efforts of those agencies. The laws forbid a number of abusive debt collection practices and require collection agencies to obtain bonds that are designed to increase the likelihood that creditor firms will receive funds recovered on their behalf.

This unit regulates and supervises collection agencies and credit counseling/ debt settlement companies. This unit investigates complaints of unlawful activity, takes disciplinary action against agencies that violate the law, and provides consumers with self-help information about the law. In 2011, the Department supervised 782 licensed collection agencies and 48 credit counseling/ debt settlement companies. Collection agency license fees, which are deposited in the *Collection Agency Cash Fund* established in Section 12-14-136 (1) (a), C.R.S., cover the

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costs of operating the unit. These fees are set by the Administrator and are adjusted annually to cover costs, pursuant to Section 12-14-119 (3) and (4), C.R.S. Penalties assessed against licensees are typically split between the General Fund and the Collection Agency Board Custodial Fund.

The following table details the types of employees that are supported by this line item.

Staffing Summary Consumer Credit Unit	FY 11-12 Actual	FY 12-13 Approp.	FY 13-14 Request	FY 13-14 Recommend.
Administrator	1.0	1.0	1.0	1.0
Attorneys	2.0	3.0	3.0	3.0
Legal Assistants	1.0	2.0	2.0	2.0
Financial Credit Examiners	7.9	8.0	8.0	8.0
Compliance Investigators	2.0	2.0	2.0	2.0
Administrative Staff	<u>4.0</u>	<u>4.0</u>	<u>4.0</u>	<u>4.0</u>
Total	17.9	20.0	20.0	20.0

Request: The Department requests \$1,512,150 cash funds and 20.0 FTE for FY 2013-14.

Recommendation: Staff recommends approving the request, which is essentially a continuation level of funding and is consistent with the Committee's common policy. The following table details the calculation of the recommended funding.

Consumer Protection, Consumer Credit Unit				
	Total Funds	General Fund	Cash Funds	FTE
FY 2012-13 Appropriation:				
HB 12-1335 (Long Bill)	1,521,916		1,521,916	20.0
TOTAL	\$1,521,916		\$1,521,916	20.0
FY 2013-14 Recommended Appropriation:				
FY 2012-13 Appropriation	\$1,521,916		\$1,521,916	20.0
Eliminate one-time capital outlay funding (R-2 for FY 12-13)	(9,766)		(9,766)	0.0
TOTAL	\$1,512,150		\$1,512,150	20.0
Increase/(Decrease)	(\$9,766)		(\$9,766)	0.0
Percentage Change	(0.6%)	0.0%	(0.6%)	0.0%
FY 2013-14 Executive Request:	\$1,512,150		\$1,512,150	20.0
Request Above/(Below) Recommendation	\$0		\$0	0.0

Indirect Cost Assessment

Indirect cost assessments are charged to cash and federally-funded programs for departmental and statewide overhead costs. The indirect assessments for this department are based upon the number of cash and federally funded FTE who work in each division. The sources of funds for this line item include: the Uniform Credit Code Cash Fund; the Collection Agency Cash Fund; court-ordered awards; fees collected by the Department of Regulatory Agencies from mortgage companies and loan originators; and the Tobacco Settlement Defense Account.

Request: The Department requests \$504,250 for FY 2013-14. The request is impacted by R-4 (Refinance Public Information Officer).

Recommendation: Staff recommends approving the request. However, staff requests permission to adjust these amounts as necessary once the Committee has finalized all common policies and the demand for legal services for FY 2013-14 has been determined. Staff will utilize the indirect cost assessment methodology that was described in detail in Appendix D of the FY 2013-14 Staff Budget Briefing, dated November 26, 2012.

(6) Special Purpose

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

LINE ITEM DETAIL

District Attorneys' Salaries

Background Information – State Funding for DAs. Colorado's district attorneys' offices (DAs) are responsible for prosecuting all criminal and traffic cases filed in district and county courts. While DAs' budgets are primarily set and provided by boards of county commissioners within each respective judicial district, the State provides direct funding for DAs in the following four areas:

1. The Department of Law's budget includes an appropriation for "District Attorneys' Salaries" (\$2,656,368 for FY 2012-13). This line item is described below.
2. The Judicial Branch's budget includes an appropriation for "District Attorney Mandated Costs" (\$2,529,549 for FY 2012-13).
3. The Department of Corrections' budget includes an appropriation for "Payments to District Attorneys" for costs associated with prosecuting a crime alleged to have been committed by a person in the custody of the Department (\$366,880 for FY 2012-13).
4. The Department of Public Safety's budget includes an appropriation for "Witness Protection Fund Expenditures" to pay DAs for qualifying expenses related to security personnel, travel expenses, lodging, and other immediate needs (\$83,000 for FY 2012-13).

In addition, the General Assembly appropriates funds to the State Court Administrator's Office, the Office of the State Public Defender (OSPD), the Office of the Alternate Defense Counsel (OADC), and the Office of the Child's Representative to cover the costs of obtaining discoverable materials¹⁶. In FY 2011-12, these offices spent a total of \$2,298,508 for discovery; 98 percent of these costs were incurred by the OSPD and the OADC. These costs have increased by 84 percent in the last five fiscal years. The majority of these expenditures were paid to reimburse DAs.

District Attorneys' Salaries line item. Pursuant to Section 20-1-306, C.R.S., the State contributes 80 percent of the statutory minimum salary for the state's 22 District Attorneys (including the associated costs of employer PERA contributions). In 2007 the General Assembly raised the statutory minimum salary for district attorneys from \$67,000 to \$130,000 over a four-year period. A judicial district may choose to pay a salary that exceeds the statutory minimum using local funds. Every four years, the House and Senate Judiciary Committees are required to review the compensation of elected District Attorneys and make recommendations, if appropriate, to the General Assembly regarding such compensation. The next compensation review is scheduled to occur in 2016.¹⁷

The State's contribution for District Attorneys' salaries is provided through a General Fund appropriation to the Department of Law. This appropriation currently accounts for 26.7 percent of total General Fund appropriations to the Department.

Request: The Department requests \$2,676,960 General Fund for FY 2013-14. The request reflects a full 12 months of funding \$104,000 of the minimum \$130,000 salary for each district attorney, plus \$17,680 (17.0 percent) for each district attorney for the associated employer contributions for PERA, PERA amortization equalization disbursement (AED), and PERA supplemental amortization equalization disbursement (SAED). The request reflects an increase of \$20,592, based on the scheduled increase in AED and SAED rates.

Recommendation: Staff recommends approving the request, which is consistent with current law. Please note that District Attorneys are not affected by the State's pay date shift. Thus, the applicable AED and SAED rates are based on six months of the applicable 2012 rate and six months of the applicable 2013 rate.

Litigation Management and Technology

This line item was added to the Long Bill in FY 1994-95 to pay for: (1) unanticipated legal costs that arise over the course of the fiscal year, especially when the General Assembly is out of session; and (2) technology costs that would otherwise require General Fund appropriations. This appropriation has reduced the need for supplemental requests related to the Legal Services to State Agencies (LSSA) program and other unanticipated litigation, and it has provided the

¹⁶ Under Colorado Supreme Court Rule 16, the prosecuting attorney is required to make available to the defense certain material and information that is within his or her control and to provide duplicates upon request. The State pays the costs of duplicating discoverable material when legal representation is provided for an indigent defendant.

¹⁷ See Section 20-1-301, C.R.S.

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Department with a source of funds to maintain information technology equipment (over and above the funding appropriated for the Information Technology Asset Maintenance line item).

Moneys for this appropriation come from two sources:

1. Excess revenues earned by the LSSA program during the previous fiscal year. This line item appropriation allows the Department to retain and roll forward a portion of any excess revenues to the next fiscal year. Moneys that have been rolled forward that are not spent in the following fiscal year revert to the General Fund. Please note that excess earnings fluctuate substantially from year to year and the amount is not known with certainty until after the close of the fiscal year. The excess earnings for FY 2012-13, for example, will not be known with certainty until July 2013, the first month of the fiscal year in which such earnings can be expended. The following table provides a history of excess LSSA revenues, and the portion that reverted to the General Fund.

Excess Legal Services to State Agencies (LSSA) Revenues					
Fiscal Year	Excess LSSA Revenues Earned	Excess Revenues as Percent of Total LSSA Revenues	Fiscal Year	Expenditures of Excess LSSA Revenues	Excess LSSA Revenues Credited to the General Fund
2005-06	\$532,673	2.8%	2006-07	(\$180,221)	\$352,452
2006-07	362,515	1.8%	2007-08	(216,577)	145,938
2007-08	267,456	1.2%	2008-09	(267,456)	0
2008-09	496,834	2.0%	2009-10	(145,258)	351,576
2009-10	367,965	1.5%	2010-11	(262,256)	105,709
2010-11	491,912	1.9%	2011-12	(250,894)	241,018
2011-12	93,490	0.4%	2012-13	n/a	n/a

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

Attorney Fees and Costs Account				
Fiscal Year	Beginning Fund Balance	Revenues	Expenditures	Ending Fund Balance
2005-06	\$208,794	\$23,276	(\$100,477)	\$131,593
2006-07	131,593	244,420	(71,333)	304,680
2007-08	304,680	267,118	(142,251)	429,547
2008-09	429,547	105,671	(94,595)	440,623
2009-10	440,623	202,185	(54,021)	588,787
2010-11	588,787	123,861	(22,417)	690,231

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Attorney Fees and Costs Account				
Fiscal Year	Beginning Fund Balance	Revenues	Expenditures	Ending Fund Balance
2011-12	690,231	442,207	(7,426)	1,125,012

Request: The Department requests a continuation of this annual \$325,000 cash funds appropriation for FY 2013-14.

Recommendation: Staff recommends approving the Department's request. Please note that H.B. 12-1248 (which was sponsored by the Joint Budget Committee) requires the Department to credit all moneys received from state agencies as payment for legal services to the newly created Legal Services Cash Fund, beginning in FY 2012-13. Moneys in the Fund are subject to annual appropriation to the Department for the direct and indirect costs associated with providing legal services to state agencies and for any of the Department's litigation expenses. Thus, for FY 2013-14, this line item will thus consist of two fund sources: the Legal Services Cash Fund and various court awards that are deposited into the Attorneys Fees and Costs Account.

Tobacco Litigation

This line item supports the costs of outside counsel (Hale, Westfall, LLP) and other arbitration-related expenses. Department attorneys helped develop and continue to assist the non-participating manufacturer (NPM) enforcement program that is operated by the Department of Revenue. The Department of Law's efforts are essentially "on trial" before the arbitrators; attorneys from the Department of Law are likely to be called to testify during the arbitration proceeding. Thus, the Department is required to utilize outside counsel.

Background Information. When the tobacco Master Settlement Agreement (MSA) was signed in 1998, participants recognized that the extra costs that the settlement imposed on participating manufacturers would place them at a competitive disadvantage when compared with manufacturers who have not joined the agreement. In an effort to level the playing field, the agreement required states to enact "qualifying statutes" that force NPMs to make payments into escrow accounts that are comparable to what they would have paid had they participated in the agreement. House Bill 99-1208 added the qualifying statute to Colorado law. The MSA requires states to "diligently enforce" their qualifying statutes. If certain preconditions are met, settlement payments to states that do not diligently enforce are reduced.

Since 2006, Colorado and the other states have been involved in a legal dispute with the participating manufacturers, who allege that the states are not diligently enforcing their NPM laws. Due to this dispute, some tobacco companies have withheld a portion of their settlement payments, placing them in escrow. When a diligent enforcement question arises, it is settled by a panel of arbitrators who must decide the issue in a unified national proceeding in which a separate decision will be made on the diligent enforcement efforts of each participating state. Thus the arbitrators might decide that one state should receive a reduced payment because it failed to diligently enforce, while another state diligently enforced and is entitled to its full payment.

Request: The Department requests \$500,000 General Fund for FY 2013-14. The request is impacted by R-3 (Refinance Tobacco Litigation Efforts).

Recommendation: Staff recommends approving the request. The request reflects a reduction from \$880,000 to \$500,000 based on the status of the 2003 NPM Adjustment/Diligent Enforcement Arbitration. Colorado's state-specific hearing occurred in December 2012. For FY 2013-14, outside counsel will continue to work in FY 2013-14 on either the confirmation of the award the State receives during FY 2012-13 or the challenge of that decision, as well as the continued monitoring of other state proceedings.

The Defense Account of the Tobacco Litigation Settlement Cash Fund was established out of MSA moneys received in compensation for attorney fees, and other costs that Colorado incurred in its legal action against tobacco manufacturers. As described earlier in this packet (R-3), the balance in the Defense Account is anticipated to be exhausted by the end of FY 2012-13. Thus, staff's recommendation is from the General Fund rather than the Defense Account.

Lobato Litigation Expenses

This line item provides authority for the Department of Law to receive and spend General Fund moneys from the Governor's Office to cover litigation expenses associated with the *Anthony Lobato, et al. v. The State of Colorado, et al* case. The plaintiffs in this case allege that the current system of funding public schools is unconstitutional, and ask the court to compel the State to design and implement a new system. The trial in Denver district court concluded in September 2011. The Colorado Supreme Court is scheduled to hear oral arguments on March 7, 2013.

This line item thus covers expenses other than Department attorneys and staff, such as expert witnesses and transcripts. This line item was established in FY 2010-11, and in the last two fiscal years the Department has received and spent a total of \$659,610.

Request: The Department requests a continuation level of funding (\$50,000 reappropriated funds) for FY 2013-14.

Recommendation: Staff recommends approving the request, which is a continuation level of funding. Staff also recommends appropriating the same amount of General Fund to the Office of the Governor to fund these litigation expenses.

In addition, staff recommends authorizing the Department of Law to receive and spend moneys from the Governor's Office sufficient to purchase 3,600 hours of legal services related to this case. Once the blended legal rate is set, a General Fund appropriation will be included in the Governor's budget for the purchase of 3,600 hours of legal services, and an equal amount of reappropriated funds will be appropriated to the Department of Law in the Legal Services to State Agencies section of the Long Bill.

The Colorado Supreme Court is scheduled to hear oral arguments in the *Lobato* case on March 7, 2013. The Department of Law indicates that litigation expenses and the need for legal services in FY 2013-14 cannot be determined until the Colorado Supreme Court issues an order in the

case. There is no requirement that the Colorado Supreme Court issue its ruling within any particular time frame. In addition, the Colorado Supreme Court could resolve the case in favor of the state defendants, it could affirm in full for the plaintiffs, or anything in between. A remand for additional proceedings in the trial court is possible, and proposed legislation could affect the scope of such a remand. Based on information available at this time, a continuation level of funding seems reasonable.

Background Information – Lobato, et al. v. the State of Colorado, et al. In June 2005 a complaint was filed alleging that Colorado's system of funding public schools is unconstitutional because it does not provide adequate funding, and funding is not allocated in a manner rationally related to the constitutional mandate that the General Assembly provide for the maintenance of a "thorough and uniform" public school system. The Plaintiffs have asked the court to declare the entire existing system of funding public schools unconstitutional, and to require the General Assembly to enact and fund a new system.

Other than reasonable attorneys' and expert witness fees, the Plaintiffs are not seeking a specific monetary judgment. However, Plaintiffs assert that the system is underfunded and requires at least an additional \$1.35 million to \$4.15 billion annually to allow school districts to meet all state and federal standards and requirements (excluding transportation, food services, or facility-related expenses). With respect to facility needs, Plaintiffs assert that an additional \$5.7 billion to \$17.9 billion should be spent on capital facilities. Finally, if the Plaintiffs prevail on their claim for attorneys' fees and costs, Plaintiffs' attorneys' fees and costs will likely exceed \$1 million.

The trial court initially dismissed the case on the ground that the issue presented a non-justiciable political question. The Court of Appeals affirmed the decision, but the Colorado Supreme Court reversed and remanded the case for trial. The five week trial in Denver district court concluded in September 2011. The Denver district court issued a decision in December 2011 concluding that the entire system of public school finance (including the Public School Finance Act, categorical programs, and capital construction funding) is not rationally related to the constitutional "thorough and uniform" mandate.

The court enjoined the Defendants from adopting, implementing, administering, or enforcing any laws and regulations that fail to establish, maintain, and fund a thorough and uniform system of schools that fulfills the qualitative mandate and that is in full compliance with constitutional local control requirements. The court further enjoined the Defendants to design, enact, fund, and implement a system of public school finance that provides and assures that adequate, necessary, and sufficient funds are available in a manner rationally related to these constitutional requirements.

However, the court stayed the enforcement of the injunctive relief in order to provide the State a reasonable time to create and implement a system of public school finance that meets these constitutional mandates. This stay will continue in effect until final action by the Colorado Supreme Court upon appeal of the Denver district court's decision. If such an appeal had not been made, the Denver district court would have reviewed the stay upon application of either party submitted no earlier than the conclusion of the 2012 legislative session. While this stay is

in place and until further action by the Supreme Court or the Denver district court, the present financing formula and funding may remain in effect.

In July 2012 the State filed a direct appeal to the Colorado Supreme Court. The Plaintiffs (the Appellees for purposes of the current appeal case) have filed their reply brief, the State has filed its answer brief, and a number of *amici curiae* or "friend of the court" briefings have been filed in support of both the State and the Appellees. The next step in the case will be oral arguments before the court.

Lowry Range Litigation Expenses

This line item provides authority for the Department of Law to receive and spend moneys from the State Land Board for its litigation needs related to the Lowry Range property. The source of funds is the State Board of Land Commissioners Investment and Development Fund. This line item covers expenses other than Department attorneys and staff, such as outside counsel, expert witnesses, and all discovery, deposition, and case preparation efforts. This line item was established in FY 2012-13 with an appropriation of \$638,870.

Background Information – Lowry Range Lawsuit. The State Land Board entered into a water lease with Rangeview Metropolitan District (RMD) in 1986 for the right to use all the water on and under the Lowry Range. RMD retained Pure Cycle Corporation to act as service provider of water developed at the Lowry Range. With oil and gas development moving forward on the Lowry Range (discussed below), RMD asserts that it has exclusive right to provide water to all users at Lowry Range, including oil and gas lessees. The State Land Board disagrees with this assertion. Pure Cycle and RMD filed a lawsuit against the State Land Board alleging breach of contract, promissory estoppel, contract reformation, and unjust enrichment claims.

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

Initially, the State Land Board estimated that litigation efforts related to this lawsuit would take two years to proceed through trial; any potential appeal phase would follow. The matter has been consolidated with another JBC case. A motion to dismiss in each case has been pending for eight months. Because of the delay, it is likely that the time frame to proceed through trial will be extended as well.

Background Information – State Board of Land Commissioners Investment and Development Fund. Up to \$5.0 million of royalties and other payments for the depletion or extraction of a natural resource on state trust lands are annually credited to the State Board of Land Commissioners Investment and Development Fund [see Sections 36-1-116 (1) (b) (II) (D) and 36-1-153, C.R.S.]. Moneys in the Fund are continuously appropriated to the State Board of Land Commissioners:

"...to hire staff, contract for services, make purchases, and take other actions as the state board deems appropriate to provide for the development of additional value-added benefit for the state's trust lands, including both portfolio enhancement and additional income. Such actions may include, but are not limited to, the rezoning, platting, master planning, or other development activities that increase the value of or rate of return from the state's trust lands."

Moneys in the Fund are continuously appropriated to the Board, and these moneys are not reflected in annual appropriations to the Department of Natural Resources. Thus, these moneys are reflected as cash funds in the Department of Law's budget.

Request: The Department requests \$616,520 cash funds for FY 2013-14.

Recommendation: Staff recommends approving the request, which includes a reduction of \$22,350 compared to the FY 2012-13 appropriation. This reduction is consistent with the initial request that was submitted last year. **In addition, staff recommends authorizing the Department of Law to receive and spend moneys from the State Land Board sufficient to purchase 3,600 hours of legal services related to this case.** Once the blended legal rate is set, this cash funds spending authority would be included in the line items in the Legal Services to State Agencies section of the Long Bill.

Long Bill Footnotes and Requests for Information

LONG BILL FOOTNOTES

Staff recommends the following footnotes be continued as **modified**:

- 39 Department of Law, Legal Services to State Agencies** -- In making this appropriation, it is the intent of the General Assembly that hourly billing rates charged by the Department for legal services to state agencies not exceed ~~\$79.87~~ \$_____ per hour for attorneys and not exceed ~~\$64.79~~ \$_____ per hour for legal assistants, which equates to a blended rate of ~~\$77.25~~ \$_____ per hour.

Comment: The blended legal rate is used to compute the Long Bill appropriations for legal services for the various agencies of state government. The blended rate is also used to compute legal-service appropriations in other legislation. For example, the blended rate for FY 2013-14 will be used for fiscal notes for bills considered during the 2014 legislative session. This footnote contains a clear statement of legislative intent regarding the blended legal rate and the rates to be charged for the services provided by attorneys and legal assistants. **Staff will ultimately fill in the hourly rates that correspond to appropriations that are included in the FY 2013-14 Long Bill.**

- 40 Department of Law, Special Purpose, Litigation Management and Technology** -- It is the intent of the General Assembly to grant the Department of Law additional

flexibility by allowing the Department to use moneys appropriated in this line item to address unanticipated state legal needs that arise during ~~FY 2012-13~~ FY 2013-14, as well as information technology asset maintenance needs that would otherwise require General Fund appropriations during ~~FY 2012-13~~ FY 2013-14. It is also the intent of the General Assembly that moneys spent from this line item shall not require the appropriation of additional FTE and will not be used for any type of salary increase, promotion, reclassification, or bonus related to any present or future FTE employed by the Department of Law. It is furthermore the intent of the General Assembly that moneys spent from this line item will not be used to offset present or future personal services deficits in any division in the Department. The Department is requested to include with its annual budget request information detailing the purpose of line item expenditures. Such information is also requested with any supplemental requests for additional legal services funding within or outside of the Legal Services to State Agencies program.

Comment: Since FY 1994-95 the Department's appropriations have included this line item, which allows the Department to pay for unanticipated legal costs that arise over the course of the fiscal year (especially when the General Assembly is not in session), and technology costs that would otherwise require a General Fund appropriation. This appropriation has reduced the need for legal services supplemental requests related to the Legal Services to State Agencies program (LSSA) and other unanticipated litigation.

Moneys for this appropriation come from two sources:

1. Excess revenues earned by the LSSA program during the previous fiscal year; and
2. Various court awards that are deposited into the Attorneys Fees and Costs Account.

For FY 2012-13, this line item allows the Department to roll forward and spend the \$93,490 of excess LSSA revenues earned in FY 2011-12; moneys that are rolled forward and not spent in FY 2012-13 will revert to the General Fund.

Pursuant to H.B. 12-1248, excess legal services revenues that are earned in FY 2012-13 will be credited to the new Legal Services Cash Fund. Thus, for the FY 2013-14 Long Bill this line item will consist of two fund sources: the Legal Services Cash Fund and various court awards that are deposited into the Attorneys Fees and Costs Account.

REQUESTS FOR INFORMATION

Staff recommends that the following request for information be **added**:

- 1 Department of Law, Criminal Justice and Appellate, Appellate Unit --** The Department is requested to provide by November 1, 2013, a report concerning the Appellate Unit's progress in reducing its case backlog, including the following data for FY 2012-13: the number of opening briefs received; the number of answer briefs filed; the number of cases resolved through the expedited docket; the number of cases resolved through the experimental docket; and the case backlog as of June 30, 2013. In addition,

the Department is requested to summarize the tasks completed by the inter-agency working group that was established to review the procedures, rules, and practices for handling post conviction appeals, along with any recommended procedural, regulatory, or statutory changes.

Staff recommends that the following request for information be **continued**:

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

Comment: Section 25.5-4-310, C.R.S., requires the Attorney General to submit an annual report to the Health and Human Services Committees and to the Joint Budget Committee each January 15 concerning claims brought under the "Colorado Medicaid False Claims Act" during the previous fiscal year. The report is required to include:

- The number of actions filed by the Attorney General, the number which were completed, and the amount that was recovered through settlement or through a judgment and (if known) the amount recovered for damages, penalties, and litigation costs;
- The number of actions filed by a person other than the Attorney General, the number which were completed, the amount that was recovered through settlement or through a judgment and (if known) the amount recovered for damages, penalties, and litigation costs, and the amount recovered by the state and the person; and
- The amount expended by the state for investigation, litigation, and all other costs for claims related to the "Colorado Medicaid False Claims Act".

This request for information is designed to allow the Department to submit a single, comprehensive annual report concerning the expenditures and recoveries associated with the Medicaid Fraud Control Unit's efforts.

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Appendix A: Number Pages

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	FY 2013-14 Recommendation
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DEPARTMENT OF LAW
John Suthers, Attorney General

(1) ADMINISTRATION

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

Personal Services	<u>2,939,483</u>	<u>2,937,442</u>	<u>3,049,837</u>	<u>3,139,121</u>	<u>3,139,121</u> *
FTE	38.5	39.1	41.7	42.7	42.7
General Fund	0	0	14,072	0	0
Cash Funds	0	0	0	0	0
Reappropriated Funds	2,939,483	2,937,442	3,035,765	3,139,121	3,139,121
Health, Life, and Dental	<u>1,967,131</u>	<u>2,261,494</u>	<u>2,620,363</u>	<u>2,875,286</u>	<u>2,850,112</u> *
General Fund	474,390	577,900	712,358	757,853	748,515
Cash Funds	216,077	237,546	307,246	280,953	275,969
Reappropriated Funds	1,226,397	1,385,970	1,497,893	1,708,446	1,697,754
Federal Funds	50,267	60,078	102,866	128,034	127,874
Short-term Disability	<u>42,246</u>	<u>49,028</u>	<u>49,196</u>	<u>57,762</u>	<u>58,002</u> *
General Fund	11,893	13,008	13,008	14,930	14,949
Cash Funds	3,829	4,457	4,457	5,662	5,693
Reappropriated Funds	25,271	30,127	30,127	34,828	35,006
Federal Funds	1,253	1,436	1,604	2,342	2,354

JBC Staff Staff Figure Setting - FY 2013-14
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	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	FY 2013-14 Recommendation
S.B. 04-257 Amortization Equalization					
Disbursement	<u>654,314</u>	<u>773,099</u>	<u>965,510</u>	<u>1,165,243</u>	<u>1,167,093</u> *
General Fund	183,131	203,279	271,731	301,266	298,930
Cash Funds	58,252	70,505	93,597	113,381	113,960
Reappropriated Funds	393,530	476,591	559,668	703,769	707,149
Federal Funds	19,401	22,724	40,514	46,827	47,054
S.B. 06-235 Supplemental Amortization					
Equalization Disbursement	<u>477,318</u>	<u>620,125</u>	<u>828,618</u>	<u>1,051,954</u>	<u>1,052,692</u> *
General Fund	133,747	162,234	232,402	271,976	268,934
Cash Funds	42,475	56,656	80,435	102,357	102,880
Reappropriated Funds	286,950	382,975	480,964	635,347	638,399
Federal Funds	14,146	18,260	34,817	42,274	42,479
Salary Survey for Classified Employees					
	<u>0</u>	<u>0</u>	<u>0</u>	<u>264,303</u>	<u>339,441</u>
General Fund	0	0	0	64,048	73,571
Cash Funds	0	0	0	54,723	70,627
Reappropriated Funds	0	0	0	123,984	167,876
Federal Funds	0	0	0	21,548	27,367
Salary Survey for Exempt Employees					
	<u>0</u>	<u>0</u>	<u>0</u>	<u>563,778</u>	<u>641,548</u> *
General Fund	0	0	0	145,152	158,741
Cash Funds	0	0	0	14,289	16,336
Reappropriated Funds	0	0	0	400,653	461,559
Federal Funds	0	0	0	3,684	4,912

JBC Staff Staff Figure Setting - FY 2013-14
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	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	FY 2013-14 Recommendation
Merit Pay for Classified Employees	<u>0</u>	<u>0</u>	<u>0</u>	<u>165,278</u>	<u>153,103</u>
General Fund	0	0	0	59,712	47,536
Cash Funds	0	0	0	27,434	27,435
Reappropriated Funds	0	0	0	65,178	65,178
Federal Funds	0	0	0	12,954	12,954
Merit Pay for Exempt Employees	<u>0</u>	<u>0</u>	<u>0</u>	<u>367,907</u>	<u>367,907</u> *
General Fund	0	0	0	87,555	87,555
Cash Funds	0	0	0	8,884	8,884
Reappropriated Funds	0	0	0	267,460	267,460
Federal Funds	0	0	0	4,008	4,008
Workers' Compensation	<u>50,863</u>	<u>66,843</u>	<u>73,256</u>	<u>74,366</u>	<u>74,366</u> *P
General Fund	14,877	18,378	19,388	19,320	19,320
Cash Funds	5,038	6,919	7,666	9,149	9,149
Reappropriated Funds	29,605	39,449	43,950	43,671	43,671
Federal Funds	1,343	2,097	2,252	2,226	2,226
Attorney Registration and Continuing Legal Education	<u>92,626</u>	<u>92,626</u>	<u>99,263</u>	<u>99,263</u>	<u>99,263</u> *
General Fund	22,238	22,238	21,769	22,144	22,144
Cash Funds	4,538	4,538	3,000	2,625	2,625
Reappropriated Funds	65,287	65,287	72,525	72,525	72,525
Federal Funds	563	563	1,969	1,969	1,969
Operating Expenses	<u>182,724</u>	<u>169,196</u>	<u>193,513</u>	<u>190,629</u>	<u>190,629</u>
General Fund	0	0	0	0	0
Cash Funds	0	0	0	0	0
Reappropriated Funds	182,724	169,196	193,513	190,629	190,629

JBC Staff Staff Figure Setting - FY 2013-14
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	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	FY 2013-14 Recommendation	
Administrative Law Judge Services	0	0	<u>1,135</u>	<u>4,315</u>	<u>4,315</u>	P
Cash Funds	0	0	1,135	4,315	4,315	
Purchase of Services from Computer Center	<u>37,522</u>	<u>73,188</u>	<u>107,588</u>	<u>53,855</u>	<u>53,855</u>	P
Reappropriated Funds	37,522	73,188	107,588	53,855	53,855	
Multiuse Network Payments	0	0	0	<u>118,313</u>	<u>118,313</u>	P
Reappropriated Funds	0	0	0	118,313	118,313	
Payment to Risk Management and Property Funds	<u>28,842</u>	<u>92,047</u>	<u>128,156</u>	<u>130,115</u>	<u>130,115</u>	P
General Fund	0	0	40,207	0	0	
Reappropriated Funds	28,842	92,047	87,949	130,115	130,115	
Vehicle Lease Payments	<u>74,330</u>	<u>65,989</u>	<u>70,285</u>	<u>63,819</u>	<u>63,819</u>	* P
General Fund	22,184	18,277	19,980	18,377	18,377	
Cash Funds	21,848	22,153	21,501	19,889	19,889	
Reappropriated Funds	25,484	22,896	26,189	22,938	22,938	
Federal Funds	4,814	2,663	2,615	2,615	2,615	
ADP Capital Outlay	0	0	<u>154,370</u>	0	0	
Cash Funds	0	0	154,370	0	0	
Information Technology Asset Maintenance	<u>407,667</u>	<u>407,667</u>	<u>445,807</u>	<u>445,807</u>	<u>445,807</u>	*
General Fund	15,291	15,291	21,754	22,803	22,803	
Cash Funds	59,588	59,588	63,299	62,250	62,250	
Reappropriated Funds	331,407	331,407	359,373	359,373	359,373	
Federal Funds	1,381	1,381	1,381	1,381	1,381	

JBC Staff Staff Figure Setting - FY 2013-14
Staff Working Document - Does Not Represent Committee Decision

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	FY 2013-14 Recommendation
Leased Space	<u>26,220</u>	<u>26,220</u>	<u>27,789</u>	<u>27,789</u>	<u>27,789</u>
General Fund	4,321	4,321	4,580	4,580	4,580
Cash Funds	2,880	2,880	3,052	3,052	3,052
Reappropriated Funds	18,857	18,857	19,985	19,985	19,985
Federal Funds	162	162	172	172	172
Capitol Complex Leased Space	<u>1,252,757</u>	<u>1,284,061</u>	<u>1,273,320</u>	<u>0</u>	<u>0</u>
General Fund	368,073	352,895	335,366	0	0
Cash Funds	124,080	132,910	132,620	0	0
Reappropriated Funds	727,537	757,812	766,375	0	0
Federal Funds	33,067	40,444	38,959	0	0
Ralph L. Carr Colorado Judicial Center Leased Space	<u>0</u>	<u>0</u>	<u>0</u>	<u>2,926,487</u>	<u>3,066,487</u> * P
General Fund	0	0	0	767,179	803,881
Cash Funds	0	0	0	353,185	370,081
Reappropriated Funds	0	0	0	1,718,514	1,800,725
Federal Funds	0	0	0	87,609	91,800
Security for State Services Building	<u>120,919</u>	<u>125,430</u>	<u>140,489</u>	<u>140,000</u>	<u>0</u> *
General Fund	34,587	34,472	37,180	36,702	0
Cash Funds	11,976	12,983	14,704	16,896	0
Reappropriated Funds	71,164	74,024	84,287	82,211	0
Federal Funds	3,192	3,951	4,318	4,191	0

JBC Staff Staff Figure Setting - FY 2013-14
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	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	FY 2013-14 Recommendation	
Communication Services Payments	<u>7,744</u>	<u>8,365</u>	<u>10,614</u>	<u>8,205</u>	<u>8,205</u>	P
General Fund	2,748	2,946	3,765	3,285	3,285	
Cash Funds	2,092	2,269	2,868	1,843	1,843	
Reappropriated Funds	1,056	1,146	1,448	1,119	1,119	
Federal Funds	1,848	2,004	2,533	1,958	1,958	
COFRS Modernization	<u>0</u>	<u>0</u>	<u>46,431</u>	<u>46,431</u>	<u>46,431</u>	P
Reappropriated Funds	0	0	46,431	46,431	46,431	
Attorney General Discretionary Fund	<u>5,000</u>	<u>5,000</u>	<u>5,000</u>	<u>5,000</u>	<u>5,000</u>	
General Fund	5,000	5,000	5,000	5,000	5,000	
TOTAL - (1) Administration	8,367,706	9,057,820	10,290,540	13,985,026	14,103,413	
<i>FTE</i>	<u>38.5</u>	<u>39.1</u>	<u>41.7</u>	<u>42.7</u>	<u>42.7</u>	
General Fund	1,292,480	1,430,239	1,752,560	2,601,882	2,598,121	
Cash Funds	552,673	613,404	889,950	1,080,887	1,094,988	
Reappropriated Funds	6,391,116	6,858,414	7,414,030	9,938,465	10,039,181	
Federal Funds	131,437	155,763	234,000	363,792	371,123	

JBC Staff Staff Figure Setting - FY 2013-14
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	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	FY 2013-14 Recommendation
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(2) LEGAL SERVICES TO STATE AGENCIES

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

Personal Services	<u>18,649,052</u>	<u>19,247,465</u>	<u>20,980,781</u>	<u>20,584,910</u>	<u>20,535,526</u>
FTE	218.0	226.3	241.5	238.5	238.5
Cash Funds	1,582,388	1,560,550	253,320	253,320	253,320
Reappropriated Funds	17,066,664	17,686,915	20,727,461	20,331,590	20,282,206
Operating and Litigation	<u>898,698</u>	<u>1,533,916</u>	<u>1,722,996</u>	<u>1,672,128</u>	<u>1,672,128</u>
Cash Funds	0	0	27,256	27,256	27,256
Reappropriated Funds	898,698	1,533,916	1,695,740	1,644,872	1,644,872
Indirect Cost Assessment	<u>2,608,316</u>	<u>2,809,499</u>	<u>2,950,911</u>	<u>3,253,100</u>	<u>3,253,100</u> *
Reappropriated Funds	2,608,316	2,809,499	2,950,911	3,253,100	3,253,100
TOTAL - (2) Legal Services to State Agencies	22,156,066	23,590,880	25,654,688	25,510,138	25,460,754
FTE	<u>218.0</u>	<u>226.3</u>	<u>241.5</u>	<u>238.5</u>	<u>238.5</u>
Cash Funds	1,582,388	1,560,550	280,576	280,576	280,576
Reappropriated Funds	20,573,678	22,030,330	25,374,112	25,229,562	25,180,178

JBC Staff Staff Figure Setting - FY 2013-14
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	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	FY 2013-14 Recommendation
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(3) CRIMINAL JUSTICE AND APPELLATE

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

Special Prosecutions Unit	<u>2,759,362</u>	<u>2,795,921</u>	<u>3,013,205</u>	<u>3,293,688</u>	<u>3,233,334</u> *
FTE	28.5	29.6	32.5	34.4	34.4
General Fund	1,570,474	1,359,303	1,391,287	1,602,519	1,546,447
Cash Funds	794,728	883,377	1,067,153	1,092,567	1,090,426
Reappropriated Funds	394,160	553,241	554,765	598,602	596,461
Auto Theft Prevention Grant	<u>227,976</u>	<u>222,007</u>	<u>239,075</u>	<u>282,234</u>	<u>282,234</u>
FTE	2.0	2.0	2.0	2.5	2.5
Reappropriated Funds	227,976	222,007	239,075	282,234	282,234
Appellate Unit	<u>2,646,858</u>	<u>2,603,619</u>	<u>2,709,335</u>	<u>3,263,535</u>	<u>3,240,771</u> *
FTE	31.6	30.9	32.0	37.5	37.5
General Fund	2,449,993	2,219,720	2,195,709	2,528,013	2,505,249
Reappropriated Funds	196,865	383,899	513,626	735,522	735,522
Medicaid Fraud Control Unit	<u>1,495,791</u>	<u>1,535,692</u>	<u>1,579,511</u>	<u>1,579,511</u>	<u>1,579,511</u>
FTE	15.0	16.6	17.0	17.0	17.0
General Fund	381,574	383,914	394,876	394,876	394,876
Federal Funds	1,114,217	1,151,778	1,184,635	1,184,635	1,184,635

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	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	FY 2013-14 Recommendation
Peace Officers Standards and Training Board					
Support	<u>2,485,503</u>	<u>2,529,852</u>	<u>2,683,620</u>	<u>2,966,320</u>	<u>2,966,320</u> *
FTE	6.5	4.6	7.0	7.0	7.0
Cash Funds	2,485,503	2,529,852	2,683,620	2,966,320	2,966,320
Safe2Tell	<u>94,765</u>	<u>100,615</u>	<u>100,686</u>	<u>100,686</u>	<u>100,686</u>
FTE	1.0	1.0	1.0	1.0	1.0
General Fund	94,765	100,615	100,686	100,686	100,686
Indirect Cost Assessment	<u>382,767</u>	<u>440,209</u>	<u>446,544</u>	<u>490,622</u>	<u>490,622</u> *
Cash Funds	205,732	222,031	215,830	237,134	237,134
Reappropriated Funds	46,101	71,943	73,184	80,407	80,407
Federal Funds	130,934	146,235	157,530	173,081	173,081
TOTAL - (3) Criminal Justice and Appellate	10,093,022	10,227,915	10,771,976	11,976,596	11,893,478
FTE	84.6	84.7	91.5	99.4	99.4
General Fund	4,496,806	4,063,552	4,082,558	4,626,094	4,547,258
Cash Funds	3,485,963	3,635,260	3,966,603	4,296,021	4,293,880
Reappropriated Funds	865,102	1,231,090	1,380,650	1,696,765	1,694,624
Federal Funds	1,245,151	1,298,013	1,342,165	1,357,716	1,357,716

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	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	FY 2013-14 Recommendation
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(4) WATER AND NATURAL RESOURCES

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

Federal and Interstate Water Unit	<u>497,751</u>	<u>486,995</u>	<u>513,883</u>	<u>513,883</u>	<u>513,883</u>
FTE	5.5	5.3	5.5	5.5	5.5
General Fund	497,751	486,995	513,883	513,883	513,883
Defense of the Colorado River Basin Compact	<u>279,249</u>	<u>300,355</u>	<u>335,198</u>	<u>335,198</u>	<u>335,198</u>
FTE	3.0	3.0	3.0	3.0	3.0
Cash Funds	279,249	300,355	335,198	335,198	335,198
Defense of the Republican River Compact	<u>66,133</u>	<u>64,156</u>	<u>110,000</u>	<u>110,000</u>	<u>110,000</u>
Cash Funds	66,133	64,156	110,000	110,000	110,000
Consultant Expenses	<u>49,358</u>	<u>106,426</u>	<u>400,000</u>	<u>400,000</u>	<u>400,000</u>
Cash Funds	49,358	106,426	400,000	400,000	400,000
Comprehensive Environmental Response, Compensation and Liability Act	<u>310,097</u>	<u>348,625</u>	<u>460,629</u>	<u>460,629</u>	<u>460,629</u>
FTE	3.4	3.8	3.5	3.5	3.5
Reappropriated Funds	310,097	348,625	460,629	460,629	460,629
Comprehensive Environmental Response, Compensation and Liability Act Contracts	<u>337,085</u>	<u>300,440</u>	<u>425,000</u>	<u>425,000</u>	<u>425,000</u>
Reappropriated Funds	337,085	300,440	425,000	425,000	425,000

JBC Staff Staff Figure Setting - FY 2013-14
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	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	FY 2013-14 Recommendation
Natural Resource Damage Claims at Rocky Mountain Arsenal	<u>0</u>	<u>0</u>	<u>50,000</u>	<u>50,000</u>	<u>50,000</u>
Cash Funds	0	0	0	0	0
Reappropriated Funds	0	0	50,000	50,000	50,000
Indirect Cost Assessment	<u>41,384</u>	<u>43,414</u>	<u>43,414</u>	<u>47,699</u>	<u>47,699</u> *
Reappropriated Funds	41,384	43,414	43,414	47,699	47,699
TOTAL - (4) Water and Natural Resources	1,581,057	1,650,411	2,338,124	2,342,409	2,342,409
<i>FTE</i>	<u>11.9</u>	<u>12.1</u>	<u>12.0</u>	<u>12.0</u>	<u>12.0</u>
General Fund	497,751	486,995	513,883	513,883	513,883
Cash Funds	394,740	470,937	845,198	845,198	845,198
Reappropriated Funds	688,566	692,479	979,043	983,328	983,328

JBC Staff Staff Figure Setting - FY 2013-14
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	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	FY 2013-14 Recommendation
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(5) CONSUMER PROTECTION

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

Consumer Protection and Antitrust	<u>1,794,040</u>	<u>1,691,441</u>	<u>2,170,214</u>	<u>2,046,520</u>	<u>2,046,520</u> *
FTE	19.7	19.3	26.0	25.0	25.0
General Fund	907,056	865,872	931,023	1,084,818	1,084,818
Cash Funds	644,928	586,642	997,710	720,221	720,221
Reappropriated Funds	242,056	238,927	241,481	241,481	241,481
Consumer Credit Unit	<u>1,338,218</u>	<u>1,320,369</u>	<u>1,521,916</u>	<u>1,512,150</u>	<u>1,512,150</u>
FTE	18.0	17.9	20.0	20.0	20.0
Cash Funds	1,338,218	1,320,369	1,521,916	1,512,150	1,512,150
Indirect Cost Assessment	<u>307,418</u>	<u>334,907</u>	<u>471,352</u>	<u>504,250</u>	<u>504,250</u> *
Cash Funds	271,947	297,695	434,140	463,365	463,365
Reappropriated Funds	35,471	37,212	37,212	40,885	40,885
TOTAL - (5) Consumer Protection	3,439,676	3,346,717	4,163,482	4,062,920	4,062,920
FTE	<u>37.7</u>	<u>37.2</u>	<u>46.0</u>	<u>45.0</u>	<u>45.0</u>
General Fund	907,056	865,872	931,023	1,084,818	1,084,818
Cash Funds	2,255,093	2,204,706	2,953,766	2,695,736	2,695,736
Reappropriated Funds	277,527	276,139	278,693	282,366	282,366

JBC Staff Staff Figure Setting - FY 2013-14
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	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	FY 2013-14 Recommendation
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(6) SPECIAL PURPOSE

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

District Attorneys' Salaries	<u>2,263,229</u>	<u>2,479,795</u>	<u>2,656,368</u>	<u>2,676,960</u>	<u>2,676,960</u>
General Fund	2,263,229	2,479,795	2,656,368	2,676,960	2,676,960
Litigation Management and Technology	<u>382,256</u>	<u>250,894</u>	<u>325,000</u>	<u>325,000</u>	<u>325,000</u>
Cash Funds	382,256	250,894	325,000	325,000	325,000
Tobacco Litigation	<u>972,823</u>	<u>745,624</u>	<u>880,000</u>	<u>500,000</u>	<u>500,000</u> *
General Fund	0	0	0	500,000	500,000
Cash Funds	972,823	745,624	880,000	0	0
Lobato Litigation Expenses	<u>417,573</u>	<u>242,037</u>	<u>50,000</u>	<u>50,000</u>	<u>50,000</u>
Reappropriated Funds	417,573	242,037	50,000	50,000	50,000
Lowry Range Litigation Expenses	<u>0</u>	<u>0</u>	<u>638,870</u>	<u>616,520</u>	<u>616,520</u>
Cash Funds	0	0	638,870	616,520	616,520

TOTAL - (6) Special Purpose	4,035,881	3,718,350	4,550,238	4,168,480	4,168,480
FTE	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
General Fund	2,263,229	2,479,795	2,656,368	3,176,960	3,176,960
Cash Funds	1,355,079	996,518	1,843,870	941,520	941,520
Reappropriated Funds	417,573	242,037	50,000	50,000	50,000

JBC Staff Staff Figure Setting - FY 2013-14
Staff Working Document - Does Not Represent Committee Decision

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	FY 2013-14 Recommendation
TOTAL - Department of Law	49,673,408	51,592,093	57,769,048	62,045,569	62,031,454
<i>FTE</i>	<u>390.7</u>	<u>399.4</u>	<u>432.7</u>	<u>437.6</u>	<u>437.6</u>
General Fund	9,457,322	9,326,453	9,936,392	12,003,637	11,921,040
Cash Funds	9,625,936	9,481,375	10,779,963	10,139,938	10,151,898
Reappropriated Funds	29,213,562	31,330,489	35,476,528	38,180,486	38,229,677
Federal Funds	1,376,588	1,453,776	1,576,165	1,721,508	1,728,839

NOTE: An asterisk (*) indicates that this line item is affected by a decision item (R-1, R-2, R-3, or R-4) or a budget amendment (BA-1). A "P" indicates that the recommendation is pending, and staff has reflected the requested amount for purposes of this document.