

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



FY 2012-13 STAFF FIGURE SETTING

DEPARTMENT OF LAW

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

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**DEPARTMENT OF LAW
FY 2012-13 STAFF FIGURE SETTING**

JBC WORKING DOCUMENT - ALL DECISIONS SUBJECT TO CHANGE
Staff Recommendation Does Not Represent Committee Decision

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	FY 2009-10 Actual	FY 2010-11 Actual	FY 2011-12 Approp	FY 2012-13 Request	FY 2012-13 Staff Recomm.	Change Request
(1) ADMINISTRATION						
This Division provides funding for the Office of the Attorney General, human resources, financial services, budgeting, information technology services, and special projects and facility management. This Division also includes centrally appropriated line items. This Division is supported by indirect cost recoveries, as well as a number of cash funds and other sources of reappropriated funds. Federal funds reflect centralized appropriations related to the Medicaid Fraud Control Unit.						
Personal Services - RF	2,723,687	2,939,483	2,942,096	3,065,063	3,065,063	R-3
FTE	36.6	38.5	40.7	41.7	41.7	R-3
Health, Life, and Dental	<u>1,940,668</u>	<u>1,967,131</u>	<u>2,281,572</u>	<u>2,415,841</u>	<u>2,620,363</u>	
General Fund	534,414	474,390	577,900	642,316	712,358	
Cash Funds	152,611	216,077	237,546	317,507	307,246	R-1, R-2
Reappropriated Funds	1,194,594	1,226,397	1,385,970	1,362,479	1,497,893	
Federal Funds	59,049	50,267	80,156	93,539	102,866	
Short-term Disability	<u>36,556</u>	<u>42,246</u>	<u>49,196</u>	<u>54,275</u>	<u>48,421</u>	
General Fund	11,079	11,893	13,008	15,188	13,008	
Cash Funds	2,962	3,829	4,457	5,889	4,457	R-1, R-2
Reappropriated Funds	21,527	25,271	30,127	30,957	29,352	
Federal Funds	988	1,253	1,604	2,241	1,604	
S.B. 04-257 Amortization Equalization Disbursement	<u>560,822</u>	<u>654,314</u>	<u>775,756</u>	<u>981,232</u>	<u>951,110</u>	
General Fund	159,454	183,131	203,279	274,591	271,731	
Cash Funds	40,983	58,252	70,505	106,458	93,597	R-1, R-2
Reappropriated Funds	344,034	393,530	476,591	559,668	545,268	
Federal Funds	16,351	19,401	25,381	40,515	40,514	
S.B. 06-235 Supplemental Amortization Equalization Disbursement	<u>348,889</u>	<u>477,318</u>	<u>622,261</u>	<u>843,245</u>	<u>816,243</u>	
General Fund	98,034	133,747	162,234	235,977	232,402	
Cash Funds	25,614	42,475	56,656	91,487	80,435	R-1, R-2
Reappropriated Funds	215,022	286,950	382,975	480,964	468,589	
Federal Funds	10,219	14,146	20,396	34,817	34,817	

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Salary Survey for Classified Employees	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
General Fund	0	0	0	0	0	0
Cash Funds	0	0	0	0	0	0
Reappropriated Funds	0	0	0	0	0	0
Federal Funds	0	0	0	0	0	0
Salary Survey for Exempt Employees	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
General Fund	0	0	0	0	0	0
Cash Funds	0	0	0	0	0	0
Reappropriated Funds	0	0	0	0	0	0
Federal Funds	0	0	0	0	0	0
Performance-based Pay Awards for Classified Employees	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
General Fund	0	0	0	0	0	0
Cash Funds	0	0	0	0	0	0
Reappropriated Funds	0	0	0	0	0	0
Federal Funds	0	0	0	0	0	0
Performance-based Pay Awards for Exempt Employees	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
General Fund	0	0	0	0	0	0
Cash Funds	0	0	0	0	0	0
Reappropriated Funds	0	0	0	0	0	0
Federal Funds	0	0	0	0	0	0
Workers' Compensation	<u>50,893</u>	<u>50,863</u>	<u>66,843</u>	<u>79,763</u>	<u>Pending</u>	
General Fund	15,272	14,877	18,378	21,109		
Cash Funds	4,136	5,038	6,919	8,348		
Reappropriated Funds	30,125	29,605	39,449	47,854		
Federal Funds	1,360	1,343	2,097	2,452		

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	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2012-13	Change
	Actual	Actual	Approp	Request	Staff Recomm.	Request
Attorney Registration and Continuing Legal Education	<u>92,626</u>	<u>92,626</u>	<u>92,626</u>	<u>92,626</u>	<u>99,263</u>	
General Fund	22,238	22,238	22,238	22,238	21,769	
Cash Funds	3,750	4,538	4,538	4,538	3,000	
Reappropriated Funds	66,075	65,287	65,287	65,287	72,525	
Federal Funds	563	563	563	563	1,969	
Operating Expenses	<u>169,420</u>	<u>182,724</u>	<u>189,679</u>	<u>193,513</u>	<u>193,513</u>	
General Fund	0	0	0	0	0	
Reappropriated Funds	169,420	182,724	189,679	193,513	193,513	R-3
Administrative Law Judge Services	<u>0</u>	<u>0</u>	<u>0</u>	<u>1,100</u>	<u>Pending</u>	
General Fund	0	0	0	301		
Cash Funds	0	0	0	118		
Reappropriated Funds	0	0	0	681		
Purchase of Services from Computer Center	<u>68,003</u>	<u>37,522</u>	<u>73,188</u>	<u>109,715</u>	<u>106,841</u>	
General Fund	68,003	0	0	0	0	
Reappropriated Funds	0	37,522	73,188	109,715	106,841	
Payment to Risk Management and Property Funds	<u>92,968</u>	<u>28,842</u>	<u>92,047</u>	<u>87,789</u>	<u>Pending</u>	
General Fund	0	0	0	0		
Reappropriated Funds	92,968	28,842	92,047	87,789		
Vehicle Lease Payments	<u>73,969</u>	<u>74,330</u>	<u>65,989</u>	<u>70,285</u>	<u>Pending</u>	
General Fund	23,891	22,184	18,277	19,980		NPI-1
Cash Funds	14,773	21,848	22,153	21,501		NPI-1
Reappropriated Funds	30,621	25,484	22,896	26,189		NPI-1
Federal Funds	4,684	4,814	2,663	2,615		NPI-1
ADP Capital Outlay	<u>13,764</u>	<u>0</u>	<u>0</u>	<u>154,370</u>	<u>154,370</u>	
General Fund	9,176	0	0	0	0	
Cash Funds	0	0	0	154,370	154,370	R-3
Reappropriated Funds	4,588	0	0	0	0	
Federal Funds	0	0	0	0	0	

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	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2012-13	Change
	Actual	Actual	Approp	Request	Staff Recomm.	Request
IT Asset Maintenance	<u>407,667</u>	<u>407,667</u>	<u>407,667</u>	<u>445,807</u>	<u>445,807</u>	
General Fund	15,291	15,291	15,291	21,754	21,754	R-3
Cash Funds	47,298	59,588	59,588	63,299	63,299	R-3
Reappropriated Funds	343,697	331,407	331,407	359,373	359,373	R-3
Federal Funds	1,381	1,381	1,381	1,381	1,381	
Leased Space	<u>32,502</u>	<u>26,220</u>	<u>26,220</u>	<u>27,789</u>	<u>27,789</u>	
General Fund	5,357	4,321	4,321	4,580	4,580	
Cash Funds	3,570	2,880	2,880	3,052	3,052	
Reappropriated Funds	23,374	18,857	18,857	19,985	19,985	
Federal Funds	201	162	162	172	172	
Capitol Complex Leased Space	<u>1,276,139</u>	<u>1,252,757</u>	<u>1,284,061</u>	<u>1,429,495</u>	<u>Pending</u>	
General Fund	382,931	368,073	352,895	378,315		
Cash Funds	103,874	124,080	132,910	149,602		
Reappropriated Funds	755,229	727,537	757,812	857,628		
Federal Funds	34,105	33,067	40,444	43,950		
Security for State Services Building	<u>196,693</u>	<u>120,919</u>	<u>125,430</u>	<u>140,489</u>	<u>140,489</u>	
General Fund	73,989	34,587	34,472	37,180	37,180	
Cash Funds	15,512	11,976	12,983	14,704	14,704	
Reappropriated Funds	101,938	71,164	74,024	84,287	84,287	
Federal Funds	5,254	3,192	3,951	4,318	4,318	
Communication Services Payments	<u>6,208</u>	<u>7,744</u>	<u>8,365</u>	<u>11,726</u>	<u>10,548</u>	
General Fund	2,308	2,748	2,946	4,160	3,742	
Cash Funds	575	2,092	2,269	3,168	2,850	
Reappropriated Funds	1,773	1,056	1,146	1,600	1,439	
Federal Funds	1,552	1,848	2,004	2,798	2,517	
Attorney General Discretionary Fund - GF	5,000	5,000	5,000	5,000	5,000	

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	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2012-13	Change
	Actual	Actual	Approp	Request	Staff Recomm.	Request
SUBTOTAL - Administration	8,096,474	8,367,706	9,107,996	10,209,123	8,684,820	
FTE	<u>36.6</u>	<u>38.5</u>	<u>40.7</u>	<u>41.7</u>	<u>41.7</u>	
General Fund	1,426,437	1,292,480	1,430,239	1,682,689	1,323,524	
Cash Funds	415,658	552,673	613,404	944,041	727,010	
Reappropriated Funds	6,118,672	6,391,116	6,883,551	7,353,032	6,444,128	
FTE	36.6	38.5	40.7	41.7	41.7	
Federal Funds	135,707	131,437	180,802	229,361	190,158	
(2) LEGAL SERVICES TO STATE AGENCIES (LSSA)						
This Division provides funding for the attorneys, paralegals, and support staff who provide legal services to other state agencies. The Division is primarily supported by reappropriated funds received from various state agencies. Cash funds are received from state enterprises.						
Personal Services	18,075,032	18,649,052	20,500,893	21,278,344	20,571,790	
FTE	<u>212.7</u>	<u>218.0</u>	<u>237.8</u>	<u>240.3</u>	<u>237.8</u>	R-4, BA-1
Cash Funds	1,659,140	1,582,388	1,659,140	1,671,962	253,320	
FTE					2.0	
Reappropriated Funds	16,415,892	17,066,664	18,841,753	19,606,382	20,318,470	R-4, BA-1
FTE					235.8	
Operating and Litigation	<u>849,568</u>	<u>898,698</u>	<u>1,643,735</u>	<u>1,650,051</u>	<u>1,577,307</u>	R-4, BA-1
Cash Funds	0	0	0	0	27,256	
Reappropriated Funds	849,568	898,698	1,643,735	1,650,051	1,550,051	
Indirect Cost Assessment - RF	2,665,207	2,608,316	2,809,499	2,935,070	2,957,773	
SUBTOTAL - Legal Services to State Agencies	21,589,807	22,156,066	24,954,127	25,863,465	25,106,870	
FTE	<u>212.7</u>	<u>218.0</u>	<u>237.8</u>	<u>240.3</u>	<u>237.8</u>	
Cash Funds	1,659,140	1,582,388	1,659,140	1,671,962	280,576	
FTE					2.0	
Reappropriated Funds	19,930,667	20,573,678	23,294,987	24,191,503	24,826,294	
FTE					235.8	

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(3) CRIMINAL JUSTICE AND APPELLATE						
This section provides funding for the investigation and prosecution of insurance, securities, Medicaid, and workers' compensation fraud, as well as gang-related criminal activity, complex crimes, and environmental crimes. This section represents the prosecution when defendants challenge their felony convictions before the state appellate courts or federal courts, assists district attorneys investigating and prosecuting homicide cases, handles foreign prosecutions, and certifies and helps train peace officers. Finally, this section provides funding for the Safe2Tell toll-free hotline, and keeps crime victims informed about cases handled by the Department. Cash funds include the P.O.S.T. Board Cash Fund, the Insurance Fraud Cash Fund, and moneys received from Pinnacol Assurance. Reappropriated funds include moneys from the Division of Securities Cash Fund that are transferred from the Department of Regulatory Agencies, indirect cost recoveries, grant moneys transferred from the Department of Public Safety, and Victims Assistance and Law Enforcement Funds. Federal funds are from the U.S. Department of Health and Human Services' Medicaid Fraud Control Program.						
Special Prosecutions Unit	2,685,907	2,759,362	2,774,265	2,830,320	2,830,320	
FTE	<u>29.1</u>	<u>28.5</u>	<u>30.5</u>	<u>30.5</u>	<u>30.5</u>	
General Fund	1,480,003	1,570,474	1,359,303	1,391,287	1,391,287	
FTE					14.2	
Cash Funds	203,794	794,728	861,711	879,039	879,039	
FTE					10.4	
Reappropriated Funds	1,002,110	394,160	553,251	559,994	559,994	
FTE					5.9	
Auto Theft Prevention Grant	57,463	227,976	239,075	239,075	239,075	
FTE	<u>0.5</u>	<u>2.0</u>	<u>2.0</u>	<u>2.0</u>	<u>2.0</u>	
Cash Funds	57,463	0	0	0	0	
FTE	0.5	0.0	0.0	0.0	0.0	
Reappropriated Funds	0	227,976	239,075	239,075	239,075	
FTE	0.0	2.0	2.0	2.0	2.0	
Appellate Unit	2,555,197	2,646,858	2,611,793	2,703,455	2,703,455	
FTE	<u>30.7</u>	<u>31.6</u>	<u>32.0</u>	<u>32.0</u>	<u>32.0</u>	
General Fund	2,302,221	2,449,993	2,224,371	2,197,268	2,184,623	R-5
FTE	30.0	31.0	31.0	31.0	31.0	
Reappropriated Funds	252,976	196,865	387,422	506,187	518,832	
FTE	0.7	0.6	1.0	1.0	1.0	

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	Actual	Actual	Approp	Request	Staff Recomm.	Request
Medicaid Fraud Control Unit	1,272,725	1,495,791	1,548,974	1,579,511	1,579,514	
FTE	<u>13.9</u>	<u>15.0</u>	<u>17.0</u>	<u>17.0</u>	<u>17.0</u>	
General Fund	318,208	381,574	387,242	394,876	394,879	
FTE					4.3	
Federal Funds	954,517	1,114,217	1,161,732	1,184,635	1,184,635	
FTE					12.7	
Peace Officers Standards and Training Board						
Support - CF	2,107,154	2,485,503	2,674,700	2,683,620	2,608,620	
FTE	6.5	6.5	7.0	7.0	7.0	
Victims Assistance	72,651	See Appellate Unit				
FTE	<u>1.0</u>					
General Fund	0					
Reappropriated Funds	72,651					
Safe2Tell - GF	n/a	94,765	100,686	100,686	100,686	
FTE		1.0	1.0	1.0	1.0	
Indirect Cost Assessment	<u>328,276</u>	<u>382,767</u>	<u>451,504</u>	<u>443,402</u>	<u>443,112</u>	
Cash Funds	77,430	205,732	222,031	214,311	214,171	
Reappropriated Funds	138,920	46,101	71,943	72,669	72,621	
Federal Funds	111,926	130,934	157,530	156,422	156,320	
SUBTOTAL - Criminal Justice and Appellate	9,079,373	10,093,022	10,400,997	10,580,069	10,504,782	
FTE	<u>81.7</u>	<u>84.6</u>	<u>89.5</u>	<u>89.5</u>	<u>89.5</u>	
General Fund	4,100,432	4,496,806	4,071,602	4,084,117	4,071,475	
FTE					50.5	
Cash Funds	2,445,841	3,485,963	3,758,442	3,776,970	3,701,830	
FTE					17.4	
Reappropriated Funds	1,466,657	865,102	1,251,691	1,377,925	1,390,522	
FTE					8.9	
Federal Funds	1,066,443	1,245,151	1,319,262	1,341,057	1,340,955	
					12.7	

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(4) WATER AND NATURAL RESOURCES						
This section provides funding to represent the State in legal cases involving water and natural resources, such as oil, gas, mining and minerals. This section also handles cases involving wildlife, pollution, hazardous waste, and protection of the state's air and water. Cash funds are from the Colorado Water Conservation Board's Litigation Fund, the Hazardous Substance Response Fund, and the Attorney Fees and Costs Account. Reappropriated funds are from the Colorado Water Conservation Board's Litigation Fund.						
Federal and Interstate Water Unit	499,637	497,751	502,159	513,883	513,883	
FTE	<u>5.5</u>	<u>5.5</u>	<u>5.5</u>	<u>5.5</u>	<u>5.5</u>	
General Fund	487,168	497,751	502,159	513,883	513,883	
FTE	5.5	5.5	5.5	5.5	5.5	
Cash Funds	12,469	0	0	0	0	
Defense of the Colorado River Basin Compact	275,383	279,249	330,920	335,198	335,198	
FTE	<u>3.4</u>	<u>3.0</u>	<u>3.0</u>	<u>3.0</u>	<u>3.0</u>	
Cash Funds	275,383	274,544	330,920	335,198	335,198	
FTE	3.4	3.0	3.0	3.0	3.0	
Reappropriated Funds	0	4,705	0	0	0	
Defense of the Republican River Compact - CF	65,190	66,133	110,000	110,000	110,000	
Consultant Expenses	<u>82,678</u>	<u>49,358</u>	<u>400,000</u>	<u>400,000</u>	<u>400,000</u>	
Cash Funds	55,267	34,378	400,000	400,000	400,000	
Reappropriated Funds	27,411	14,980	0	0	0	
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)	291,374	310,097	452,682	460,629	410,629	
FTE	<u>3.4</u>	<u>3.4</u>	<u>3.5</u>	<u>3.5</u>	<u>3.5</u>	
General Fund	276,351	0	0	0	0	
FTE	3.4	0.0	0.0	0.0	0.0	
Reappropriated Funds	15,023	310,097	452,682	460,629	410,629	
FTE	0.0	3.4	3.5	3.5	3.5	
CERCLA Contracts - RF	447,550	337,085	425,000	425,000	425,000	

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	Actual	Actual	Approp	Request	Staff Recomm.	Request
Natural Resource Damage Claims at Rocky Mountain Arsenal	<u>2,420</u>	<u>0</u>	<u>50,000</u>	<u>50,000</u>	<u>50,000</u>	
Cash Funds	2,420	0	50,000	50,000	0	
Reappropriated Funds	0	0	0	0	50,000	
Indirect Cost Assessment - RF	0	41,384	43,414	43,108	43,080	
SUBTOTAL - Water and Natural Resources	1,664,232	1,581,057	2,314,175	2,337,818	2,287,790	
FTE	<u>12.3</u>	<u>11.9</u>	<u>12.0</u>	<u>12.0</u>	<u>12.0</u>	
General Fund	763,519	497,751	502,159	513,883	513,883	
FTE					5.5	
Cash Funds	410,729	375,055	890,920	895,198	845,198	
FTE					3.0	
Reappropriated Funds	489,984	708,251	921,096	928,737	928,709	
FTE					3.5	

(5) CONSUMER PROTECTION

This section provides funding for the protection of Colorado consumers and business against fraud, enforcement of Colorado's Antitrust Act, and enforcement of the tobacco Master Settlement Agreement and related tobacco laws. Cash funds are from fees paid by regulated businesses, court-ordered awards, custodial funds, and the Tobacco Settlement Defense Account. Reappropriated funds are from moneys in the Mortgage Company and Loan Originator Licensing Cash Fund that are transferred from the Department of Regulatory Agencies.

Consumer Protection and Anti-Trust	1,627,090	1,794,040	1,781,681	2,175,106	2,175,106	
FTE	<u>19.5</u>	<u>19.7</u>	<u>21.0</u>	<u>26.0</u>	<u>26.0</u>	
General Fund	794,743	907,056	908,598	928,104	928,104	
FTE	10.7	11.6	10.0	9.0	9.0	R-1
Cash Funds	592,455	644,928	634,152	1,003,297	1,003,297	R-1
FTE	5.8	5.8	8.0	14.0	14.0	R-1
Reappropriated Funds	239,892	242,056	238,931	243,705	243,705	
FTE	3.0	2.3	3.0	3.0	3.0	
Consumer Credit Unit - CF	n/a	1,338,218	1,331,207	1,521,916	1,521,916	R-2
FTE		18.0	18.0	20.0	20.0	R-2

FY 2012-13 Joint Budget Committee Staff Figure Setting
Department of Law
NUMBERS PAGES

	FY 2009-10 Actual	FY 2010-11 Actual	FY 2011-12 Approp	FY 2012-13 Request	FY 2012-13 Staff Recomm.	Change Request
Collection Agency Board - CF	312,025	See Consumer Credit				
FTE	5.3	Unit				
Uniform Consumer Credit Code (UCCC) - CF	971,349	See Consumer Credit				
FTE	12.0	Unit				
Indirect Cost Assessment	<u>311,188</u>	<u>307,418</u>	<u>334,907</u>	<u>468,035</u>	<u>455,421</u>	
Cash Funds	273,977	271,947	297,695	431,085	418,495	
Reappropriated Funds	37,211	35,471	37,212	36,950	36,926	
SUBTOTAL - Consumer Protection	3,221,652	3,439,676	3,447,795	4,165,057	4,152,443	
FTE	<u>36.8</u>	<u>37.7</u>	<u>39.0</u>	<u>46.0</u>	<u>46.0</u>	
General Fund	794,743	907,056	908,598	928,104	928,104	
FTE					9.0	
Cash Funds	2,149,806	2,255,093	2,263,054	2,956,298	2,943,708	
FTE					34.0	
Reappropriated Funds	277,103	277,527	276,143	280,655	280,631	
FTE					3.0	
(6) SPECIAL PURPOSE						
This section contains special purpose appropriations and programs. This section currently includes funding to support District Attorneys' salaries, funding for litigation expenses associated with two significant lawsuits, and spending authority for excess revenues earned by the Legal Services to State Agencies program in the previous fiscal year.						
District Attorneys' Salaries - GF	2,096,027	2,263,229	2,479,796	2,656,368	2,656,368	
Litigation Management and Technology Fund - CF	145,258	382,256	325,000	325,000	325,000	
Statewide HIPAA Legal Services - GF	3,538	0	0	0	0	
Tobacco Litigation - CF	535,462	972,823	880,000	880,000	880,000	
Lobato Litigation Expenses - RF	0	417,573	432,500 a/	50,000	50,000	

FY 2012-13 Joint Budget Committee Staff Figure Setting
Department of Law
NUMBERS PAGES

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2012-13	Change
	Actual	Actual	Approp	Request	Staff Recomm.	Request
Lowry Range Litigation Expenses	n/a	n/a	n/a	<u>638,870</u>	<u>638,870</u>	BA-1
Cash Funds					638,870	
Reappropriated Funds				638,870	0	
SUBTOTAL - Special Purpose	<u>2,780,285</u>	<u>4,035,881</u>	<u>4,117,296</u>	<u>4,550,238</u>	<u>4,550,238</u>	
General Fund	2,099,565	2,263,229	2,479,796	2,656,368	2,656,368	
Cash Funds	680,720	1,355,079	1,205,000	1,205,000	1,843,870	
Reappropriated Funds	0	417,573	432,500	688,870	50,000	

a/ In addition to the appropriation of \$432,500 for FY 2011-12, the Department has rolled forward \$617,051 of the FY 2010-11 appropriation to cover expenditures that will occur in FY 2011-12.

DEPARTMENT OF LAW						
TOTAL FUNDS	46,431,823	49,673,408	54,342,386	57,705,770	55,286,943	
FTE	<u>380.1</u>	<u>390.7</u>	<u>419.0</u>	<u>429.5</u>	<u>427.0</u>	
General Fund	9,184,696	9,457,322	9,392,394	9,865,161	9,493,354	
FTE					65.0	
Cash Funds	7,761,894	9,606,251	10,389,960	11,449,469	10,342,192	
FTE					56.4	
Reappropriated Funds	28,283,083	29,233,247	33,059,968	34,820,722	33,920,284	
FTE					292.9	
Federal Funds	1,202,150	1,376,588	1,500,064	1,570,418	1,531,113	
FTE					12.7	

**FY 2012-13 FIGURE SETTING
DEPARTMENT OF LAW**

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

Committee of Reference SMART Act Recommendation Letter for the Department

House Judiciary Committee

Received January 30, 2012

Recommendations

The House Judiciary Committee did not provide a recommendation on the Department's FY 2012-13 budget.

Senate Judiciary Committee

Received January 27, 2012

Recommendations

The Senate Judiciary Committee recommended the following changes:

- The Committee expressed support for decision item R-1, concerning consumer protection enhancement.

Summary of Significant Recommendations Included in this Packet

The following table lists the most significant year-over-year changes recommended by staff for FY 2012-13, as well as one staff recommendation that affects FY 2011-12 appropriations.

Summary of Significant Staff Recommendations in this Packet						
Description	Total Funds	General Fund	Cash Funds	Reapprop. Funds	Federal Funds	FTE
FY 2011-12:						
Appropriation to cover the retirement payout for a long-term employee	\$29,814	\$29,814	\$0	\$0	\$0	0.0
FY 2012-13:						
State Land Board legal services and litigation expenses (BA-1)	911,426	0	911,426	0	0	2.0
Centrally appropriated line items	879,176	304,497	136,703	381,474	56,502	0.0
Reverse increase in employee PERA contribution (S.B. 11-076)	774,669	180,082	69,016	502,668	22,903	0.0
Consumer protection enhancement (R-1)	359,154	0	359,154	0	0	5.0
Case management system (R-3)	287,410	6,463	158,081	122,866	0	1.0

Summary of Significant Staff Recommendations in this Packet						
Description	Total Funds	General Fund	Cash Funds	Reapprop. Funds	Federal Funds	FTE
Consumer Credit Unit - Unlicensed entities compliance effort (R-2)	162,210	0	162,210	0	0	2.0
Add deputy attorney general (R-4)	147,028	0	0	147,028	0	1.0
Increase in state portion of District Attorney salaries (H.B. 07-1170)	121,572	121,572	0	0	0	0.0
Reinstate 1.5 percent appellate base reduction (R-5)	37,428	37,428	0	0	0	0.0
2.0 Base personal services reduction (alternative proposed by Department)	(675,000)	0	(75,000)	(600,000)	0	0.0
Reduction in <i>Lobato</i> litigation expenses	(382,500)	0	0	(382,500)	0	0.0
Legal services to state agencies	(69,602)	0	(1,405,820)	1,336,218	0	(1.0)

Application of 2.0 percent Base Personal Services Reduction

The Joint Budget Committee has adopted a common policy of reducing all base personal services appropriations by 2.0 percent. On February 16, 2012, the Department of Law submitted a "comeback" request, asking that the Committee not apply this base reduction to seven of the twelve relevant line items¹. As detailed in the following table, approval of the Department's comeback would decrease the funding reduction by \$230,814 (including \$96,398 General Fund). The Department indicated that its comeback request was based on the assumption that the Committee did not intend, as a result of this policy, to necessitate layoffs nor significantly compromise a unit's ability to meet its statutory responsibilities.

2.0 Percent Base Personal Services Reduction	Total	GF	CF	RF	FF
<i>Administration, Personal Services</i>	\$2,973,997	\$0	\$0	(\$58,595)	\$0
<i>Legal Services to State Agencies, Personal Services</i>	(378,459)	0	0	(378,459)	0
<i>Criminal Justice and Appellate:</i>					
Special Prosecutions Unit	(54,096)	(26,508)	(17,127)	(10,461)	0
Auto Theft Prevention Grant	(3,902)	0	0	(3,902)	0
Appellate Unit	(51,131)	(51,131)	0	0	0
Medicaid Fraud Control Unit	(29,491)	(7,373)	0	0	(22,118)
Peace Officers Standards and Training (P.O.S.T.) Board Support	(9,356)	0	(9,356)	0	0
Safe2Tell	(2,085)	(2,085)	0	0	0

¹ The Department verbally indicated that it would prioritize its comeback for these line items as follows: Appellate Unit; Special Prosecutions Unit; Administration - Personal Services; Medicaid Fraud Control Unit; Consumer Credit Unit; Federal and Interstate Water Unit; and Safe2Tell.

2.0 Percent Base Personal Services Reduction	Total	GF	CF	RF	FF
<i>Water and Natural Resources:</i>					
Federal and Interstate Water Unit	(9,301)	(9,301)	0	0	0
Defense of the Colorado River Basin Compact	(4,961)	0	(4,961)	0	0
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)	(6,392)	0	0	(6,392)	0
<i>Consumer Protection:</i>					
Consumer Protection and Anti-trust	(32,818)	(17,195)	(11,172)	(4,451)	0
Consumer Credit Unit	(26,115)	0	(26,115)	0	0
Total impact of common policy	(666,702)	(113,593)	(68,731)	(462,260)	(22,118)
Total of line items included in comeback (shaded above)	230,814	96,398	43,242	69,056	22,118
Impact of reduction if comeback is approved	(435,888)	(17,195)	(25,489)	(393,204)	0

In addition, the Department requested verbally that if the Committee denies its comeback request, that the Department be allowed to allocate the overall reduction among line items in a different manner. Based on the Committee's expressed interest in this option, the Department submitted an alternative plan on February 24, 2012. In total, the Department's alternative plan (which is detailed in the following table) reduces base appropriations by \$700,000 (slightly more than the common policy), but it does not reduce any direct General Fund appropriations to the Department. The proposed alternative would, however, reduce the hourly rate paid by state agencies for legal services, thereby indirectly reducing General Fund expenditures.

As the Committee has not yet taken action on the Department's comeback request, **staff's recommendations in this packet are based on the Department's proposed alternative.** Staff includes a discussion of the impact of the alternative option on each affected line item later in this packet. If the Committee approves a portion or all of the Department's February 16 comeback, staff will adjust appropriations accordingly.

PROPOSED ALTERNATIVE TO 2.0 Percent Base Personal Services Reduction	Total	GF	CF	RF	FF
<i>Legal Services to State Agencies:</i>					
Personal Services	(\$450,000)	\$0	\$0	(\$450,000)	\$0
Operating Expenses	(100,000)	0	0	(100,000)	0
<i>Criminal Justice and Appellate:</i>					
Peace Officers Standards and Training (P.O.S.T.) Board Support	(75,000)	0	(75,000)	0	0
<i>Water and Natural Resources:</i>					
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)	(75,000)	0	0	(75,000)	0
Total impact of proposed alternative	(700,000)	0	(75,000)	(625,000)	0

(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.

Background Information - Classified and Exempt Employees. The Department of Law's employees include classified employees and non-classified or "exempt" employees. Classified employees are governed by state personnel rules and procedures; exempt employees are not. All of the Department's attorneys, who collectively make up 58 percent of the Department's staff, are exempt employees, the remaining 42 percent of the Department's staff are classified employees. Salary survey and performance-based pay for classified employees, when provided, are set by common policy. In contrast, the corresponding appropriations for exempt positions are established through the figure setting process for the Department of Law.

Personal Services.

Description. 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 to contractors for their services, and termination/retirement payouts for accumulated vacation and sick leave.

The following table provides a staffing overview for this line item.

Staffing Summary Administration	FY 10-11 Actual	FY 11-12 Approp.	FY 12-13 Request	FY 12-13 Recommend.
Office of the Attorney General	8.8	9.0	9.0	9.0
Human Resources	3.5	3.5	3.5	3.5
Financial Services/ Budgeting	7.5	7.5	7.5	7.5
Information Technology Services	13.7	15.2	16.2	16.2
Legal Support Services	5.0	5.5	5.5	5.5
Total	38.5	40.7	41.7	41.7

Request. The Department requests \$3,065,063 and 41.7 FTE for FY 2012-13. The request is impacted by R-3 (discussed below).

R-3: Case Management System

The Department requests a total of \$287,410 and 1.0 FTE to implement a case management system. The request includes \$154,370 cash funds from the Attorney's Fees and Cost Account², \$122,866 reappropriated funds from indirect cost recoveries, \$6,463 General Fund, and \$3,711 from various cash funds. If this request is approved, the Department estimates that the FY 2012-13 hourly blended billing rate charged to state agencies would increase by \$0.02 to cover the ongoing annual costs of the system. The requested increases in General Fund and cash funds would cover the share of the ongoing costs attributed to the Department's other units.

Over the last ten years the Department has discussed the need for a case management system and has researched available options. The vendor that has been selected through an extensive evaluation and bidding process (ProLaw) provides a system that would provide an automated solution to manage:

- documents;
- client and contact information;
- appointments, tasks, and deadlines; and
- court docketing, calendaring, and records.

The system would also provide significant reporting capabilities. The ProLaw system also integrates easily with the Westlaw on-line research product.

The Department estimates that full implementation of the case management system "will conservatively yield an efficiency savings of an estimated \$582,000 annually to client agencies alone". This estimate is based on the assumption that each attorney and legal assistant will save 10

² 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 custodial moneys. Moneys in the Account are subject to annual appropriation by the General Assembly for legal services provided by the Department.

minutes per day by utilizing the case management system. In addition, the system would provide efficiency savings to the Consumer Protection, Criminal Justice, and the Water and Natural Resources sections within the Department. For example, the calendaring function would allow the Water unit to automate the water court calendar, make the calendar accessible to all unit members, assist in planning work flow, and help eliminate missed court dates.

The Department does not, however, anticipate that these savings would reduce the number of Department staff. Instead, the Department indicates that the system will allow attorneys to spend more time practicing law instead of looking for files and documents. The Department indicates that the system will allow its non-client units (e.g., Consumer Protection) to handle more cases, and it could potentially slow the rate of growth of requests for increased legal services.

To implement the system in FY 2012-13, the Department requires funding for the following:

- one-time ADP capital outlay costs of \$154,370 for the software, the first year of maintenance payments, customization of the calendaring system based on Colorado court rules, implementation, and training;
- ongoing annual IT asset maintenance costs of \$38,410³, including \$26,760 for license maintenance fees and \$11,650 for calendaring rules maintenance; and
- ongoing funding for one IT professional to assist with the system implementation and provide ongoing internal management of the system.

Summary of Decision Item R-3: Case Management System					
	GF	CF	RF	Total Funds	FTE
<u>Administration</u>					
Personal Services:					
IT Professional III	\$0	\$0	\$81,600	\$81,600	1.0
PERA and Medicare	<u>0</u>	<u>0</u>	<u>9,466</u>	<u>9,466</u>	
Total Personal Services	0	0	91,066	91,066	1.0
Operating Expenses					
Operating Expenses (supplies and telephone)	0	0	950	950	
One-time Capital Outlay (computer and software)	<u>0</u>	<u>0</u>	<u>2,884</u>	<u>2,884</u>	
Total Operating Expenses	0	0	3,834	3,834	

³ Please note that the Department's request reflects only \$38,140 for IT asset maintenance costs. While staff's recommendation for FY 2012-13 does not include the additional \$270, staff assumes that this will be adjusted as necessary in the Department's budget request for FY 2013-14.

Summary of Decision Item R-3: Case Management System					
	GF	CF	RF	Total Funds	FTE
ADP Capital Outlay	0	154,370	0	154,370	
Information Technology Asset Maintenance	6,463	3,711	27,966	38,140	
Total Requested Changes	\$6,463	\$158,081	\$122,866	\$287,410	1.0

Recommendation. Staff recommends approving the request. Given the Department's size and role for the State, the Department should be allowed to implement a case management system to properly manage its workload, work flow, and case-related documents. The selected system should improve the Department's efficiency and effectiveness, and provide the Attorney General and the supervisory attorneys better reports to monitor the status of active cases. Although the Department has selected a vendor-based system, staff agrees that the Department should have a dedicated IT professional to assist with the system implementation, provide ongoing management of the system, and provide ongoing training for system users.

The following table details staff's overall recommendation for the Personal Services line item.

Administration, Personal Services	Total	GF	CF	RF	FF	FTE
FY 2011-12 Long Bill	\$2,973,997	\$0	\$0	\$2,973,997	\$0	40.7
S.B. 11-076	(31,901)	0	0	(31,901)	0	0.0
FY 2011-12 Appropriation	2,942,096	0	0	2,942,096	0	40.7
Reinstate FY 2011-12 reduction in employer's PERA contribution (S.B. 11-076)	31,901	0	0	31,901	0	0.0
Salary Survey awarded in FY 2011-12	0	0	0	0	0	0.0
Performance-based Pay awarded in FY 2011-12	0	0	0	0	0	0.0
2.0 percent base personal services reduction	0	0	0	0	0	0.0
R-3: Case Management System	91,066	0	0	91,066	0	1.0
FY 2012-13 Recommendation	3,065,063	0	0	3,065,063	0	41.7
FY 2012-13 Request	3,065,063	0	0	3,065,063	0	41.7
Recommendation - Request	0	0	0	0	0	0.0

The reappropriated funds derive from indirect cost recoveries.

Please note that if the Committee elects to apply the 2.0 percent base personal services reduction to this line item (*i.e.*, denying both the Department's comeback request and the proposed alternative reductions), **staff would recommend that the Committee exclude the Attorney General's salary.** Pursuant to Section 19 of Article IV of the State Constitution, the Attorney General's salary shall not be increased or diminished during his official term.

Health, Life and Dental.

Description. 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 \$2,415,841 for this line item for FY 2012-13, including \$39,760 cash funds for R-1 (Consumer protection enhancement) and R-2 (Consumer Credit Unit - Unlicensed entities compliance effort).

Recommendation. **Staff recommends appropriating \$2,620,363 for FY 2012-13**, consistent with Committee policy with respect to employer contribution rates⁴.

Health, Life, and Dental	Total	GF	CF	RF	FF
FY 2011-12 Appropriation	\$2,281,572	\$577,900	\$237,546	\$1,385,970	\$80,156
Common policy adjustment	338,791	134,458	69,700	111,923	22,710
R-1 (Consumer protection enhancement)	0	0	0	0	0
R-2 (Consumer Credit Unit - Unlicensed entities compliance effort)	0	0	0	0	0
FY 2012-13 Recommendation	2,620,363	712,358	307,246	1,497,893	102,866

Short-term Disability.

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

Request. The Department requests \$54,275 for this purpose for FY 2012-13, including \$712 cash funds for R-1 (Consumer protection enhancement) and R-2 (Consumer Credit Unit - Unlicensed entities compliance effort).

Recommendation. **Staff recommends an appropriation of \$48,421.** The common policy is to appropriate: the lesser of the FY 2012-13 request or the FY 2011-12 appropriation, reduced by 2.0 percent. Based on the Department's proposed alternative to the across-the-board base personal services reduction, staff has modified this policy to reduce the FY 2011-12 appropriated amounts by a slightly smaller amount that corresponds to the portion of the proposed alternative that relates to personal services (a reduction of \$450,000 reappropriated funds in the LSSA section).

Short-term Disability	Total	GF	CF	RF	FF
FY 2011-12 Appropriation	\$49,196	\$13,008	\$4,457	\$30,127	\$1,604
Common policy adjustment	(775)	0	0	(775)	0

⁴ Employer contribution rates approved by the Committee include the following: \$404.72 (employee), \$733.24 (employee + spouse), \$705.20 (employee + children), and \$1,025.72 (employee + family) for health benefits; \$23.74 (employee), \$38.30 (employee + spouse), \$39.34 (employee + children), and \$51.18 (employee + family) for dental benefits; and \$9.40 for life benefits.

Short-term Disability	Total	GF	CF	RF	FF
R-1 (Consumer protection enhancement)	0	0	0	0	0
R-2 (Consumer Credit Unit - Unlicensed entities compliance effort)	0	0	0	0	0
FY 2012-13 Recommendation	48,421	13,008	4,457	29,352	1,604

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

Description. 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 a total of \$981,232 for FY 2012-13, including \$12,861 cash funds for R-1 (Consumer protection enhancement) and R-2 (Consumer Credit Unit - Unlicensed entities compliance effort).

Recommendation. **Staff recommends an appropriation of \$951,110.** The common policy is to apply the relevant rates [3.0 percent of base salaries for CY 2012 and 3.4 percent of base salaries for CY 2013] to base salaries (which are estimated based on actual June 2011 salary expenditures), and reduce the result by 2.0 percent. Based on the Department's proposed alternative to the across-the-board base personal services reduction, staff has modified this policy to take a slightly smaller reduction that corresponds to the portion of the proposed alternative that relates to personal services (a reduction of \$450,000 reappropriated funds in the LSSA section).

AED	Total	GF	CF	RF	FF
FY 2011-12 Appropriation	\$775,756	\$203,279	\$70,505	\$476,591	\$25,381
Common policy adjustment	175,354	68,452	23,092	68,677	15,133
R-1 (Consumer protection enhancement)	0	0	0	0	0
R-2 (Consumer Credit Unit - Unlicensed entities compliance effort)	0	0	0	0	0
FY 2012-13 Recommendation	951,110	271,731	93,597	545,268	40,514

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

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

Request. The Department requests a total of \$843,245 for FY 2012-13, including \$11,052 cash funds for R-1 (Consumer protection enhancement) and R-2 (Consumer Credit Unit - Unlicensed entities compliance effort).

Recommendation. **Staff recommends an appropriation of \$816,243.** The common policy is to apply the relevant rates [2.5 percent of base salaries for CY 2012 and 3.0 percent of base salaries for CY 2013] to base salaries (which are estimated based on actual June 2011 salary expenditures), and reduce the result by 2.0 percent. Based on the Department's proposed alternative to the across-the-board base personal services reduction, staff has modified this policy to take a slightly smaller

reduction that corresponds to the portion of the proposed alternative that relates to personal services (a reduction of \$450,000 reappropriated funds in the LSSA section).

SAED	Total	GF	CF	RF	FF
FY 2011-12 Appropriation	\$622,261	\$162,234	\$56,656	\$382,975	\$20,396
Common policy adjustment	193,982	70,168	23,779	85,614	14,421
R-1 (Consumer protection enhancement)	0	0	0	0	0
R-2 (Consumer Credit Unit - Unlicensed entities compliance effort)	0	0	0	0	0
FY 2012-13 Recommendation	816,243	232,402	80,435	468,589	34,817

Salary Survey for Classified Employees.

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

Request. The Department did not request any funding for this line item for FY 2012-13.

Recommendation. **Staff recommends approving the request, consistent with Committee policy.**

Salary Survey for Exempt Employees.

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

Request. The Department did not request any funding for this line item for FY 2012-13.

Recommendation. **Staff recommends approving the request, consistent with Committee policy.**

Performance-based Pay for Classified Employees.

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

Request. The Department did not request any funding for this line item for FY 2012-13.

Recommendation. **Staff recommends approving the request, consistent with Committee policy.**

Performance-based Pay for Exempt Employees.

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

Request. The Department did not request any funding for this line item for FY 2012-13.

Recommendation. **Staff recommends approving the request, consistent with Committee policy.**

Workers' Compensation.

Description. 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.

Request. The Department requests \$79,763 for FY 2012-13.

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.

Description. This line item provides funding for the Department to cover the annual registration fee for each attorney (\$225), and to provide \$150 per attorney for continuing legal education requirements.

Request. The Department requests a continuation level of funding (\$92,626) for FY 2012-13.

Recommendation. **Staff recommends appropriating \$99,263 for this line item, which is \$6,637 higher than the amount requested. However, staff also recommends adjusting the sources of funds appropriated, resulting in a General Fund recommendation that is \$469 lower than the request.**

This line item was established in the FY 2008-09 Long Bill in response to a decision item submitted by the Department. As indicated above, the line item was intended to provide a total of \$375 per attorney per fiscal year to cover the annual registration fee required to practice law in Colorado and to provide some funding for required continuing legal education expenses. This request was designed to make the salary and benefit package offered by the Department more competitive with other public sector law firms. The FY 2008-09 appropriation was based provided funding sufficient for the 247 attorneys; the sources of funds mirrored the fund sources that were used at that time to pay attorneys' salaries.

This appropriation has not changed since FY 2008-09 to reflect the additional attorneys that have been authorized. In addition, the sources of funds have not been adjusted recently to reflect approved changes in the fund sources used to support attorneys' salaries. Staff's recommendation provides \$375 per attorney for 264.7 FTE attorneys, including the 3.0 FTE attorneys that have been requested for FY 2012-13 (consistent with staff's recommendations for R-1, R-2, and R-4). Staff's recommendation adjusts the sources of funds to mirror the fund sources that are recommended to support attorneys' salaries in FY 2012-13, thus resulting in a reduction in the General Fund portion of the appropriation. The Department is aware of and supports staff's recommendation.

Operating Expenses.

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

Request. The Department requests \$193,513 for FY 2012-13, including \$3,834 reappropriated funds for R-3 (Case management system).

Recommendation. **Staff recommends approving the request**, including the funding associated with R-3.

Administrative Law Judge Services.

Description. 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 \$1,100 for FY 2012-13.

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.

Description. 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 \$109,715 reappropriated funds for this purpose for FY 2012-13.

Recommendation. **Staff recommends an appropriation of \$106,841 reappropriated funds, consistent with Committee policy.**

Payment to Risk Management and Property Funds.

Description. 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 \$87,789 reappropriated funds for this purpose for FY 2012-13.

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.

Description. 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 a total of \$70,285 for FY 2012-13, which represents an increase of \$4,296 relative to the adjusted FY 2011-12 appropriation. The Department has not requested funding to replace any vehicles.

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 Vehicle Lease Payments is established.

ADP Capital Outlay.

Description. 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 \$154,370 cash funds for FY 2012-13 related to R-3 (Case management system).

Recommendation. **Staff recommends approving the request.**

IT Asset Maintenance.

Description. 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 total of \$445,807 for FY 2012-13, including \$38,140 for R-3 (Case management).

Recommendation. **Staff recommends approving the request,** including the funding associated with R-3.

Leased Space.

Description. 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 2012-13.

Recommendation. **Staff recommends approving the request to cover scheduled leased space payments.**

Capitol Complex Leased Space.

Description. The Department leases 101,685 square feet of Capitol Complex space in the State Services Building at 1525 Sherman Street.

Request. The Department requests \$1,429,495 total funds for FY 2012-13.

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 Capitol Complex Leased Space is established.

Security for State Services Building.

Description. This appropriation pays for security at the State Services Building, the Capital Complex building that houses the Department of Law. A rotating group of uniformed State Patrol troopers provide armed, in-building security from 8 a.m. to 5 p.m. daily.

Request. The Department requests \$140,489 for FY 2012-13.

Recommendation. **Staff’s recommendation reflects the Committee’s recent action on the Department of Public Safety’s budget request.**

Operating Expenses	Total	GF	CF	RF	FF
FY 2011-12 Appropriation	\$125,430	\$34,472	\$12,983	\$74,024	\$3,951
Change of Colorado State Patrol's cost for providing building security	15,059	2,708	1,721	10,263	367
FY 2012-13 Recommendation	140,489	37,180	14,704	84,287	4,318

Communications Services Payments.

Description. 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 \$11,726 for this purpose for FY 2012-13.

Recommendation. **Staff recommends an appropriation of \$10,548, consistent with Committee policy.**

Attorney General Discretionary Fund.

Description. 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.**

Sources of Funding and Indirect Cost Assessments

Indirect cost assessments are charged to cash and federally-funded programs for departmental and statewide overhead costs. Each of the next four sections of the Long Bill include an "Indirect Cost Assessment" line item to identify each section's share of departmental and statewide overhead costs. These funds are then reappropriated in several line items to replace what would otherwise be a General Fund appropriation.

Consistent with Committee policy, staff will ensure that the indirect cost assessment line items include a total of \$557,745 for this department's share of statewide indirect costs. The indirect cost assessments that will be necessary to cover departmental overhead costs will be calculated once all common policies have been finalized by the Committee. Staff will ensure that the sum of the indirect cost assessments is properly used to offset General Fund expenditures in this section.

(2) LEGAL SERVICES TO STATE AGENCIES (LSSA)

This Long Bill section 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, who 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 2011-12, 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. When received, these payments are classified as cash funds. For FY 2011-12, appropriations in the Legal Services to State Agencies (LSSA) section of the Long Bill represent 45.9 percent of the Department's total budget and 56.8 percent of its total FTE; if the associated central appropriations (e.g., employee benefits, leased space, etc.) are included, funding for LSSA represents about 54 percent of the Department's total budget. About 93 percent of the funding in this section is currently reflected as reappropriated funds.

Please note that the staff who are funded through this section of the Long Bill have been organized into six sections based on subject matter expertise and the need to separate staff where ethical conflicts of interest exist. Six Deputy Attorneys General oversee each of these sections. Four of the six existing Deputy Attorneys General are funded through this Long Bill section; the remaining two

Deputy Attorneys General are funded through the Criminal Justice and Appellate, and Consumer Protection sections of the Long Bill. Appendix C provides a graphic illustration of the Department's organizational structure.

Personal Services.

Description. 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 classes of employees who bill client agencies: attorneys and legal assistants. Each "billing" attorney and legal assistant provides 1,800 hours of legal services annually⁵. 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 provides a staffing overview for this line item.

Staffing Summary Legal Services to State Agencies	FY 10-11 Actual	FY 11-12 Approp.	FY 12-13 Request	FY 12-13 Recommend.
Attorneys (R-4, BA-1)	163.6	176.9	179.4	176.9
Legal Assistants	33.8	36.2	36.2	36.2
Administrative Staff	20.6	24.7	24.7	24.7
Total	218.0	237.8	240.3	237.8

The following table summarizes the anticipated change in the demand for legal services from FY 2011-12 and FY 2012-13.

Appropriation of billing FTE	Legal Hours
Legal services appropriations specifically designated in the FY 2011-12 Long Bill, plus additional hours of legal services anticipated to be purchased by other agencies (primarily higher education institutions)	358,901
FY 2011-12 legal services appropriations in legislation other than Long Bill	<u>20,298</u>
Total legal services for FY 2011-12	379,199
Legal services appropriations approved by the JBC for specifically designated line items the FY 2012-13 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	374,595
Change from FY 2011-12 to FY 2012-13	(4,604)

Request. The Department requests \$21,278,344 and 240.3 FTE for this line item. The request is impacted by: (a) annualization of funding provided for FY 2011-12; (b) R-4, which is discussed

⁵ 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.

below; (c) a request submitted by the Department on behalf of the State Board of Land Commissioners (BA-1), which is discussed below; (d) a request submitted by the Governor’s Energy Office to increase its funding for legal services; and (e) a request submitted by the Governor’s Office of Information Technology to increase its funding for legal services.

R-4: Add Deputy Attorney General

The Department requests \$147,028 reappropriated funds to add a seventh Deputy Attorney General position to address a span of control concern in the Business and Licensing section. This position would be supported through an increase in the hourly billing rates charged to client agencies for legal representation and counsel.

The Business and Licensing section now includes a total of 83.8 FTE, representing more than 35 percent of the total LSSA staff. This compares to the other three Deputy Attorneys General who are funded through the LSSA Long Bill section, which include an average of 50.0 FTE. Due to the complexity of client agencies’ legal concerns, the Department would like to add another managing attorney in the LSSA section to better align the reporting structure within each section and to ensure appropriate client support and legal representation to client agencies.

The Department considered reorganizing the sections of LSSA to shift some of the staff in the Business and Licensing section to the other three sections (State Services, Litigation, or Natural Resources and Environment). However, the Department determined that this would not provide an appropriate division of subject matter expertise. Thus, the Department plans to split the Business and Licensing section, resulting in two sections of about 42.0 FTE.

The following table details the components of the request.

Summary of Decision Item R-4: Add Deputy Attorney General		
	RF	FTE
<u>Legal Services to State Agencies</u>		
Personal Services:		
Deputy Attorney General	\$124,728	1.0
PERA and Medicare	<u>14,468</u>	
Total Personal Services	139,196	1.0
Operating Expenses (supplies and telephone)	950	
One-time Capital Outlay (office equipment, computer, and software)	<u>6,882</u>	
Total Operating Expenses and Capital Outlay	7,832	
Total Requested Changes	\$147,028	1.0

Staff Recommendation on R-4. Staff recommends approving the request. The additional managing attorney will allow the Department to ensure appropriate client support and legal representation for client agencies – particularly for those agencies that are represented by the Business and Licensing section⁶. Due to the increasing demand for services from client agencies, this section now includes a total of 83.8 FTE, representing more than a third of the total LSSA staff. During the last two legislative sessions alone, the number of FTE in this section has grown by 18.2 FTE (27.7 percent). An additional managing attorney will allow the Department to address the span of control concern, maintain an appropriate division of subject matter expertise, and maintain appropriate ethical "walls" to avoid conflicts of interest.

BA-1: Lowry Range Legal Services and Litigation Expenses

The Department requests a total of \$911,426 reappropriated funds and 2.0 FTE to address the State Land Board's litigation needs related to the Lowry Range property. The source of funds is the State Board of Land Commissioners Investment and Development Fund. The request includes \$272,556 for the provision of 3,600 hours of legal services (based on the existing rate of \$75.71/hour). The request also includes \$638,870, which would be appropriated through a new line item, for other related litigation expenses (*e.g.*, outside counsel, expert witnesses, and all discovery, deposition, and case preparation efforts).

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 Range and will require resources above and beyond existing Department resources for the purchase of legal services. The State Land Board estimates that litigation efforts related to this lawsuit will take two years to proceed through trial; any potential appeal phase would follow.

⁶ These agencies include: the Department of Regulatory Agencies (with some exceptions based on ethical conflicts of interest); the Department of Revenue; the Department of Agriculture; the State Personnel Board; the Property Tax Administrator; the Board of Assessment Appeals; the Independent Ethics Commission; and the Colorado Mined Land Reclamation Board.

Staff Recommendation on BA-1. **Staff recommends approving the request, with two modifications.** First, with respect to the \$272,556 requested for this section of the Long Bill, staff recommends providing the Department of Law with authority to receive and spend moneys from the Land Board, sufficient to provide up to 3,600 hours of legal services. Similar to other state agencies, **staff recommends using the hourly rate applicable to FY 2012-13 to determine the amount of the legal services appropriation.**

Second, **staff recommends reflecting the requested appropriations to the Department of Law as cash funds, rather than reappropriated funds.** 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. The Department of Law's request reflects these moneys as reappropriated funds. Reappropriated funds are essentially duplicative appropriations, reflecting sources of funds that are appropriated more than once for a fiscal year. As these funds would not be appropriated more than once for FY 2012-13, staff recommends appropriating the requested funds as cash funds to the Department of Law.

Overall Staff Recommendation for Line Item. The following table details staff's overall recommendation for the Personal Services line item.

LSSA, Personal Services	Total	CF	RF	FTE
FY 2011-12 Long Bill	\$19,473,569	\$1,659,140	\$17,814,429	226.6
S.B. 11-076	(451,303)	0	(451,303)	0.0
Other legislation	<u>1,478,627</u>	<u>0</u>	<u>1,478,627</u>	<u>11.2</u>
FY 2011-12 Appropriation	20,500,893	1,659,140	18,841,753	237.8
Reinstate FY 2011-12 reduction in employer's PERA contribution (S.B. 11-076)	451,303	0	451,303	0.0
Salary Survey awarded in FY 2011-12	0	0	0	0.0
Performance-based Pay awarded in FY 2011-12	0	0	0	0.0
2.0 percent base personal services reduction - Department's alternative plan	(450,000)	0	(450,000)	0.0
R-4: Add Deputy Attorney General	139,196	0	139,196	1.0

LSSA, Personal Services	Total	CF	RF	FTE
Salary and FTE adjustments to provide needed number of legal service hours	(69,602)	0	(69,602)	(1.0)
Fund source adjustment	0	(1,405,820)	1,405,820	0.0
FY 2012-13 Recommendation	20,571,790	253,320	20,318,470	237.8
FY 2012-13 Request	21,278,344	1,671,962	19,606,382	240.3
Recommendation - Request	(706,554)	(1,418,642)	712,088	(2.5)

Staff's recommendation is lower than the request due to the \$450,000 base reduction, and due Committee actions on other departments' budget requests that have reduced the number of hours of legal services that will need to be provided in FY 2012-13.

In addition, staff is recommending a relatively large fund source adjustment. The existing appropriation reflects revenues earned from higher education institutions and state veterans nursing homes as cash funds. While these entities do not receive an appropriation specifically designated for the purchase of legal services, the annual Long Bill does reflect the funds that these entities use to purchase legal services. As these amounts are duplicated in the Department of Law's budget, staff recommends reflecting them as reappropriated funds. The dollar amount of the fund source adjustment is based on the Department of Law's estimate of revenues that will be earned from entities for which there is not a corresponding appropriation (a total of \$280,320 for the Personal Services, and Operating and Litigation line items).

Operating and Litigation.

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

Request. The Department requests \$1,677,307 reappropriated funds for FY 2012-13. The request is impacted by annualization of funding provided for FY 2011-12, R-4 (discussed above), a request submitted by the Governor's Office of Information Technology to increase its funding for legal services (NPI-2), a request submitted by the Governor's Energy Office to increase its funding for legal services (NPI-3), and a request submitted by the Department of Law on behalf of the State Board of Land Commissioners (BA-1).

Recommendation. **Staff recommends appropriating \$1,577,307 for FY 2012-13.** The following table details staff's overall recommendation for the line item.

LSSA Operating and Litigation	Total	CF	RF
FY 2011-12 Appropriation	\$1,643,735	\$0	\$1,643,735
Out-year impact of 2011 legislation	(11,603)	0	(11,603)
2.0 percent base personal services reduction - Department's alternative plan	(100,000)	0	(100,000)
R-4: Add Deputy Attorney General	7,832	0	7,832

LSSA Operating and Litigation	Total	CF	RF
JBC action on Governor's Energy Office request	6,587	0	6,587
JBC action on Governor's Office of Information Technology request	3,500	0	3,500
Staff recommendation on BA-1 (Lowry Range legal services)	27,256	27,256	0
FY 2012-13 Recommendation	1,577,307	27,256	1,550,051
FY 2012-13 Request	1,677,307	0	1,677,307
Recommendation - Request	(100,000)	27,256	(127,256)

Staff's recommendation is lower than the request due to the \$100,000 base reduction

CALCULATION OF THE LEGAL SERVICES RATES

Once the cost of operating the LSSA division has been determined, this cost must be translated into billing rates that will cover these costs. As indicated above, attorneys bill at a uniform rate and legal assistants bill at a different, uniform rate. These rates can be calculated by separating them into elements:

1. An "attorney" component that covers the salaries, PERA, and Medicare of the attorneys who supply the legal services;
2. A "legal assistant" component that pays the salaries, PERA and Medicare of the legal assistants who supply the legal services; and
3. A "common" component, that covers the LSSA section's other costs, such as support staff, Deputy Attorneys General, operating expenses, leased space, etc.

The following tables compute these components:

Attorney and Legal Assistant Components of the Legal Services Rates			
	a = Salary and related costs	b = Hours billed	^a / _b = Attorney or Legal Assistant component of legal rate
Attorneys	\$16,363,899	309,496	\$52.87
Legal Assistants	2,461,640	65,160	\$37.78

Common Component of the Legal Services Rates		
	Total cost of running the LSSA division	\$28,819,596
	- Salary and related costs of attorneys	(16,363,899)
	<u>- Salary and related costs of legal assistants</u>	<u>(2,461,640)</u>
a	= Common Costs	9,994,057
b	Total hours billed by attorneys and legal assistants	374,656
^a / _b	= Common costs per billed hour	
	= Common component of legal rate	\$26.68

The total cost of running the LSSA division includes allocations of centrally appropriated items as well as indirect cost recoveries from the LSSA division.

The hourly legal rates are then computed as follows:

$$\begin{aligned}
 \text{Attorney billing rate} &= \text{Attorney component} + \text{Common component} \\
 &= \$52.87 + \$26.68 \\
 &= \$79.55 \text{ per hour}
 \end{aligned}$$

$$\begin{aligned}
 \text{Legal Assistant billing rate} &= \text{Legal Assistant component} + \text{Common component} \\
 &= \$37.78 + \$26.68 \\
 &= \$64.45 \text{ per hour}
 \end{aligned}$$

The blended legal rate, which is used to convert appropriations of hours into equivalent dollar appropriations for the Long Bill, is then a weighted average of the attorney and legal assistant rates:

$$\begin{aligned}
 &\text{Attorney hourly billing rate} * \text{Proportion of total hours billed by attorneys} \\
 + &\text{Paralegal hourly billing rate} * \text{Proportion of total hours billed by legal assistants} \\
 \hline
 = &\text{Blended legal rate} \\
 = &\mathbf{\$76.92 \text{ per hour}}
 \end{aligned}$$

This represents a \$1.21 per hour increase (1.6 percent) compared to the FY 2011-12 blended legal rate of \$75.71. The increase reflects increased costs for employee benefits, and other factors. The following table provides a recent history of the blended rate applicable for each fiscal year.

Blended Legal Rate					
Fiscal Year	Hourly Rate	Annual % Change	Fiscal Year	Hourly Rate	Annual % Change
2001-02	\$58.43		2007-08	\$72.03	6.3%
2002-03	\$59.80	2.3%	2008-09	\$75.10	4.3%
2003-04	\$60.79	1.7%	2009-10	\$75.38	0.4%
2004-05	\$61.57	1.3%	2010-11	\$73.37	-2.7%
2005-06	\$64.45	4.7%	2011-12	\$75.71	3.2%
2006-07	\$67.77	5.2%	2012-13 estim.	\$76.92	1.6%

Please note that for purposes of this document, staff has calculated the blended legal rate before the Committee has approved some of the appropriations that are used in the computation; in these instances, staff has used either the figures recommended by JBC staff or the amount requested by the Department. **Staff requests permission to modify the blended legal rate, using the technique described above, to take into account any changes in cost components of the rate that the Committee may subsequently approve.**

Indirect Cost Assessment.

Description. 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 \$2,935,070 for FY 2012-13.

Recommendation. **Staff recommends appropriating \$2,957,773 for FY 2012-13, based on recommendations in this packet and estimates of pending items.** However, staff requests permission to adjust these amounts as necessary once all common policies have been finalized by the Committee.

(3) CRIMINAL JUSTICE AND APPELLATE

This Long Bill section provides funding for Department staff who:

- investigate and prosecute certain complex and multi-jurisdictional cases, environmental crimes, and foreign prosecutions;
- investigate and prosecute Medicaid provider fraud and patient abuse;
- investigate and prosecute securities, insurance, and workers' compensation fraud;
- provide investigative and prosecutorial support to district attorneys for certain homicide cases;

- 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, which certifies and helps to train peace officers appointed by state and local law enforcement agencies. Finally, this section provides funding to support the Executive Director of Safe2Tell, a program that collects anonymous reports concerning student safety.

Please note that organizationally, the Deputy Attorney General for the Criminal Justice section oversees the activities of the staff who are funded through this Long Bill section, as well as the staff who are funded through the Legal Services to State Agencies (LSSA) Long Bill section and who provide legal services to the Department of Public Safety.

Special Prosecutions Unit.

Description. 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 line item is supported by General Fund, cash funds, and reappropriated funds, as described below.

General Fund supports the investigation and prosecution of the following types of crimes and activities:

- *Complex Crimes* - a wide variety of criminal activity including methamphetamine rings, auto theft rings, white collar crime, and tax fraud;
- *Criminal Activity by Gangs* - cases under the Colorado Organized Crime Control Act, which is similar to federal racketeering laws;
- *Environmental Crimes* - illegal discharge and disposal of hazardous waste;
- *Foreign Prosecutions* - foreign nationals who commit murder and other crimes in Colorado and subsequently flee to Mexico. Typically these individuals are prosecuted, convicted, and sentenced to prison in Mexico, even though the crimes were committed in Colorado. These prosecutions require specialized knowledge and resources that are usually lacking in the offices of local district attorneys; and
- *Multi-jurisdictional cases* - cases that 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 jurisdictions.

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 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.

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 and payments received from Pinnacol Assurance.

Finally, the investigation and prosecution of securities fraud is supported by cash funds from the Division of Securities Cash Fund that are initially appropriated to the Division of Securities, Department of Regulatory Agencies, and are then transferred to the Department of Law pursuant to Section 11-51-603.5, C.R.S.

The following table provides a staffing overview for this line item.

Staffing Summary Special Prosecutions Unit	FY 10-11 Actual	FY 11-12 Approp.	FY 12-13 Request	FY 12-13 Recommend.
Attorneys	12.0	12.0	12.0	12.0
Investigators	11.2	12.0	12.0	12.0
Administrative Staff	5.3	6.5	6.5	6.5
Total	28.5	30.5	30.5	30.5

FY 2011-12 Supplemental Request. The Department submitted a supplemental request March 5, 2012 to cover the retirement payouts for a long-term employee who will be retiring May 31, 2012. Specifically, **the Department is requesting a one-time appropriation of \$29,814 General Fund in FY 2011-12 to cover the required costs of accumulated annual, sick, and compensatory leave** (along with the associated PERA contributions). This payout must be paid within FY 2011-12.

FY 2011-12 Supplemental Recommendation. **Staff recommends approving the request.** In FY 2011-12, the General Fund portion of this line item appropriation was reduced by 14.0 percent, including the shift of \$166,276 to the Division of Securities Cash Fund and a \$54,694 base reduction. As a result, this line item does not have excess General Fund available to cover this payout. In addition, given the timing of the retirement, the Department cannot offset the payout by leaving the Criminal Investigator position vacant.

It also does not appear likely that the Department would be able to shift General Fund resources from other areas of the budget to offset this expense – particularly at this point in the fiscal year. More than a quarter of the Department’s General Fund appropriation is for the State’s contribution for district attorney salaries. With one exception, the other units that are supported by General Fund sustained base reductions of 1.5 percent (and in some cases more) in FY 2011-12. The Safe2Tell appropriation, which was not reduced in FY 2011-12, is currently insufficient to cover the costs of Safe2Tell.

FY 2012-13 Request. The Department requests an appropriation of \$2,830,320 and 30.5 FTE for FY 2012-13.

FY 2012-13 Recommendation. **Staff recommends approving the request,** as detailed in the following table.

Special Prosecutions Unit	Total	GF	CF	RF	FF	FTE
FY 2011-12 Long Bill	\$2,830,320	\$1,391,287	\$879,039	\$559,994	\$0	30.5
S.B. 11-076	<u>(56,055)</u>	<u>(31,984)</u>	<u>(17,328)</u>	<u>(6,743)</u>	<u>0</u>	<u>0.0</u>
FY 2011-12 Appropriation	2,774,265	1,359,303	861,711	553,251	0	30.5
Reinstate FY 2011-12 reduction in employer's PERA contribution (S.B. 11-076)	56,055	31,984	17,328	6,743	0	0.0
Salary Survey awarded in FY 2011-12	0	0	0	0	0	0.0
Performance-based Pay awarded in FY 2011-12	0	0	0	0	0	0.0
2.0 percent base personal services reduction	0	0	0	0	0	0.0
FY 2012-13 Recommendation	2,830,320	1,391,287	879,039	559,994	0	30.5
FY 2012-13 Request	2,830,320	1,391,287	879,039	559,994	0	30.5
Recommendation - Request	0	0	0	0	0	0.0

Auto Theft Prevention Grant.

Description. 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 2011-12). 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 a continuation level of funding for FY 2012-13 (\$239,075 and 2.0 FTE).

Recommendation. **Staff recommends approving the request. Staff does not recommend applying a 2.0 percent base personal services reduction to this line item.** Please note that this line item reflects all costs associated with the grant, including employee benefits.

Appellate Unit.

Description. 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

courts [see Section 24-31-101 (1) (a), C.R.S.]. 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.

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 2010-11, the Unit activated 1,050 new appeals; these appeals were filed by the Office of the State Public Defender (35.7 percent), private attorneys and attorneys who are paid by the Office of the Alternate Defense Counsel (33.4 percent), and *pro se* defendants (30.9 percent). In some cases, the Appellate Unit will take the offensive and seek certiorari review in the 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 FY 2010-11, the 28 attorneys in this unit filed 1,021 briefs, and argued 117 cases before the appellate court. This portion of the Appellate Unit is funded by General Fund and indirect cost recoveries.

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) Fund, which is established in Section 24-33.5-506 (1), C.R.S., and is administered by the Department of Public Safety's Division of Criminal Justice. Currently, this position is supported by \$72,651 in VALE funds and \$10,203 General Fund.

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.]

The following table provides a staffing overview for this line item.

Staffing Summary Appellate Unit	FY 10-11 Actual	FY 11-12 Approp.	FY 12-13 Request	FY 12-13 Recommend.
Attorneys	27.9	28.0	28.0	28.0
Victims' Services Coordinator	1.0	1.0	1.0	1.0
Administrative Staff	2.7	3.0	3.0	3.0
Total	31.6	32.0	32.0	32.0

Deferred implementation of H.B. 07-1054. Pursuant to H.B. 07-1054, the number of Colorado Appellate Court judgeships was increased from 19 to 22 in FY 2008-09. The Legislative Council Staff Fiscal Note for this bill anticipated that the Department's Appellate Unit would require an additional 2.0 FTE in FY 2008-09 (\$160,334 General Fund) and another 3.0 FTE (\$259,545 General Fund) 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 Department did receive the additional 2.0 FTE in FY 2008-09, the Department proposed delaying and phasing in the remaining 3.0 FTE, adding 1.0 FTE annually in FY 2009-10, FY 2010-11, and FY 2011-12. The General Assembly approved the additional 1.0 FTE for FY 2009-10 at a cost of \$86,515 General Fund. During the 2010 session, the Department requested that the remaining 2.0 FTE be deferred until the state's fiscal situation recovers enough to support the required appropriation.

Request. The Department requests \$2,703,455 and 32.0 FTE for this line item. The request is impacted by R-5 (discussed below).

R-5: Reinstate 1.5 percent Appellate Base Reduction

The Department requests \$37,428 General Fund for the Appellate Unit to restore the 1.5 percent base reduction that was taken in the FY 2011-12 Long Bill. The restored funding would allow the Department to provide modest salary increases for some of the attorneys within the Appellate Unit.

The Appellate Unit is primarily supported by General Fund, and has subsequently sustained various across-the-board funding reductions over the last decade. As a result, existing funding levels do not allow the unit to remain fully staffed (thus managing its caseload) and to provide salary increases to experienced, dedicated attorneys that are more in line with salaries in other areas of the Department.

Specifically, the average salaries for Appellate Unit attorneys are currently 5.1 to 20.7 percent lower than the averages for the Department. The average salary for the most junior attorneys in this unit (Assistant Attorneys General) is \$4,614 or 15.7 percent above the minimum salary; for the Department as a whole, the average salary for these attorneys is 27.5 percent above the minimum salary. This unit thus has a high turnover rate relative to other areas of the Department (18.5 percent). Attorneys who leave this unit generally leave for higher paying positions in other areas of the Department or in the private sector.

While the Department acknowledges that approval of this request will not resolve the salary discrepancies between the Appellate Unit and other areas of the Department, it should assist in improving employee morale and reducing turnover. This will help protect the knowledge base within the Unit, allowing the Unit to better represent the State in felony conviction appeals.

Recommendation. Staff recommends approving the request. For FY 2011-12, the General Assembly reduced base appropriations for the Department by a total of \$569,870, including \$111,369 General Fund. This request would restore \$37,428 (6.6 percent) of this base reduction.

Staff primarily recommends approving the request due to concerns about the growing backlog of appellate cases. The appellate backlog measures the number of cases in which the Appellate Unit has received opening briefs from the defense, and for which the appellate attorneys must file answer briefs. The Colorado Appellate Rules provide that answer briefs are to be filed 35 days after service of the opening brief. Most of our answer briefs are delayed a minimum of 140 days beyond the original due date, with many of the larger cases delayed far beyond that. The Unit indicates that a backlog of less than 100 cases is manageable. As detailed in the table below, the appellate backlog increased steadily from FY 2006-07 to FY 2009-10. The Unit ended FY 2010-11 with 398 cases in the backlog. However, the Unit indicated that six months into FY 2011-12, the backlog had increased to 467.

Appellate Unit - Case Statistics				
Fiscal Year	Opening Briefs Received	Answer Briefs Filed	Expedited Docket /a	Case Backlog
2006-07	951	973	46	258
2007-08	979	865	98	270
2008-09 /b	1,240	1,029	82	395
2009-10	1,152	1,054	59	434
2010-11	1,050	1,021	62	398

a/ Began March 1, 2007.

The Department has identified two primary reasons for the growing backlog:

- *Staff turnover.* Given available resources for the unit, appellate attorneys are hired at the bottom of the pay scale. Due to a high rate of turnover within the Unit, well over a third of the appellate attorneys have been employed by the Department less than three and a half years, and they are all still making entry level pay. Those attorneys with a few years experience have been leaving for higher paying positions. For each experienced attorney that leaves, the Unit must spend significant senior attorney time on hiring and training a replacement so that it can continue to provide the best representation possible. This reduces the Unit's ability to process cases quickly and effectively.

- *Increase in Private Counsel Cases.* From FY 2000-01 through FY 2007-08, private counsel cases averaged 276/year. In FY 2008-09, that number increased to 459, and has remained in the mid-300s in the last two fiscal years.

Staff notes that the appellate backlog has been a concern for more than a decade. In FY 2000-01, the General Assembly significantly increased staffing for the appellate unit (adding nine attorneys and one support staff person) to address the growing caseload and the case backlog. 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.

The FY 2000-01 appropriation supported 28 attorneys; this staffing level was intended to handle an annual caseload of up to 1,000, and reduce its backlog (estimated at 150 at that time). Subsequently, 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, legislation increased the number of judges, including adding a total of six judges for the Court of Appeals⁷. To date, the Department of Law’s Appellate Unit has received funding to add four of the six attorneys anticipated to be required based on this legislation. 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.

Appellate Unit - Staffing					
Fiscal Year	Attorneys	Admin. Staff	Victims' Services	Total Staff	Notes
2001-02	28.0	3.0		31.0	
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	0.3 FTE (mid-year) added to address backlog
2006-07	25.0	3.0		28.0	Annualization of staff added in FY 2005-06; 1.0 FTE (of 1.0 FTE total) added per H.B. 06-1028 (judges bill)
2007-08	27.0	3.0		30.0	2.0 FTE (of 5.0 FTE total) added per H.B. 07-1054 (judges bill)
2008-09 /b	27.0	3.0		30.0	
2009-10	28.0	3.0		31.0	1.0 FTE (of 5.0 FTE total) added per H.B. 07-

⁷ House Bill 06-1028 added three judges to the Court of Appeals and four county court judges. House Bill 07-1054 added a total of 43 judges over a three-year period, including three judges for the Court of Appeals.

Appellate Unit - Staffing					
Fiscal Year	Attorneys	Admin. Staff	Victims' Services	Total Staff	Notes
					1054 (judges bill)
2010-11	28.0	3.0	1.0	32.0	
2011-12	28.0	3.0	1.0	32.0	

In addition, this unit has experienced base funding reductions in four of the last five fiscal years. While some of these base reductions have been temporary, others have reduced funding by a total of \$69,329. Approval of R-5 would restore a little over half of the cumulative base reduction. While the requested funding will not address the staffing shortfall, it should allow the Unit to begin closing the gap in average salaries paid in the Appellate Unit compared to other areas of the Department.

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
	(69,329)	Net base reduction since FY 2006-07

The following table details staff's overall recommendation for the Appellate Unit line item.

Appellate Unit	Total	GF	CF	RF	FF	FTE
FY 2011-12 Long Bill	\$2,666,027	\$2,278,605	\$0	\$387,422	\$0	32.0
S.B. 11-076	(54,234)	(54,234)	0	0	0	0.0
FY 2011-12 Appropriation	2,611,793	2,224,371	0	387,422	0	32.0
Reinstate FY 2011-12 reduction in employer's PERA contribution (S.B. 11-076)	54,234	54,234	0	0	0	0.0
Salary Survey awarded in FY 2011-12	0	0	0	0	0	0.0
Performance-based Pay awarded in FY 2011-12	0	0	0	0	0	0.0
2.0 percent base personal services reduction	0	0	0	0	0	0.0
VALE funds adjustment (to reflect actual FY 2011-12 contract amount)	0	3,523	0	(3,523)	0	0.0
Indirect cost recoveries adjustment	0	(134,933)	0	134,933	0	0.0
R-5: Reinstate 1.5 percent appellate base reduction	37,428	37,428	0	0	0	0.0
FY 2012-13 Recommendation	2,703,455	2,184,623	0	518,832	0	32.0

Appellate Unit	Total	GF	CF	RF	FF	FTE
FY 2012-13 Request	2,703,455	2,197,268	0	506,187	0	32.0
Recommendation - Request	0	(12,645)	0	12,645	0	0.0

Please note that the above table includes an indirect cost 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 adjustment as necessary once indirect cost assessments and Administration appropriations are finalized.**

Medicaid Fraud Control Unit.

Description. 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 and patient abuse⁸. 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. The Unit cooperates and coordinates with several entities, including district attorneys, the Department of Health Care Policy and Financing, 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. Federal and state laws require that a state’s fraud program be independent of the Department of Health Care Policy and Financing, 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.

Although the federal government pays 75 percent of the Unit’s operating costs, the State retains at least 50 percent of the recovered funds⁹. 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.

The following table provides a staffing overview for this line item.

⁸ Fraud committed by Medicaid clients is investigated by county departments of human services.

⁹ 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.

Staffing Summary Medicaid Fraud Grant	FY 10-11 Actual	FY 11-12 Approp.	FY 12-13 Request	FY 12-13 Recommend.
Attorneys	2.8	3.0	3.0	3.0
Criminal Investigators	8.9	10.0	10.0	10.0
Auditor	1.0	1.0	1.0	1.0
Health Professional	0.3	1.0	1.0	1.0
Legal Assistants/ Administrative Staff	2.0	2.0	2.0	2.0
Total	15.0	17.0	17.0	17.0

Request. The Department requests \$1,579,511 and 17.0 FTE for this line item.

Recommendation. **Staff recommends approving the request**, as detailed in the following.

Medicaid Fraud Control Unit	Total	GF	CF	RF	FF	FTE
FY 2011-12 Long Bill	\$1,579,511	\$394,876	\$0	\$0	\$1,184,635	17.0
S.B. 11-076	<u>(30,537)</u>	<u>(7,634)</u>	<u>0</u>	<u>0</u>	<u>(22,903)</u>	<u>0.0</u>
FY 2011-12 Appropriation*	1,548,974	387,242	0	0	1,161,732	17.0
Reinstate FY 2011-12 reduction in employer's PERA contribution (S.B. 11-076)	30,537	7,634	0	0	22,903	0.0
Salary Survey awarded in FY 2011-12	0	0	0	0	0	0.0
Performance-based Pay awarded in FY 2011-12	0	0	0	0	0	0.0
2.0 percent base personal services reduction	0	0	0	0	0	0.0
FY 2012-13 Recommendation	1,579,511	394,876	0	0	1,184,635	17.0
FY 2012-13 Request	1,579,511	394,876	0	0	1,184,635	17.0
Recommendation - Request	0	0	0	0	0	0.0

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

Description. 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 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 and regulates peace officer training academies [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 \$2,683,620 and 7.0 FTE for this line item.

Recommendation. **Staff recommends appropriating \$2,608,620 cash funds and 7.0 FTE for FY 2012-13.** Staff's recommendation is \$75,000 lower than the Department request, as it reflects the Department's proposed reduction of \$75,000 as an alternative to the across-the-board 2.0 percent

base personal services reduction. The Department indicates that this reduction will not affect the staffing of this unit or compromise the value of the contracts to the various grant recipients. The following table details staff's overall recommendation for the line item.

The following table details staff's overall recommendation for the line item.

P.O.S.T. Board	Total	GF	CF	RF	FF	FTE
FY 2011-12 Long Bill	\$2,683,620	\$0	\$2,683,620	\$0	\$0	7.0
S.B. 11-076	<u>(8,920)</u>	<u>0</u>	<u>(8,920)</u>	<u>0</u>	<u>0</u>	<u>0.0</u>
FY 2011-12 Appropriation*	2,674,700	0	2,674,700	0	0	7.0
Reinstate FY 2011-12 reduction in employer's PERA contribution (S.B. 11-076)	8,920	0	8,920	0	0	0.0
Salary Survey awarded in FY 2011-12	0	0	0	0	0	0.0
Performance-based Pay awarded in FY 2011-12	0	0	0	0	0	0.0
2.0 percent base personal services reduction - Department's alternative plan	(75,000)	0	(75,000)	0	0	0.0
FY 2012-13 Recommendation	2,608,620	0	2,608,620	0	0	7.0
FY 2012-13 Request	2,683,620	0	2,683,620	0	0	7.0
Recommendation - Request	(75,000)	0	(75,000)	0	0	0.0

Safe2Tell.

Description. 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, which is operated by the Department of Public Safety's Denver Call Center, receives about 700 calls annually. Tips received at the Call Center 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) non-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 at two other full time employees who are not do not state employees. In FY 2009-10, the General Assembly approved a request to transfer the program to the Department of Law.

Request. The Department requests \$100,686 and 1.0 FTE for this line item.

Recommendation. **Staff recommends approving the request,** as detailed in the following table.

Safe2Tell	Total	GF	CF	RF	FF	FTE
FY 2011-12 Long Bill	\$100,686	\$100,686	\$0	\$0	\$0	1.0
S.B. 11-076	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.0</u>
FY 2011-12 Appropriation	100,686	100,686	0	0	0	1.0
Reinstate FY 2011-12 reduction in employer's PERA contribution (S.B. 11-076)	0	0	0	0	0	0.0
Salary Survey awarded in FY 2011-12	0	0	0	0	0	0.0
Performance-based Pay awarded in FY 2011-12	0	0	0	0	0	0.0
2.0 percent base personal services reduction	0	0	0	0	0	0.0
FY 2012-13 Recommendation	100,686	100,686	0	0	0	1.0
FY 2012-13 Request	100,686	100,686	0	0	0	1.0
Recommendation - Request	0	0	0	0	0	0.0

Indirect Cost Assessment.

Description. 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 \$443,402 for FY 2012-13.

Recommendation. **Staff recommends appropriating \$443,112 for FY 2012-13, based on recommendations in this packet and estimates of pending items.** However, staff requests permission to adjust these amounts as necessary once all common policies have been finalized by the Committee.

(4) WATER AND NATURAL RESOURCES

This Long Bill section provides funding for Department staff who work to 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 wastes, and protection of the state's air and water.

Please note that organizationally, the Deputy Attorney General for the Water and Natural Resources section oversees the activities of the staff who are funded through this Long Bill section, as well as the staff who are funded through the Legal Services to State Agencies (LSSA) Long Bill section and who provide legal services to the Department of Natural Resources and the Department of Public

Health and Environment related to environmental quality, water resources, state lands, and hazardous and solid waste.

Federal and Interstate Water Unit.

Description. 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 the Endangered Species Act. 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.

The following table provides a staffing overview for this line item.

Staffing Summary Federal and Interstate Water Unit	FY 10-11 Actual	FY 11-12 Approp.	FY 12-13 Request	FY 12-13 Recommend.
Attorneys	4.5	4.5	4.5	4.5
Legal Assistants	1.0	1.0	1.0	1.0
Total	5.5	5.5	5.5	5.5

Request. The Department requests \$513,883 and 5.5 FTE for this line item.

Recommendation. **Staff recommends approving the request,** as detailed in the following table.

Federal and Interstate Water Unit	Total	GF	CF	RF	FF	FTE
FY 2011-12 Long Bill	\$513,883	\$513,883	\$0	\$0	\$0	5.5
S.B. 11-076	<u>(11,724)</u>	<u>(11,724)</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.0</u>
FY 2011-12 Appropriation	502,159	502,159	0	0	0	5.5
Reinstate FY 2011-12 reduction in employer’s PERA contribution (S.B. 11-076)	11,724	11,724	0	0	0	0.0
Salary Survey awarded in FY 2011-12	0	0	0	0	0	0.0
Performance-based Pay awarded in FY 2011-12	0	0	0	0	0	0.0
2.0 percent base personal services reduction	0	0	0	0	0	0.0
FY 2012-13 Recommendation	513,883	513,883	0	0	0	5.5
FY 2012-13 Request	513,883	513,883	0	0	0	5.5
Recommendation - Request	0	0	0	0	0	0.0

Defense of the Colorado River Basin Compact.

Description. 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 major tasks for the staff who are supported by this line item include:

- Researching issues relevant to potential litigation;
- Maintaining a litigation database of the voluminous documents related to the Colorado River;
- Assisting the State Engineer with rules related to any in-state curtailment of water rights resulting from a Colorado River Compact call; and
- Preparing the state to fully participate in ongoing negotiations with the other states that are signatories to the Colorado River Compact, various federal agencies, and the Republic of Mexico.

The following table provides a staffing overview for this line item.

Staffing Summary Defense of the Colorado River Basin Compact	FY 10-11 Actual	FY 11-12 Approp.	FY 12-13 Request	FY 12-13 Recommend.
Attorneys	1.9	2.0	2.0	2.0
Legal Assistants	1.1	1.0	1.0	1.0
Total	3.0	3.0	3.0	3.0

Request. The Department requests \$335,198 and 3.0 FTE for this line item. The Department is currently utilizing this funding for water resource engineers, including some specializing in computer modeling, who are conducting studies that will help the Department better understand the Compacts and the river. This information will enhance the quality of future decisions and will serve as an input during negotiations involving the Colorado River. There are three immediate goals:

- Develop options for implementing Articles III through VI of the Upper Colorado River Basin Compact, which deal with allocations, curtailment, storage, and consumptive use;
- Determine how recently negotiated additions to the United States-Mexico Water Treaty of 1944 affect Colorado's ability to utilize its compact entitlements.
- Conduct a basin study that explores different water supply and demand possibilities, and the technical and legal implications of various strategies that Colorado could pursue to deal with these possibilities.

Recommendation. **Staff recommends approving the request,** as detailed in the following table.

Defense of the Colorado River Basin Compact	Total	GF	CF	RF	FF	FTE
FY 2011-12 Long Bill	\$335,198	\$0	\$335,198	\$0	\$0	3.0
S.B. 11-076	(4,278)	0	(4,278)	0	0	0.0
FY 2011-12 Appropriation	330,920	0	330,920	0	0	3.0
Reinstate FY 2011-12 reduction in employer's PERA contribution (S.B. 11-076)	4,278	0	4,278	0	0	0.0

Defense of the Colorado River Basin Compact	Total	GF	CF	RF	FF	FTE
Salary Survey awarded in FY 2011-12	0	0	0	0	0	0.0
Performance-based Pay awarded in FY 2011-12	0	0	0	0	0	0.0
2.0 percent base personal services reduction	0	0	0	0	0	0.0
FY 2012-13 Recommendation	335,198	0	335,198	0	0	3.0
FY 2012-13 Request	335,198	0	335,198	0	0	3.0
Recommendation - Request	0	0	0	0	0	0.0

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.

Description. 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) for this line item.

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

Consultant Expenses.

Background Information - Arkansas River Litigation. 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 is in the process of shifting the work in-house, though outside council is still required when complex issues arise.

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

Request. The Department requests a continuation level of funding (\$400,000) for this line item.

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).

Description. This line item provides funding for the Department's CERCLA Litigation Unit, which handles the legal work for ten 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 Department of Public Health and Environment (DPHE), providing legal advice helping DPHE 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. Since FY 1986-87, the CERCLA Litigation Unit has recovered a total of \$106.9 million, including \$28.4 million for the General Fund and \$16.1 million for the Hazardous Substance Response Fund.

During the second phase of a CERCLA case, the Department tries to win compensation from the polluter for "natural resource damages" – the environmental degradation that remains after remediation. Under CERCLA rules, any recovery that the State receives must be spent on the restoration, replacement, or acquisition of equivalent natural resources.

The following table provides a staffing overview for this line item.

Staffing Summary CERCLA	FY 10-11 Actual	FY 11-12 Approp.	FY 12-13 Request	FY 12-13 Recommend.
Attorneys	2.8	2.6	2.6	2.6
Legal Assistants	0.6	0.9	0.9	0.9
Total	3.4	3.5	3.5	3.5

Request. The Department requests \$460,629 and 3.5 FTE for this line item.

Recommendation. **Staff recommends appropriating \$410,629 reappropriated funds and 3.5 FTE for FY 2012-13.** Staff's recommendation is \$50,000 lower than the Department request, as it reflects the Department's proposed reduction of \$50,000 as an alternative to the across-the-board 2.0 percent base personal services reduction. The Department indicates that it does not anticipate utilizing its full appropriation for FY 2011-12, and this reduction should not compromise this unit's effectiveness. The following table details staff's overall recommendation for the line item.

CERCLA	Total	GF	CF	RF	FF	FTE
FY 2011-12 Long Bill	\$460,629	\$0	\$0	\$460,629	\$0	3.5
S.B. 11-076	<u>(7,947)</u>	<u>0</u>	<u>0</u>	<u>(7,947)</u>	<u>0</u>	<u>0.0</u>
FY 2011-12 Appropriation	452,682	0	0	452,682	0	3.5
Reinstate FY 2011-12 reduction in employer's PERA contribution (S.B. 11-076)	7,947	0	0	7,947	0	0.0
Salary Survey awarded in FY 2011-12	0	0	0	0	0	0.0
Performance-based Pay awarded in FY 2011-12	0	0	0	0	0	0.0
2.0 percent base personal services reduction - Department's alternative plan	(50,000)	0	0	(50,000)	0	0.0
FY 2012-13 Recommendation	410,629	0	0	410,629	0	3.5
FY 2012-13 Request	460,629	0	0	460,629	0	3.5
Recommendation - Request	(50,000)	0	0	(50,000)	0	0.0

This appropriation is supported by a transfer from DPHE from the Hazardous Substance Response Fund.

CERCLA Contracts.

Description. 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) for this line item.

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.

Description. 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. This project has been winding down for several years.

Request. The Department requests a continuation level of funding (\$50,000) for this line item.

Recommendation. **Staff recommends approving the request.** Please note, however, that pursuant to recent Committee action on the DPHE budget request, this appropriation will appear as reappropriated funds transferred from DPHE from the Hazardous Substance Response Fund in the FY 2012-13 Long Bill, consistent with other similar line items in this section.

Indirect Cost Assessment.

Description. 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 an appropriation of \$43,108 for FY 2012-13.

Recommendation. **Staff recommends appropriating \$43,080 for FY 2012-13, based on recommendations in this packet and estimates of pending items.** However, staff requests permission to adjust these amounts as necessary once all common policies have been finalized by the Committee.

(5) CONSUMER PROTECTION

This Long Bill section provides funding for Department staff who 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 the tobacco Master Settlement Agreement.

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

Consumer Protection and Anti-Trust.

Description. 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 (9.5 FTE¹⁰) 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 (9.5 FTE¹¹) 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 fraud¹². 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

¹⁰ This unit consists of 4.0 FTE attorneys, 1.0 FTE legal assistant, 1.0 FTE criminal investigator, and 3.5 FTE administrative staff.

¹¹ This unit consists of 5.0 FTE attorneys, 1.0 FTE legal assistant, 3.0 FTE investigators, and 0.5 FTE administrative staff. One of the attorneys and two of the investigators are supported by the Mortgage Company and Loan Originator Licensing Cash Fund; one of the attorneys is supported by tobacco settlement moneys.

¹² The Department of Regulatory Agencies is responsible for handling licensing and disciplinary issues, while this Department handles false advertising and litigation issues.

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 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 nonparticipating tobacco manufacturers.

In addition to the 19.0 FTE described above, this line item supports the Deputy Attorney General for the Consumer Protection section, and the Department’s Public Information Officer.

The cash funds for this line item are from:

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

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 provides a staffing overview for this line item.

Staffing Summary Consumer Protection and Anti-Trust	FY 10-11 Actual	FY 11-12 Approp.	FY 12-13 Request	FY 12-13 Recommend.
Attorneys (R-1)	9.7	10.0	11.0	11.0
Legal Assistants (R-1)	2.0	2.0	3.0	3.0
Investigators (R-1)	3.2	4.0	5.0	5.0
Administrative Staff (R-1)	4.8	5.0	7.0	7.0
Total	19.7	21.0	26.0	26.0

Request. The Department requests \$2,175,106 and 26.0 FTE for this line item. The request is impacted by R-1 (discussed below).

R-1: Consumer Protection Enhancement

The Department requests an increase of \$404,189 cash funds to add 5.0 FTE to address workload expansion and to support the efforts of the two units that are supported by this line item. The cash funds would come from custodial moneys received by the Attorney General.

First, the Department proposes a fund source adjustment to use General Fund to support 7.0 FTE existing (non-classified) attorneys¹³ involved in antitrust, consumer protection, or consumer fraud efforts (other than mortgage fraud efforts), and to use custodial cash funds to support 8.0 FTE existing classified personnel who are involved in these same efforts¹⁴. This shift would remove any perceived requirement for an attorney to support his or her position through custodial moneys received by the Department. This shift would also free up \$112,576 General Fund to support one new Assistant Attorney General (as described below), eliminating the need to request additional General Fund moneys.

Second, the Department proposes adding five FTE, including one Assistant Attorney General (supported by General Fund), and four classified staff (supported by custodial cash funds). The Department indicates that both units are experiencing increasing workload and litigation due to increases in both consumer complaints and deceptive businesses that either operate in Colorado or victimize Colorado consumers. The number of formal complaints filed with the Department, and the resulting lawsuits filed by the Department, are detailed in the following table.

Consumer Protection-related Workload Increases				
Year	Formal Complaints Filed with Department	Annual % Change	Number of Lawsuits Filed by Dept. to Enforce Consumer Protection Provisions /1	Annual % Change
2005	2,163		4	
2006	2,722	25.8%	6	50.0%
2007	2,275	-16.4%	6	0.0%
2008	2,969	30.5%	10	66.7%
2009	4,723	59.1%	14	40.0%
2010	6,462	36.8%	16	14.3%
2011	7,297	12.9%	11	-31.3%

1/ The Department indicates that in 2003 and 2004 the consumer protection staff were involved in extremely large and complex litigation against Janus and Invesco. These cases were ultimately settled for more than \$500 million. However, due to the workload associated with this litigation, fewer new cases were developed. Similarly, two major cases went to trial in early 2011, which impacted the number of case filings in 2011.

¹³ This figure excludes 3.0 FTE attorneys who are supported by the Consumer Protection and Anti-Trust line item: one Assistant Attorney General who enforces the tobacco master settlement agreement (and is thus supported by cash funds in the Tobacco Settlement Defense Account); one Assistant Attorney General who works on mortgage fraud cases (and is thus supported by moneys in the Mortgage Company and Loan Originator Licensing Cash Fund transferred from the Department of Regulatory Agencies); and the Deputy Attorney General who manages the consumer protection division (and who is supported by General Fund).

¹⁴ This figure excludes 3.0 FTE classified staff who are supported by the Consumer Protection and Anti-Trust line item: two investigators who work on mortgage fraud cases (and are thus supported by moneys transferred from the Department of Regulatory Agencies); and one public information officer (who is currently supported by custodial cash funds).

The Department indicates that most investigations of consumer complaints are fairly complex, involving numerous complainants, the review of thousands of pages of documents, and interviews and/or depositions with dozens of witnesses. Inadequate staffing can lead to bottlenecks throughout the investigation and prosecution process. The new staff would be utilized to address the existing bottlenecks, as follows:

- *Assistant Attorney General* - This position would increase the total number of attorneys for both units from nine to ten (excluding the Deputy Attorney General who manages the consumer protection section). Of the existing nine attorneys: two are managing attorneys with significant administrative and supervisory responsibilities; one is dedicated to enforcement of the tobacco master settlement agreement; and one is dedicated to mortgage and foreclosure related cases. Thus, this request seeks to increase the number of attorneys dedicated to general consumer protection and antitrust cases from five to six.
- *Criminal Investigator* - This position would increase the number of investigators available to both units from four to five, thereby reducing the number of cases per investigator (currently at 40), reducing the need for attorneys to conduct investigator activities, and reducing the time required to complete investigations.
- *Legal Assistant* - This position would increase the number of legal assistants supporting both units from two to three. Legal assistants manage documents and pleadings, and assist with case preparation, thereby allowing attorneys to focus on drafting pleadings and presenting evidence and arguments before the courts.
- *Administrative Assistants* - One position would increase from three to four the number of staff responsible for receiving, reviewing, and conducting preliminary investigations of incoming complaint calls and e-mails. The second position would increase the number of administrative staff supporting both units from one to two. Administrative assistants maintain case files, handle court filings, copy documents, prepare evidence and witness files, and handle correspondence. Adding this position will allow attorneys and legal assistants to focus on their own duties and improve the overall efficiency and productivity of both units.

The following table details the components of the request.

Summary of Decision Item R-1: Consumer Protection Enhancement				
	GF	CF	Total Funds	FTE
<u>Consumer Protection</u>				
Consumer Protection and Antitrust:				
Assistant Attorney General	\$78,624	\$0	\$78,624	1.0
Criminal Investigator I	0	66,900	66,900	1.0
Legal Assistant I	0	51,792	51,792	1.0
Administrative Assistant II	0	74,184	74,184	2.0

Summary of Decision Item R-1: Consumer Protection Enhancement				
	GF	CF	Total Funds	FTE
Subtotal: Annual Salaries	78,624	192,876	271,500	5.0
PERA and Medicare	<u>9,120</u>	<u>22,374</u>	<u>31,494</u>	
Total Personal Services	87,744	215,250	302,994	5.0
Litigation Expenses	17,000	0	17,000	
Operating Expenses (supplies and telephone)	950	3,800	4,750	
One-time Capital Outlay (office equipment, computer, and software)	<u>6,882</u>	<u>27,528</u>	<u>34,410</u>	
Total Operating Expenses and Capital Outlay	24,832	31,328	56,160	
Fund source adjustment: Support attorneys with General Fund and classified personnel with custodial cash funds	<u>(112,576)</u>	<u>112,576</u>	<u>0</u>	
TOTAL FOR LINE ITEM	0	359,154	359,154	5.0
<u>Administration</u>				
Health, Life, and Dental	0	28,400	28,400	0.0
Short-term Disability	0	481	481	0.0
Amortization Equalization Disbursement (AED)	0	8,688	8,688	0.0
Supplemental AED	0	7,466	7,466	0.0
Total Requested Changes	\$0	\$404,189	\$404,189	5.0

Recommendation. **Staff recommends approving the request. However,** consistent with Legislative Counsel Staff's fiscal note policy, **staff's recommendation excludes the \$45,035 requested for the four related employee benefits line items.** The Department can delay hiring the requested staff to cover these costs in FY 2012-13.

Over the last four years the number of consumer complaints filed with the Department has more than tripled, rising from 2,275 in 2007 to 7,297 in 2011. The additional staff will allow the Department to address this workload increase, and to improve the overall efficiency and productivity of the unit.

Staff agrees with the Department's proposal to use General Fund to support the attorneys involved in antitrust, consumer protection, or consumer fraud efforts (other than mortgage fraud efforts), and to use custodial cash funds to support the non-attorney staff who are involved in these same efforts. This shift would remove any perceived conflict of interest related to an attorney being supported by custodial moneys received by the Department as a result of his or her efforts.

Finally, staff notes that the requested appropriation increase is from 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 provided¹⁵.

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 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.

The Department indicates that it does not believe that legislative approval is necessary on expenses and FTE allocations within custodial funds. However, the Department 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.

The following table details staff’s overall recommendation for the Consumer Protection and Anti-trust line item.

Consumer Protection and Anti-Trust	Total	GF	CF	RF	FF	FTE
FY 2011-12 Long Bill	\$1,815,952	\$928,104	\$644,143	\$243,705	\$0	21.0
S.B. 11-076	<u>(34,271)</u>	<u>(19,506)</u>	<u>(9,991)</u>	<u>(4,774)</u>	<u>0</u>	<u>0.0</u>
FY 2011-12 Appropriation	1,781,681	908,598	634,152	238,931	0	21.0
Reinstate FY 2011-12 reduction in employer’s PERA contribution (S.B. 11-076)	34,271	19,506	9,991	4,774	0	0.0
Salary Survey awarded in FY 2011-12	0	0	0	0	0	0.0
Performance-based Pay awarded in FY 2011-12	0	0	0	0	0	0.0
2.0 percent base personal services reduction	0	0	0	0	0	0.0
R-1: Consumer Protection Enhancement	359,154	0	359,154	0	0	5.0
FY 2012-13 Recommendation	2,175,106	928,104	1,003,297	243,705	0	26.0
FY 2012-13 Request	2,175,106	928,104	1,003,297	243,705	0	26.0
Recommendation - Request	0	0	0	0	0	0.0

Finally, staff recommends renaming this line item Consumer Protection and *Antitrust* (removing the hyphen from antitrust).

¹⁵ 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.

Consumer Credit Unit.

Description. This appropriation supports the enforcement of seven state laws relating to consumer credit and debt collections. Pursuant to Section 5-6-103, C.R.S., the Attorney General designates an Assistant Attorney General 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* (12.5 FTE), 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". 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* (5.5 FTE), 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 licenses over 700 collection agencies, investigates complaints of unlawful activity, takes disciplinary action against agencies that violate the law, and provides consumers with self-help information about the law. 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 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 provides a staffing overview for this line item.

Staffing Summary Consumer Credit Unit	FY 10-11 Actual	FY 11-12 Approp.	FY 12-13 Request	FY 12-13 Recommend.
Administrator	1.0	1.0	1.0	1.0
Attorneys (R-2)	2.0	2.0	3.0	3.0
Compliance Investigators	2.0	2.0	2.0	2.0
Financial Credit Examiners	8.0	8.0	8.0	8.0
Legal Assistant (R-2)	1.0	1.0	2.0	2.0
Program Assistants	3.0	3.0	3.0	3.0
Administrative Assistant	1.0	1.0	1.0	1.0
Total	18.0	18.0	20.0	20.0

Request. The Department requests \$1,521,916 and 20.0 FTE for this line item. The request is impacted by R-2 (discussed below).

R-2: Consumer Credit Unit - Unlicensed Entities Compliance Effort

The Department requests \$181,560 cash funds (including \$154,326 from the Uniform Consumer Credit Code Cash Fund and \$27,234 from the Collection Agency Cash Fund) and 2.0 FTE to address workload expansion and to support the efforts of this unit.

The Department indicates that this unit is primarily experiencing increasing workload and litigation needs due to: (1) an increase in unlicensed entities offering products and services to Colorado citizens in violation of state law; and (2) legal challenges from some licensed entities. The requested staff will allow the Department to better protect consumers involved in lending, debt management, credit repair, and debt collection activities, and it will enable the Department to better support these industries by maintaining a level playing field for those companies that lawfully provide services in Colorado.

With respect to consumer credit companies, there has been a proliferation nationwide of unlicensed Internet payday lenders. These lenders claim that without a physical location in-state, they are not subject to a particular state’s laws. The Department disagrees with this assertion, and it has sought to have these lenders voluntarily license or follow state fee restrictions through litigation. In addition, some lenders may affiliate with Native American Indian tribally-owned companies, raising jurisdictional questions and making investigations complicated and time-consuming. The Department feels that it is important to investigate these matters so that all lenders are treated equally and comply with Colorado law. Over the last three years, the Department has sent investigation/

cease and desist advisory letters to 21 unlicensed payday lenders with no resolution. This unit lacks sufficient resources to issue subpoenas or file lawsuits against these companies.

With respect to debt collection companies, the Department indicates that this industry operates primarily on-line, with no physical locations in most states. It is becoming more common for companies to challenge or ignore the Department’s actions to acquire information, stop illegal activities, or obtain consumer restitution. The Department lists several ongoing and pending activities of this unit:

- pending compliance examinations on up to seven registered companies that are or will likely be contested and will likely require administrative disciplinary filings;
- ongoing investigations of nine unregistered companies that have never complied with the law;
- seven companies that have ignored voluntary inquiries need to be subpoenaed;
- two companies will require lawsuits to be filed in district court to obtain consumer restitution for violations of law;
- one collection agency is under investigation for continuing to collect debts after its license expired; and
- 50 companies were discovered online, contacted, and have refused to provide requested information about their Colorado activities.

The Department indicates that the unit’s two attorneys have full litigation caseloads with a total of 36 open cases and investigations. As a result, these attorneys spend virtually all of their time on litigation and do not have time to provide general counsel or legal advice, assist with rulemaking, or other non-litigation work. Thus, these attorneys have not had time to undergo a thorough review of federal law and rule changes to determine necessary changes to state laws and rules.

Finally, the Department has received increased complaints concerning credit repair companies. The Department is currently conducting ten investigations related to complaints received in 2010, and a major lawsuit against a credit repair company is currently in litigation following two years of preparation.

The Department indicates that the additional staff would allow this unit to handle 10 to 15 more investigations and cases each year. The following table details the components of the request.

Summary of Decision Item R-2: Consumer Credit Unit - Unlicensed Entities Compliance Effort				
	UCCC CF	CA CF	Total CF	FTE
<u>Consumer Protection</u>				
Consumer Credit Unit:				
Assistant Attorney General	\$66,830	\$11,794	\$78,624	1.0
Legal Assistant I	<u>44,023</u>	<u>7,769</u>	<u>51,792</u>	<u>1.0</u>
Subtotal: Annual Salaries	110,854	19,562	130,416	2.0
PERA and Medicare	<u>12,859</u>	<u>2,269</u>	<u>15,128</u>	

Summary of Decision Item R-2: Consumer Credit Unit - Unlicensed Entities Compliance Effort				
	UCCC CF	CA CF	Total CF	FTE
Total Personal Services	123,713	21,832	145,544	2.0
Litigation Expenses	4,250	750	5,000	
Operating Expenses (supplies and telephone)	1,615	285	1,900	
One-time Capital Outlay (office equipment, computer, and software)	<u>8,301</u>	<u>1,465</u>	<u>9,766</u>	
Total Operating Expenses and Capital Outlay	14,166	2,500	16,666	
TOTAL FOR LINE ITEM	137,879	24,332	162,210	2.0
<u>Administration</u>				
Health, Life, and Dental	9,656	1,704	11,360	0.0
Short-term Disability	196	35	231	0.0
Amortization Equalization Disbursement (AED)	3,547	626	4,173	0.0
Supplemental AED	3,048	538	3,586	0.0
Total Requested Changes	\$154,326	\$27,234	\$181,560	2.0

Recommendation. **Staff recommends approving the request. However,** consistent with Legislative Counsel Staff's fiscal note policy, **staff's recommendation excludes the \$19,350 requested for the four related employee benefits line items.** The Department can delay hiring the requested staff to cover these costs in FY 2012-13.

The requested staff will allow the Department to better protect consumers involved in lending, debt management, credit repair, and debt collection activities. It will also allow the Department to address the increase in unlicensed entities offering products and services to Colorado citizens, thereby maintaining a "level playing field" for those companies that lawfully provide services in Colorado.

The following table details staff's overall recommendation for the Consumer Credit Unit line item.

Consumer Credit Unit	Total	GF	CF	RF	FF	FTE
FY 2011-12 Long Bill	\$1,359,706	\$0	\$1,359,706	\$0	\$0	18.0
S.B. 11-076	<u>(28,499)</u>	<u>0</u>	<u>(28,499)</u>	<u>0</u>	<u>0</u>	<u>0.0</u>
FY 2011-12 Appropriation	1,331,207	0	1,331,207	0	0	18.0
Reinstate FY 2011-12 reduction in employer's PERA contribution (S.B. 11-076)	28,499	0	28,499	0	0	0.0
Salary Survey awarded in FY 2011-12	0	0	0	0	0	0.0
Performance-based Pay awarded in FY 2011-12	0	0	0	0	0	0.0
2.0 percent base personal services reduction	0	0	0	0	0	0.0
R-2: Consumer Credit Unit - Unlicensed Entities Compliance Effort	162,210	0	162,210	0	0	2.0
FY 2012-13 Recommendation	1,521,916	0	1,521,916	0	0	20.0

Consumer Credit Unit	Total	GF	CF	RF	FF	FTE
FY 2012-13 Request	1,521,916	0	1,521,916	0	0	20.0
Recommendation - Request	0	0	0	0	0	0.0

The fund sources are the Collection Agency Cash Fund and the Uniform Consumer Credit Code Cash Fund.

Indirect Cost Assessment.

Description. 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 an appropriation of \$468,035 for FY 2012-13.

Recommendation. **Staff recommends appropriating \$455,421 for FY 2012-13, based on recommendations in this packet and estimates of pending items.** However, staff requests permission to adjust these amounts as necessary once all common policies have been finalized by the Committee.

National Foreclosure Settlement.

As the Committee is aware, the Attorney General recently announced that Colorado has joined a multi-state settlement with the five largest national banks (Bank of America, JPMorgan Chase, Wells Fargo, Citi, and Ally) to end problematic business practices and to help distressed homeowners. The settlement will provide a total of \$204.6 million for Colorado, including:

- \$73.3 million that will be available to grant principle reductions on loans to make a modification possible. Approximately 40 percent of these funds will also be available to ease the effects of foreclosure, including waiving deficiency balances, enhanced cash-for-keys payments, and blight prevention;
- \$52.5 million for purposes such as foreclosure prevention, housing counseling services, additional legal services for distressed homeowners, promotion of loan modification opportunities, and anti-blight efforts;
- \$46.3 million worth of refinancing benefits to "underwater" borrowers; and
- \$32.5 million in payments to homeowners who lost their homes to foreclosure between January 1, 2008, and December 31, 2011.

Staff does not recommend reflecting any of these settlement funds in the FY 2012-13 Long Bill. The Attorney General's staff have indicated that these funds are custodial. The Consent Decree to be entered by the Court will direct that the settlement moneys are to be held in trust by the Attorney General and to be used for specific purposes (as outlined above).

Pursuant to Section 24-31-108 (3), C.R.S., the Attorney General is required to direct the State Treasurer in writing to place custodial moneys in a separate account, and to provide a copy of the written direction to the Joint Budget Committee. The written direction is required to set forth the basis for the Attorney General's determination that the moneys are custodial, and specify the manner in which the moneys will be expended. The written direction must be provided to the State Treasurer within 30 days after the moneys are paid to the Treasury. The Department does not know when the Court will enter the order, and thus is not sure when the moneys will be paid to the State (or over what period the settlement funds must be expended).

While custodial moneys may be indicated in the Long Bill for informational purposes, they are not subject to appropriation by the General Assembly. The Department of Law is required to provide with its annual budget request, however, an accounting of how custodial moneys have been or will be expended.

Staff does not recommend reflecting the settlement funds in the FY 2012-13 Long Bill for informational purposes because: it is unclear what portion of the funds will be spent in FY 2012-13; these funds are one-time, rather than ongoing; and these funds are unlikely to support activities that are similar to activities authorized in state statute.

(6) SPECIAL PURPOSE

This Long Bill section contains appropriations and programs that do not fit within the Department's other sections. The section often includes appropriations for large lawsuits.

District Attorneys' Salaries.

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

- The Department of Law's budget includes an appropriation for "District Attorneys' Salaries" (\$2,479,796 for FY 2011-12). This line item is described below.
- The Judicial Department's budget includes an appropriation for "District Attorney Mandated Costs" (\$2,198,494 for FY 2011-12) to reimburse DAs for costs incurred for prosecution of state matters (*e.g.*, witness fees and travel expenses, mailing subpoenas, service of process, and court reporter fees).

- 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 (\$144,108 for FY 2011-12).
- 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 2011-12).

Description. 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 (H.B. 07-1170), the General Assembly raised the statutory minimum salary for district attorneys over a four-year period. A judicial district may choose to pay a salary that exceeds the statutory minimum using local funds. The following table details the scheduled increases in the minimum salary pursuant to Section 20-1-301, C.R.S.

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

The State's contribution for district attorneys' salaries is provided through a General Fund appropriation to the Department of Law. This appropriation currently accounts for 26.4 percent of total General Fund appropriations to the Department. The following table shows recent expenditures and appropriations.

Fiscal Year	Annual Expenditure	Annual Increase	Cumulative Increase
2007-08	\$1,315,985	n/a	n/a
2008-09	1,654,605	\$338,620	\$338,620
2009-10	2,096,027	441,422	780,042
2010-11	2,263,229	167,202	947,244
2011-12 (appropriation)	2,479,796	216,567	1,163,811
2012-13 (request)	2,656,368	176,572	1,340,383

Request. The Department requests \$2,656,368 General Fund for FY 2012-13. The request reflects a full 12 months of funding \$104,000 of the minimum \$130,000 salary for each district attorney, plus \$16,744 for each district attorney for the associated employer contributions for PERA, PERA amortization equalization disbursement, and PERA supplemental amortization equalization disbursement.

Recommendation. **Staff recommends approving the request.** The calculation of this appropriation is detailed in the following table.

District Attorneys' Salaries	GF
\$104,000 base salary (80% of \$130,000) for 22 district attorneys	\$2,288,000
Employer's PERA contribution (10.15%)	232,232
PERA AED (3.0% for CY 2012; 3.4% for CY 2013)	73,216
PERA SAED (2.5% for CY 2012; 3.0% for CY 2013)	62,920
FY 2012-13 Recommendation	2,656,368
FY 2012-13 Request	2,656,368
Recommendation - Request	0

Please note that staff's recommendation does not include a 2.0 percent base personal services reduction. Pursuant to Section 11 of Article XII of the State Constitution states that the salary of a person holding any civil office under the state or any municipality cannot be increased or decreased during the term of office for which he/she was elected. Please note that since a district attorney is an elected public official with a four year term of office, this might seem to preclude the salary increases on the above schedule. However, according to the Office of Legislative Legal Services, an elected official's salary can be changed while in office according to a schedule of changes that has been approved before the term of office begins. Since all Colorado district attorneys stood for election in November 2008 and the above schedule of changes was in place prior to the election, the above schedule does not conflict with the Constitution.

This constitutional constraint means that the next opportunity to change the schedule of district attorney salaries will arise during the 2012 session, prior to the 2012 elections. Section 20-1-301 (c), C.R.S., requires the House and Senate Judiciary Committees, beginning with the 2012 legislative session and every fourth session thereafter, to review the compensation of elected district attorneys and make recommendations, if appropriate, to the General Assembly regarding their compensation.

Litigation Management and Technology Fund.

Description. This line item, which despite its name does not involve a cash fund, 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.

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 2011-12, for example, will not be known with certainty until July 2012, 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	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

Request. The Department requests a continuation of this annual \$325,000 cash funds appropriation.

Recommendation. **Staff recommends approving the Department's request. However, staff recommends renaming this line item "Litigation Management and Technology",** so that the name of the line item does not imply the existence of such a fund.

Please note that H.B. 12-1248 (which is sponsored by the Joint Budget Committee) will require 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.

For FY 2012-13, this line item will allow the Department to retain and roll forward a portion of any excess revenues earned in FY 2011-12 to FY 2012-13; moneys that are rolled forward that are not spent in FY 2012-13 will revert to the General Fund. Excess legal services revenues that are earned in FY 2012-13 will be credited to the new Legal Services Cash Fund. In the FY 2013-14 Long Bill, 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.

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 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 in each of the last five years, 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.

Description. 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 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.

Request. The Department requests a continuation of the \$880,000 cash funds appropriation from the Defense Account of the Tobacco Litigation Settlement Cash Fund.

Recommendation. Staff recommends approving the request. The 2003 NPM Adjustment/Diligent Enforcement Arbitration began in July 2010. Most preliminary legal issues have been decided or have been briefed and deferred by the Arbitration Panel. Colorado is one of the remaining 35 states whose diligence is being contested by the participating manufacturers. State specific hearings are scheduled to occur from June 2012 through May 2013. Colorado, Arizona, and Washington have hearings scheduled for December 2012. Thus, the Department will require funding to pay for outside counsel to prepare for and attend the December hearing, make any necessary post-hearing motions, and attend other states' hearings that concern issues relevant to Colorado's interests. Colorado will also pay a share of the Panel and hearing expenses, estimated at \$47,000.

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 of June 30, 2011, the Defense Account had a balance of \$1,910,260. The following estimates, provided by the Department of Law, indicate that the Account balance should be sufficient to cover the appropriations recommended in this packet for FY 2012-13. However, the Account balance will not be sufficient to cover likely ongoing expenditures in FY 2013-14.

Tobacco Settlement Defense Account: Projected Cash Flow		
	FY 2011-12 Estimate	FY 2012-13 Estimate
Beginning FY Balance	\$1,910,260	\$1,131,870
Interest earnings	31,443	10,443
Expenditures (including litigation expenses, costs associated with 1.0 FTE employed by Department of Law, and indirect costs)	<u>(809,833)</u>	<u>(1,061,939)</u>
Ending FY Balance after transfer	1,131,870	80,374

Lobato Litigation Expenses.

Description. 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.

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, when the General Assembly appropriated \$1,207,093. The Department expended \$417,573 of this appropriation, and rolled forward \$617,051 of the appropriation to cover expenditures that will occur in FY 2011-12. The General Assembly appropriated \$432,500 for this line item in FY 2011-12.

Request. The Department requests \$50,000 for this line item for FY 2012-13, which reflects a reduction of \$382,500 as requested by the Governor's Office (NPI-1).

Recommendation. Staff will reflect \$50,000 reappropriated funds, consistent with Committee action on the budget request for the Office of the Governor.

Lowry Range Litigation Expenses.

Description. This is a new line item requested by the Department through a budget amendment (BA-1).

Request. The Department requests \$638,870 reappropriated funds for this line item for FY 2012-13.

Recommendation. **Staff recommends approving the request** (this request is discussed in the LSSA section of this document).

Requests for Information

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

Medicaid Fraud Request for Information

- 1. Department of Law, Criminal Justice and Appellate, Medicaid Fraud Control Unit --** PURSUANT TO SECTION 25.5-4-310, C.R.S., ~~The General Assembly requests that 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 produce a progress report on the Department's efforts to reduce Medicaid fraud and abuse in Colorado. The report should include: (1) the most recent estimates on the total amount of Medicaid fraud and abuse in Colorado; (2) a summary of total fines, costs, and restitutions recovered, attributable to the Medicaid Fraud Control Unit's efforts; (3) a detailed explanation of the Medicaid Fraud Control Unit's participation in global or national Medicaid fraud settlements, including total awards received due to them; and (4) evidence of the effectiveness of the Medicaid Fraud Control Unit in reducing the amount of Medicaid fraud and abuse in Colorado. The Medicaid Fraud Control Unit is requested to submit the report to the Joint Budget Committee by November 1, 2011.~~

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 shall include, but not be limited to:

- 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".

Staff's recommended changes to this request for information are 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.

Long Bill Footnotes

Staff recommends continuing the following footnotes, as amended:

Legal Rate

- 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 ~~\$78.49~~ \$_____ per hour for attorneys and not exceed ~~\$62.39~~ \$____ per hour for ~~paralegals~~ LEGAL ASSISTANTS, which equates to a blended rate of ~~\$75.71~~ \$_____ per hour.

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 special bills. This footnote contains a clear statement of legislative intent regarding the blended legal rate and the rates to be charged for legal and for paralegal services. Staff will fill in the hourly rates that correspond to appropriations that are included in the FY 2012-13.

Litigation Management and Technology Fund

- 40 Department of Law, Special Purpose, Litigation Management and Technology Fund** -- It is the intent of the General Assembly to grant the Department of Law additional flexibility by allowing the Department to use ~~funds~~ MONEYS appropriated in this line item to address unanticipated state legal needs that arise during ~~FY 2011-12~~ FY 2012-13, as well as information technology asset maintenance needs that would otherwise require General Fund appropriations during ~~FY 2011-12~~ FY 2012-13. It is also the intent of the General Assembly that moneys spent from this ~~fund~~ 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 ~~fund~~ 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 ~~submit a quarterly report to the Joint Budget Committee~~ INCLUDE WITH ITS ANNUAL BUDGET REQUEST INFORMATION detailing the purpose ~~for which moneys from this fund have been expended~~ OF LINE ITEM EXPENDITURES. Such a ~~report~~ INFORMATION is also requested with any supplemental requests for additional legal services funding within or outside of the Legal Services to State Agencies program.

The recommended amendments to this footnote are intended to: (1) remove language that implies that there is a Litigation Management and Technology Fund; and (2) allow the Department to submit actual expenditure information as part of its annual budget request.

State Representative
ROBERT S. GARDNER
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Chairman:
Judiciary Committee
Vice-Chairman
Legal Services
Member:
Appropriations Committee
Local Government Committee

COLORADO
HOUSE OF REPRESENTATIVES
STATE CAPITOL
DENVER
80203

January 27, 2012

Representative Cheri Gerou
Chair, Joint Budget Committee
200 East 14th Avenue, Third Floor
Denver, Colorado 80203

Dear Representative Gerou:

The SMART Act allows committees of reference to make formal recommendations to the Joint Budget Committee (JBC) regarding state departments' budgets, based on the committee's hearings with their assigned departments. The House Judiciary Committee met on January 26, 2012, to discuss recommendations to the JBC per the SMART Act. At this time, the committee has no formal recommendations for the departments it oversees.

Sincerely,

Representative Bob Gardner, Chair
House Judiciary Committee

- c: Joint Budget Committee Members
House Judiciary Committee Members
Tom Clements, Executive Director, Department of Corrections
Gary Maas, Legislative Liaison, Department of Corrections
John Suthers, Colorado Attorney General, Department of Law
David Blake, Deputy Attorney General for Legal Policy and Government Affairs,
Department of Law
James Davis, Executive Director, Department of Public Safety
Jana Locke, Legislative Liaison, Department of Public Safety
Colonel James Wolfenbarger, Chief, Colorado State Patrol
Sergeant Bobby Juchem, Legislative Liaison, Colorado State Patrol
The Honorable Michael Bender, Chief Justice of the Colorado Supreme Court, Judicial Branch

January 17, 2012

Page 2

Jeff Clayton, Legislative Liaison, Judicial Branch

Douglas Wilson, Colorado State Public Defender, Office of the State Public Defender

Lindy Frolich, Director, Office of the Alternate Defense Counsel

Linda Weinerman, Executive Director, Office of the Child's Representative

Dorothy Macias, Legislative Liaison, Office of the Child's Representative

John Ziegler, Staff Director, Joint Budget Committee

Jessika Shipley, Legislative Council Staff



MORGAN CARROLL
SENATE DISTRICT 29

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200 E. COLFAX AVENUE
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Senate
State of Colorado
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COMMITTEES

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LEGAL SERVICES
MEMBER

January 26, 2012

Representative Cheri Gerou
Chair, Joint Budget Committee
200 East 14th Avenue, Third Floor
Denver, Colorado 80203

Dear Representative Gerou:

The SMART Act allows a committee of reference to make formal recommendations to the Joint Budget Committee (JBC) regarding state departments' budgets, based on the committee's hearings with their assigned departments. The Senate Judiciary Committee met on January 25, 2012, to discuss recommendations to the JBC per the SMART Act. At its meeting, the committee made:

- 4 recommendations concerning the Department of Corrections;
- 1 recommendation concerning the Department of Law;
- 2 recommendations concerning the Department of Public Safety; and
- 4 recommendations concerning the Judicial Branch, including 1 recommendation concerning the independent agencies within the branch.

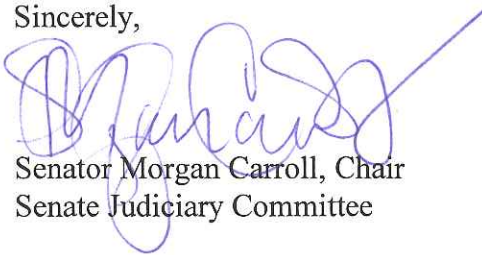
Table 1 summarizes the committee's recommendations for each department. In some instances, the committee voted to express support for certain decision items in each department's budget requests. However, it should be noted that the committee's silence on other decision items is not intended to convey disapproval of those decision items. Furthermore, the committee made its recommendations by considering only the budget requests of specific departments; those recommendations may need to be revisited once the overall demands of the FY 2012-13 budget become clear.



Table 1
Senate Judiciary Committee Recommendations to the Joint Budget Committee

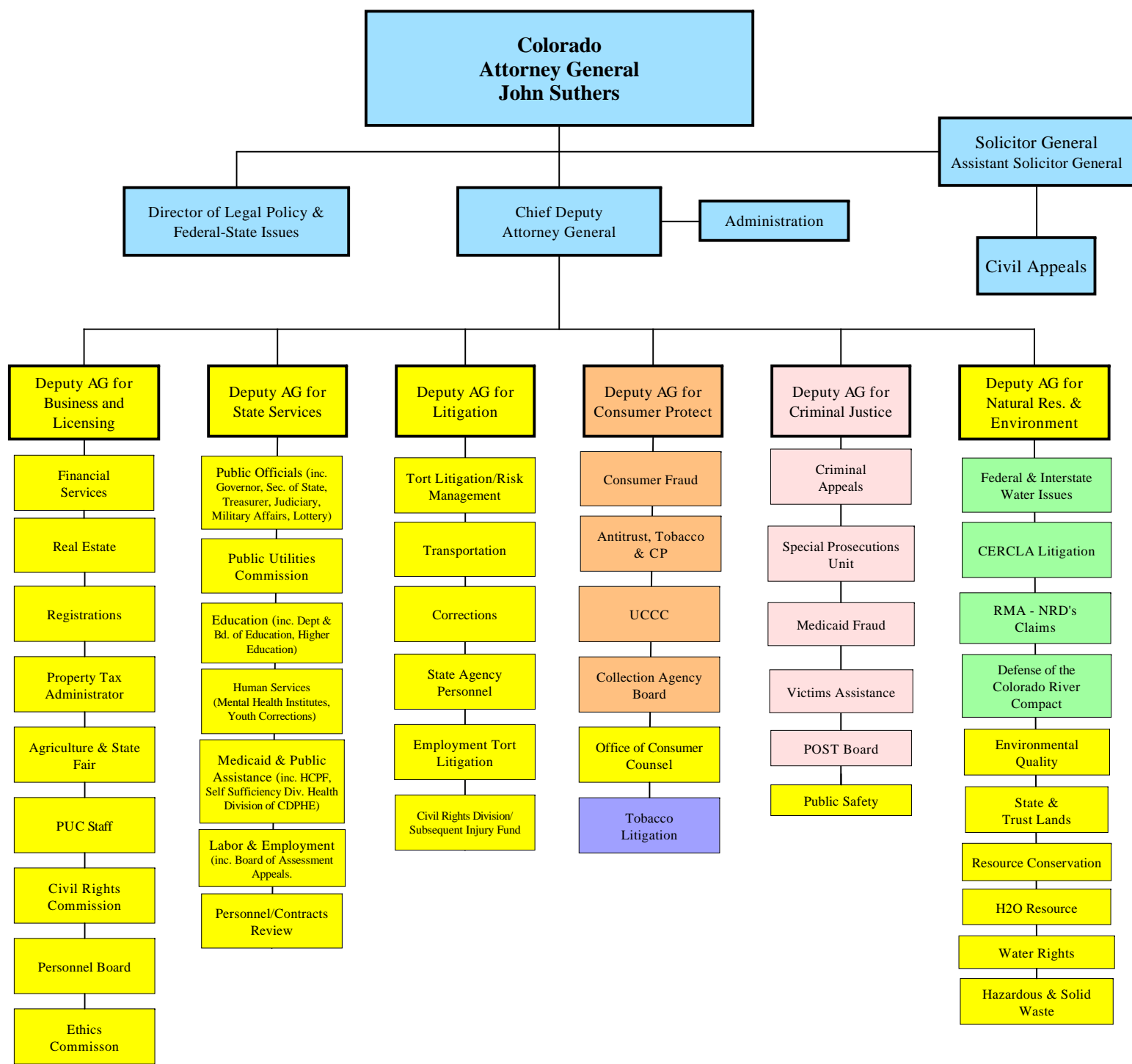
Department	Recommendation
Department of Corrections (4)	The Joint Budget Committee should take steps to ensure that if there are any funds not expended under the per offender per day medical expenses line item (Decision Item 5), those funds should not revert back to the legislature, but should instead be used for a wellness and prevention fund within the department.
	The committee expressed support for Decision Item 1, concerning sex offender treatment expansion, and encouraged methods to ensure that the best treatment models are and continue to be scrutinized in order to ensure the pursuit of the most outcome- and cost-effective approaches.
	The committee expressed support for Decision Item 2, concerning the Colorado Correctional Industries expansion program.
	The Joint Budget Committee should adjust funding for the Department of Corrections' Decision Item 4, concerning external capacity caseload, by either waiting until more accurate inmate population figures are available in March, or by decreasing the funding to match 300 offenders, rather than 724 offenders as requested.
Department of Law (1)	The committee expressed support for Decision Item 1, concerning consumer protection enhancement.
Department of Public Safety (2)	The committee expressed support for Change Request 1, concerning an operating fund increase for the Colorado Crime Information Center.
	The committee expressed support for Change Request 3, concerning backup and emergency medical assistance in mountainous and rural areas.
Judicial Branch (4)	The committee expressed support for Decision Item 1, concerning compensation realignment.
	The committee expressed support for Decision Item 2, concerning protective proceedings, and encouraged research into new ideas concerning how to deliver these services in an innovative and efficient manner.
	The committee expressed support for Decision Item 3, concerning <i>pro se</i> case managers, and for Decision Item 4, concerning the supervision of sex offenders on probation.
	The committee expressed support for all of the Judicial Branch's decision items, including those related to the Office of the State Public Defender, the Office of the Alternate Defense Counsel, and the Office of the Child's Representative, within the context of the limited information that the committee had available as it considered the requests.

Sincerely,



Senator Morgan Carroll, Chair
Senate Judiciary Committee

- c: Joint Budget Committee Members
Senate Judiciary Committee Members
Tom Clements, Executive Director, Department of Corrections
Gary Maas, Legislative Liaison, Department of Corrections
John Suthers, Colorado Attorney General, Department of Law
David Blake, Deputy Attorney General for Legal Policy and Government Affairs,
Department of Law
James Davis, Executive Director, Department of Public Safety
Jana Locke, Legislative Liaison, Department of Public Safety
Colonel James Wolfinbarger, Chief, Colorado State Patrol
Sergeant Bobby Juchem, Legislative Liaison, Colorado State Patrol
The Honorable Michael Bender, Chief Justice of the Colorado Supreme Court, Judicial Branch
Jeff Clayton, Legislative Liaison, Judicial Branch
Douglas Wilson, Colorado State Public Defender, Office of the State Public Defender
Lindy Frolich, Director, Office of the Alternate Defense Counsel
Linda Weinerman, Executive Director, Office of the Child's Representative
Dorothy Macias, Legislative Liaison, Office of the Child's Representative
John Ziegler, Staff Director, Joint Budget Committee
Hillary Smith, Legislative Council Staff



Long Bill Funding Sources: **LSSA=Yellow** **Criminal Justice & Appellate=Pink** **Administration=Blue**
Natural Resources & Water Rights=Light Green **Consumer Protection=Orange** **Special Purpose =Purple**