

This document has the following parts:

1. The March 16, 2011, JBC Staff figure setting document for the Department of Law.
2. A March 17, 2011, comeback memo that alters recommendations in the figure setting document.

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



FY 2011-12 STAFF FIGURE SETTING

DEPARTMENT OF LAW

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

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March 16, 2011**

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

DEPARTMENT OF LAW

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

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Approp	FY 2011-12 Request	FY 2011-12 Staff Recomm.	Change Request
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DEPARTMENT OF LAW
John W. Suthers, Attorney General

(1) ADMINISTRATION

This Division includes the Office of the Attorney General, Human Resources, Fiscal and Accounting, Information Technology Services, and Legal Support Services. It also includes the department's central appropriations or "Pots", such as Health, Life and Dental, and Short Term Disability, which are allocated among divisions and are financed by almost all of the department's various fund sources. Much of the division's other activity is supported by reappropriated funds that derive from indirect cost recoveries.

Personal Services	2,792,460	2,723,687	2,947,855	3,013,268	2,912,096	
FTE	<u>39.6</u>	<u>36.6</u>	<u>42.2</u>	<u>42.2</u>	<u>40.7</u>	
General Fund	(9)	0	0	0	0	
Cash Funds	0	0	0	0	0	
Cash Funds Exempt/RF	2,792,469	2,723,687	2,947,855	3,013,268	2,912,096	
 Health, Life and Dental	 <u>1,774,106</u>	 <u>1,940,668</u>	 <u>1,967,131</u>	 <u>2,281,572</u>	 <u>2,281,572</u>	 DI #1
General Fund	522,880	534,414	474,390	577,900	577,900	
Cash Funds	141,137	152,611	216,077	237,546	237,546	
Cash Funds Exempt/RF	1,063,960	1,194,594	1,226,397	1,385,970	1,385,970	
Federal Funds	46,129	59,049	50,267	80,156	80,156	

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Approp	FY 2011-12 Request	FY 2011-12 Staff Recomm.	Change Request
Short-term Disability	<u>36,340</u>	<u>36,556</u>	<u>42,246</u>	<u>51,296</u>	<u>49,196</u>	DI #1
General Fund	10,672	11,079	11,893	13,021	13,008	
Cash Funds	2,874	2,962	3,829	4,886	4,457	
Cash Funds Exempt/RF	21,660	21,527	25,271	31,462	30,127	
Federal Funds	1,134	988	1,253	1,927	1,604	
 S.B. 04-257 Amortization Equalization						
Disbursement	<u>440,589</u>	<u>560,822</u>	<u>654,314</u>	<u>811,469</u>	<u>775,756</u>	DI #1
General Fund	124,687	159,454	183,131	205,982	203,279	
Cash Funds	35,889	40,983	58,252	77,296	70,505	
Cash Funds Exempt/RF						
Federal Funds	266,062	344,034	393,530	497,713	476,591	
	13,951	16,351	19,401	30,478	25,381	
 S.B. 06-235 Supplemental Amortization						
Equalization Disbursement	<u>204,308</u>	<u>348,889</u>	<u>477,318</u>	<u>652,073</u>	<u>622,261</u>	DI #1
General Fund	56,229	98,034	133,747	165,521	162,234	
Cash Funds	16,578	25,614	42,475	62,113	56,656	
Cash Funds Exempt/RF	124,962	215,022	286,950	399,948	382,975	
Federal Funds	6,539	10,219	14,146	24,491	20,396	
 Salary Survey for Classified Employees	<u>251,113</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	
General Fund	48,237	0	0	0	0	
Cash Funds	55,068	0	0	0	0	
Cash Funds Exempt/RF	128,644	0	0	0	0	
Federal Funds	19,164	0	0	0	0	

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Approp	FY 2011-12 Request	FY 2011-12 Staff Recomm.	Change Request
Salary Survey for Exempt Employees	<u>649,316</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	
General Fund	155,259	0	0	0	0	
Cash Funds	27,694	0	0	0	0	
Cash Funds Exempt/RF						
	461,582	0	0	0	0	
Federal Funds	4,781	0	0	0	0	
Performance-based Pay Awards for Classified Employees	<u>109,976</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	
General Fund	30,751	0	0	0	0	
Cash Funds	20,811	0	0	0	0	
Cash Funds Exempt/RF						
	49,054	0	0	0	0	
Federal Funds	9,360	0	0	0	0	
Performance-based Pay Awards for Exempt Employees	<u>278,881</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	
General Fund	64,830	0	0	0	0	
Cash Funds	11,485	0	0	0	0	
Cash Funds Exempt/RF	200,188	0	0	0	0	
Federal Funds	2,378	0	0	0	0	
Workers' Compensation	<u>64,888</u>	<u>50,893</u>	<u>50,863</u>	<u>81,150</u>	Pending	DI #1
General Fund	19,236	15,272	14,877	22,592		
Cash Funds	5,833	4,136	5,038	8,358		
Cash Funds Exempt/RF	37,990	30,125	29,605	47,657		
Federal Funds	1,829	1,360	1,343	2,543		

	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2011-12	Change
	Actual	Actual	Approp	Request	Staff Recomm.	Request
Attorney Registration and Continuing Legal Education						
Education	<u>92,626</u>	<u>92,628</u>	<u>92,626</u>	<u>92,626</u>	<u>92,626</u>	
General Fund	22,238	22,239	22,238	22,238	22,238	
Cash Funds	3,750	3,750	4,538	4,538	4,538	
Cash Funds Exempt/RF	66,075	66,076	65,287	65,287	65,287	
Federal Funds	563	563	563	563	563	
Operating Expenses	<u>192,297</u>	<u>169,420</u>	<u>194,679</u>	<u>194,835</u>	<u>189,679</u>	DI NP1
General Fund	0	0	0	0	0	
Cash Funds Exempt/RF	192,297	169,420	194,679	194,835	189,679	
Purchase of Services from Computer Center	<u>60,456</u>	<u>68,003</u>	<u>37,522</u>	<u>75,727</u>	Pending	
General Fund	0	68,003	0	0		
Cash Funds Exempt/RF	60,456	0	37,522	75,727		
Payment to Risk Management and Property Funds	<u>86,286</u>	<u>92,968</u>	<u>28,842</u>	<u>113,724</u>	Pending	
General Fund	0	0	0	0		
Cash Funds Exempt/RF	86,286	92,968	28,842	113,724		
Vehicle Lease Payments	<u>65,125</u>	<u>73,969</u>	<u>74,330</u>	<u>68,661</u>	Pending	DI NP2
General Fund	12,446	23,891	22,184	19,646		
Cash Funds	11,362	14,773	21,848	21,147		
Cash Funds Exempt/RF	31,571	30,621	25,484	25,118		
Federal Funds	9,746	4,684	4,814	2,750		

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Approp	FY 2011-12 Request	FY 2011-12 Staff Recomm.	Change Request
ADP Capital Outlay	<u>15,138</u>	<u>13,764</u>	<u>0</u>	<u>0</u>	<u>0</u>	
General Fund	6,881	9,176	0	0	0	
Cash Funds	0	0	0	0	0	
Cash Funds Exempt/RF	8,257	4,588	0	0	0	
Federal Funds	0	0	0	0	0	
IT Asset Maintenance	<u>432,348</u>	<u>407,667</u>	<u>407,667</u>	<u>407,667</u>	<u>407,667</u>	
General Fund	22,935	15,291	15,291	15,291	15,291	
Cash Funds	53,722	47,298	59,588	59,588	59,588	
Cash Funds Exempt/RF	353,620	343,697	331,407	331,407	331,407	
Federal Funds	2,071	1,381	1,381	1,381	1,381	
Leased Space	<u>30,001</u>	<u>32,502</u>	<u>26,220</u>	<u>26,220</u>	<u>26,220</u>	
General Fund	4,945	5,357	4,321	4,321	4,321	
Cash Funds	3,295	3,570	2,880	2,880	2,880	
Cash Funds Exempt/RF	21,576	23,374	18,857	18,857	18,857	
Federal Funds	185	201	162	162	162	
Capitol Complex Leased Space	<u>1,149,527</u>	<u>1,276,139</u>	<u>1,252,757</u>	<u>1,340,779</u>	Pending	DI #1
General Fund	245,252	382,931	368,073	373,262		
Cash Funds	103,172	103,874	124,080	138,099		
Cash Funds Exempt/RF	768,765	755,229	727,537	787,395		
Federal Funds	32,338	34,105	33,067	42,023		

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Approp	FY 2011-12 Request	FY 2011-12 Staff Recomm.	Change Request
Security for State Services Building	<u>257,633</u>	<u>196,693</u>	<u>120,919</u>	<u>123,150</u> B	<u>123,150</u>	DI #1
General Fund	79,153	73,989	34,587	34,284	34,284	
Cash Funds	21,161	15,512	11,976	12,684	12,684	
Reappropriated Funds	150,093	101,938	71,164	72,322	72,322	
Federal Funds	7,226	5,254	3,192	3,860	3,860	
Communications Services Payments	<u>6,208</u>	<u>6,208</u>	<u>7,744</u>	<u>7,920</u>	Pending	
General Fund	2,308	2,308	2,748	2,810		
Cash Funds	575	575	2,092	2,140		
Cash Funds Exempt/RF	1,773	1,773	1,056	1,080		
Federal Funds	1,552	1,552	1,848	1,890		
Attorney General Discretionary Fund - GF	5,000	5,000	5,000	5,000	5,000	
SUBTOTAL - Administration	8,994,622	8,096,476	8,388,033	9,347,137	7,485,223	-19.9%
FTE	<u>39.6</u>	<u>36.6</u>	<u>42.2</u>	<u>42.2</u>	<u>40.7</u>	<u>(1.5)</u>
General Fund	1,433,930	1,426,438	1,292,480	1,461,868	1,037,555	-29.0%
Cash Funds	514,406	415,658	552,673	631,275	448,854	-28.9%
Cash Funds Exempt/RF	6,887,340	6,118,673	6,411,443	7,061,770	5,865,311	-16.9%
Federal Funds	158,946	135,707	131,437	192,224	133,503	-30.5%

	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2011-12	Change
	Actual	Actual	Approp	Request	Staff Recomm.	Request
(2) LEGAL SERVICES TO STATE AGENCIES (LSSA)						
<i>This Division provides legal services to other agencies of state government, earning its appropriations of Cash Funds and Reappropriated Funds from the legal fees paid by those state agencies.</i>						
Personal Services	17,138,755	18,075,032	20,393,608	S 19,636,569	19,056,636	DI #3
FTE	<u>203.5</u>	<u>212.7</u>	<u>237.5</u>	<u>226.6</u>	<u>226.6</u>	
General Fund	0	0	0	0	0	
Cash Funds	1,582,342	1,659,140	1,582,388	1,659,140	1,659,140	
Cash Funds Exempt/RF	15,556,413	16,415,892	18,811,220	17,977,429	17,397,496	
Operating and Litigation - CFE/RF	880,632	849,567	1,648,676	S 1,505,284	1,479,444	DI #3
Indirect Cost Assessment - CFE/RF	2,676,131	2,665,207	2,608,316	2,608,316	Pending	
SUBTOTAL - Legal Services to State Agencies	20,695,518	21,589,806	24,650,600	23,750,169	20,536,080	-13.5%
FTE	<u>203.5</u>	<u>212.7</u>	<u>237.5</u>	<u>226.6</u>	<u>226.6</u>	<u>0.0</u>
General Fund	0	0	0	0	0	n/a
Cash Funds	1,582,342	1,659,140	1,582,388	1,659,140	1,659,140	0.0%
Cash Funds Exempt/RF	19,113,176	19,930,666	23,068,212	22,091,029	18,876,940	-14.5%

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Approp	FY 2011-12 Request	FY 2011-12 Staff Recomm.	Change Request
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(3) CRIMINAL JUSTICE AND APPELLATE

This Division prosecutes fraud involving insurance, securities, Medicaid, and workers' compensation. It also handles foreign prosecutions, certifies peace officers, provides support to district attorneys in homicide cases, and represents the state in criminal appeals. When the Department is involved in criminal appeals or in trial court criminal prosecution, the division is responsible for keeping crime victims informed about the case.

Reappropriated funds are transferred from the Department of Regulatory Agencies and the Department of Public Safety. Cash funds derive from Pinnacol Assurance and the P.O.S.T. Board Cash Fund. Federal Funds derive from the U.S. Department of Health and Human Services' Medicaid Fraud Control Program.

Special Prosecutions Unit	2,579,914	2,685,907	2,844,966	2,905,728	2,774,265	DI #1, DI NP1
FTE	<u>29.1</u>	<u>29.1</u>	<u>31.0</u>	<u>31.0</u>	<u>30.5</u>	
General Fund	1,429,370	1,480,003	1,578,099	1,446,041	1,359,303	
Cash Funds	213,484	203,794	872,706	891,351	861,711	
Cash Funds Exempt/RF	937,060	1,002,110	394,161	568,336	553,251	
Auto Theft Prevention Grant	0	57,463	246,976	242,388	234,705	
FTE	<u>0.0</u>	<u>0.5</u>	<u>2.0</u>	2.0	2.0	
Cash Funds	0	57,463	0	0	0	
Cash Funds Exempt/RF	0	0	246,976	242,388	234,705	
Appellate Unit	2,360,972	2,627,235	2,648,687	2,703,575	2,611,793	DI NP1
FTE	<u>29.3</u>	<u>30.7</u>	<u>32.0</u>	<u>32.0</u>	<u>32.0</u>	
General Fund	2,288,823	2,301,608	2,450,093	2,503,443	2,414,663	
FTE	28.3	30.7	31.0	31.0	31.0	
Cash Funds Exempt/RF	72,149	325,627	198,594	200,132	197,130	
FTE	1.0		1.0	1.0	1.0	

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Approp	FY 2011-12 Request	FY 2011-12 Staff Recomm.	Change Request
Medicaid Fraud Control Unit	1,232,421	1,272,725	1,618,187	1,616,613	1,548,974	DI NP1
FTE	<u>13.7</u>	<u>13.9</u>	<u>17.0</u>	<u>17.0</u>	<u>17.0</u>	
General Fund	302,876	318,208	404,547	404,152	387,242	
Federal Funds	929,545	954,517	1,213,640	1,212,461	1,161,732	
Peace Officers Standards and Training Board						
Support	1,053,301	2,107,154	2,681,744	2,691,996	2,674,700	DI NP1
FTE	<u>4.6</u>	<u>6.5</u>	<u>7.0</u>	<u>7.0</u>	<u>7.0</u>	
General Fund	57,107	0	0	0	0	
Cash Funds	996,194	2,107,154	2,681,744	2,691,996	2,674,700	
Cash Funds Exempt/RF	0	0	0	0	0	
Safe2Tell - GF	0	0	98,351	98,351	98,351	
FTE	0.0	0.0	1.0	1.0	1.0	
Indirect Cost Assessment	<u>247,395</u>	<u>328,276</u>	<u>375,994</u>	<u>375,994</u>	Pending	
Cash Funds	106,744	77,430	205,732	205,732		
Cash Funds Exempt/RF	140,651	138,920	46,113	46,113		
Federal Funds	0	111,926	124,149	124,149		
SUBTOTAL - Criminal Justice and Appellate	7,474,003	9,078,760	10,514,905	10,634,645	9,942,788	-6.5%
FTE	<u>76.7</u>	<u>80.7</u>	<u>90.0</u>	<u>90.0</u>	<u>89.5</u>	<u>(0.5)</u>
General Fund	4,078,176	4,099,819	4,531,090	4,451,987	4,259,559	-4.3%
Cash Funds	1,316,422	2,445,841	3,760,182	3,789,079	3,536,411	-6.7%
Cash Funds Exempt/RF	1,149,860	1,466,657	885,844	1,056,969	985,086	-6.8%
Federal Funds	929,545	1,066,443	1,337,789	1,336,610	1,161,732	-13.1%

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Approp	FY 2011-12 Request	FY 2011-12 Staff Recomm.	Change Request
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(4) WATER AND NATURAL RESOURCES

This Division represents the state in legal cases involving water and natural resources, such as oil, gas, mining and minerals. It is also involved in legal cases involving wildlife, pollution, hazardous waste, and protection of the state's air and water. Reappropriated funds come from the Colorado Water Conservation Board's Litigation Fund and the Hazardous Substance Response Fund.

Federal and Interstate Water Unit	470,910	487,168	516,519	526,892	504,494	DI NP1
FTE	<u>5.5</u>	<u>5.5</u>	<u>5.5</u>	<u>5.5</u>	<u>5.5</u>	
General Fund	470,910	487,168	516,519	526,892	504,494	
FTE	5.5	5.5	5.5	5.5	5.5	
Cash Funds	0	0	0	0	0	
FTE	0.0	0.0	0.0	0.0	0.0	
Defense of the Colorado River Basin Compact	412,928	275,383	333,017	340,011	330,920	DI NP1
FTE	<u>4.0</u>	<u>3.4</u>	<u>3.0</u>	<u>3.0</u>	<u>3.0</u>	
General Fund	(11,698)	0	0	0	0	
Cash Funds	424,626	275,383	333,017	340,011	330,920	
Cash Funds Exempt/RF	0	0	0	0	0	
Defense of the Republican River Compact	141,218	65,190	110,000	110,000	110,000	
FTE	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	
Cash Funds	141,218	39,043	110,000	110,000	110,000	
Cash Funds Exempt/RF	0	26,147	0	0	0	
Consultant Expenses	92,589	82,678	75,000 S	400,000	400,000	
Cash Funds	92,589	55,267	75,000	400,000 B	400,000	BA-1
Cash Funds Exempt/RF	0	27,411	0	0	0	

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Approp	FY 2011-12 Request	FY 2011-12 Staff Recomm.	Change Request
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)	397,637	291,374	382,962	466,191	452,682	DI #2, DI NP1
FTE	<u>3.9</u>	<u>3.4</u>	<u>3.5</u>	<u>3.5</u>	<u>3.5</u>	
General Fund	380,905	276,351	0	0	0	
Cash Funds Exempt/RF	16,732	15,023	382,962	466,191	452,682	
CERCLA Contracts	<u>526,861</u>	<u>447,550</u>	<u>500,000</u>	<u>425,000</u>	<u>425,000</u>	DI #2, DI NP1
General Fund	76,861	0	0	0	0	
Cash Funds Exempt/RF	450,000	447,550	500,000	425,000	425,000	
Natural Resource Damage Claims at Rocky Mountain Arsenal	75,600	1,670	150,000	50,000	50,000	
FTE	<u>0.3</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	
General Fund	(356)	0	0	0	0	
FTE	0.0	0.0	0.0	0.0	0.0	
Cash Funds	75,956	1,670	150,000	50,000 B	50,000	BA-3
FTE	0.3	0.0	0.0	0.0	0.0	
Indirect Cost Assessment - CFE/RF	0	0	41,384	41,384	Pending	
SUBTOTAL - Water and Natural Resources	2,117,743	1,651,013	2,108,882	2,359,478	2,273,096	-3.7%
FTE	<u>13.7</u>	<u>12.3</u>	<u>12.0</u>	<u>12.0</u>	<u>12.0</u>	<u>0.0</u>
General Fund	916,622	763,519	516,519	526,892	504,494	-4.3%
Cash Funds	734,389	371,363	668,017	900,011	890,920	-1.0%
Cash Funds Exempt/RF	466,732	516,131	924,346	932,575	877,682	-5.9%

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Approp	FY 2011-12 Request	FY 2011-12 Staff Recomm.	Change Request
(5) CONSUMER PROTECTION						
<i>This Division protects Colorado consumers and business against fraud and maintains a competitive business environment. Cash funds derive from fees paid by regulated businesses, court-ordered awards, and custodial funds. Reappropriated funds come from the Department of Regulatory Agencies.</i>						
Consumer Protection and Anti-Trust	1,667,444	1,627,090	1,814,069	1,849,900 B	1,781,681	DI NP1, BA-5
FTE	<u>19.1</u>	<u>19.5</u>	<u>21.0</u>	<u>21.0</u>	<u>21.0</u>	
General Fund	720,977	794,743	907,056	928,148	908,598	
FTE	11.5	11.0	12.5	10.0	10.0	
Cash Funds	717,531	592,455	664,957	674,911	634,152	
FTE	0.8	1.5	1.5	8.0	8.0	
Cash Funds Exempt/RF	228,936	239,892	242,056	246,841	238,931	
FTE	6.8	7.0	7.0	3.0	3.0	
Consumer Credit Unit	1,268,455	1,280,987	1,350,707	1,378,738	1,331,207	DI NP1
FTE	<u>17.5</u>	<u>17.3</u>	<u>18.0</u>	<u>18.0</u>	<u>18.0</u>	
Cash Funds	1,268,455	1,280,987	1,350,707	1,378,738	1,331,207	
Cash Funds Exempt/RF	0	0	0	0	0	
Indirect Cost Assessment	<u>313,952</u>	<u>311,188</u>	<u>307,418</u>	<u>307,418</u>	Pending	
Cash Funds	276,278	273,977	271,947	271,947		
Cash Funds Exempt/RF	37,674	37,211	35,471	35,471		
SUBTOTAL - Consumer Protection	3,249,851	3,219,265	3,472,194	3,536,056	3,112,888	-12.0%
FTE	<u>36.6</u>	<u>36.8</u>	<u>39.0</u>	<u>39.0</u>	<u>39.0</u>	<u>0.0</u>
General Fund	720,977	794,743	907,056	928,148	908,598	-2.1%
Cash Funds	2,262,264	2,147,419	2,287,611	2,325,596	1,965,359	-15.5%
Cash Funds Exempt/RF	266,610	277,103	277,527	282,312	238,931	-15.4%

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Approp	FY 2011-12 Request	FY 2011-12 Staff Recomm.	Change Request
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(6) SPECIAL PURPOSE

This division contains special purpose appropriations and programs that do not fit within the Department's other divisions.

Over the years it has also included appropriations for a number of large lawsuits.

District Attorneys' Salaries - GF	1,654,605	2,096,027	2,263,228 S	2,479,796	2,479,796	
Litigation Management and Technology Fund	<u>327,006</u>	<u>145,258</u>	<u>325,000</u>	<u>325,000</u>	<u>325,000</u>	
Cash Funds	327,006	145,258	325,000	325,000	325,000	
Cash Funds Exempt/RF	0	0	0	0	0	
Statewide HIPAA Legal Services - GF	17,490	3,538	0	0	0	
Tobacco Litigation	<u>372,226</u>	<u>535,462</u>	<u>750,000</u>	<u>880,000</u> B	<u>880,000</u> BA-2	
General Fund	0	0	0	0	0	
Cash Funds	372,226	535,462	750,000	880,000	880,000	
Cash Funds Exempt/RF	0	0	0	0	0	
Lobato Litigation Expenses - RF	0	0	1,207,093 S	432,500	432,500	

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Approp	FY 2011-12 Request	FY 2011-12 Staff Recomm.	Change Request
SUBTOTAL - Special Purpose	2,371,327	2,780,285	4,545,321	4,117,296	4,117,296	0.0%
FTE	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
General Fund	1,672,095	2,099,565	2,263,228	2,479,796	2,479,796	0.0%
FTE	0.0	0.0	0.0	0.0	0.0	0.0
Cash Funds	699,232	680,720	1,075,000	1,205,000	1,205,000	0.0%
FTE	0.0	0.0	0.0	0.0	0.0	0.0
Cash Funds Exempt/RF	0	0	1,207,093	432,500	432,500	0.0%
FTE	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	0	0	0	0	0	n/a
FTE	0.0	0.0	0.0	0.0	0.0	0.0
DEPARTMENT OF LAW						
TOTAL FUNDS	44,903,064	46,415,605	53,679,935	53,744,781	47,467,371	-11.7%
FTE	<u>370.1</u>	<u>379.1</u>	<u>420.7</u>	<u>409.8</u>	<u>407.8</u>	<u>(2.0)</u>
General Fund	8,821,800	9,184,084	9,510,373	9,848,691	9,190,002	-6.7%
Cash Funds	7,109,055	7,720,141	9,925,871	10,510,101	9,705,684	-7.7%
Cash Funds Exempt/RF	27,883,718	28,309,230	32,774,465	31,857,155	27,276,450	-14.4%
Federal Funds	1,088,491	1,202,150	1,469,226	1,528,834	1,295,235	-15.3%

**FY 2011-12 FIGURE SETTING
DEPARTMENT OF LAW**

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

The Department of Law is comprised of the following division, which will be considered in order:

- (1) Administration
- (2) Legal Services to State Agencies
- (3) Criminal Justice and Appellate
- (4) Water and Natural Resources
- (5) Consumer Protection
- (6) Special Purpose

(1) ADMINISTRATION

The Administration Division includes the following sections:

- *Office of the Attorney General*, which includes the Attorney General, Chief Deputy Attorney General, Solicitor General, Director of Legal Policy and Federal-State Issues, and associated administrative staff;
- *Human Resources*, which hires new employees, manages employee benefits, and consults with employees and managers regarding applicable state and federal personnel laws and regulations;
- *Fiscal and Accounting*, which includes accounting, financial reporting, payroll, and budgeting;
- *Information Technology Services*, which handles the Department's computer needs including maintenance, computer training, and operation of the Attorney General's website;
- *Legal Support Services*, which produces about 75 percent 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.
- *Special Projects & Facilities Management* - coordinates building security, construction projects, capital complex, the legal library and other matters.

Administration Division appropriations fall into two categories:

- Appropriations that pay the actual cost of running the Division, such as salaries for the Attorney General and Division personnel, and
- Central appropriations or "Pots", such as Health, Life and Dental, that the Department allocates among its divisions.

The Administration Division pays most of its actual costs with indirect cost assessments that are collected from the Department's various divisions and transferred as reappropriated funds to the Administration Division. The most important source of indirect cost recoveries is the assessment in the Department's largest division, Legal Services to State Agencies. Any part of the actual cost of running the Administration Division that cannot be covered by indirect cost assessments must be covered by the General Fund.

The central appropriations are paid directly by the divisions that use the pots. As a consequence, the "potted" appropriations are a mixture of General Fund, cash funds, reappropriated funds, and federal funds, reflecting the funding sources of the divisions to which the central appropriations will be distributed.

Classified and Exempt Employees. The Department of Law's employees fall into two broad categories: 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 approximately 60 percent of the Department's workers, are exempt employees, the remaining 40 percent of the Department's workers are classified employees. Salary Survey and Performance-based Pay for classified employees are set by Common Policy; the corresponding appropriations for exempt positions are set during figure setting for the Department of Law.

Personal Services. This line item finances personal services expenditures in the Administration Division. 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 summarizes staffing levels within the division.

Staffing Summary Administration	FY 09-10 Actual	FY 10-11 Approp.	FY 11-12 Request	FY 11-12 Recommend.
Office of the Attorney General	8.0	9.0	9.0	9.0
Human Resources	2.6	3.5	3.5	3.5
Fiscal and Accounting	7.3	7.5	7.5	7.5
Information Technology Services	13.8	15.2	15.2	15.2
Legal Support Services	4.9	7.0	7.0	5.5

Staffing Summary Administration	FY 09-10 Actual	FY 10-11 Approp.	FY 11-12 Request	FY 11-12 Recommend.
Total	36.6	42.2	42.2	40.7

The corresponding personal services calculation and the resulting staff recommendation, along with the Department's request, are presented in the following table. A 1.5 percent base reduction would reduce reappropriated funds by \$44,271, but staff recommends that \$5,000 of the reduction come from the Administration Division's Operating Expenses, where the reduction will cause fewer adjustment difficulties. Staff also that recommends FTE be reduced by 1.5, which reflects staffing adjustments that the Department has made during the current economic downturn.

Administration Personal Services	Total	GF	CF	RF	FF	FTE
FY 2010-11 Appropriation	2,947,855	0	0	2,947,855	0	42.2
State PERA contribution back to 10.15%	65,413	0	0	65,413	0	0.0
1.5% base reduction (\$5,000 of this reduction is taken from Operating Expenses line item)	(39,271)	0	0	(39,271)	0	0.0
FTE reduction	0	0	0	0	0	(1.5)
State PERA contribution down to 7.65%	(61,901)	0	0	(61,901)	0	0.0
FY 2011-12 Recommendation	2,912,096	0	0	2,912,096	0	40.7
FY 2011-12 Request	3,013,268	0	0	3,013,268	0	42.2
Recommendation - Request	(101,172)	0	0	(101,172)	0	(1.5)

The reappropriated funds derive from indirect cost recoveries.

Health, Life and Dental. In accord with Committee-approved common policy, Staff recommends an appropriation that equals the Department's request, with the following adjustments:

Health, Life, and Dental	Total	GF	CF	RF	FF
FY 2010-11 Appropriation	1,967,131	474,390	216,077	1,226,397	50,267
Restore the one-time GF Health, Life, and Dental reduction that was taken during Supplementals in lieu of a 1% across-the-board GF Personal Services Reduction	55,000	55,000	0	0	0
Committee-approved common polity adjustment	259,441	62,034	21,469	146,049	29,889
DI #1, Refinance Securities Fraud Unit FTE (Considered later in this document)	0	(13,524)	0	13,524	0
FY 2011-12 Recommendation	2,281,572	577,900	237,546	1,385,970	80,156

If the Pro-rata Benefits bill that the Governor has requested becomes law in the form proposed by the Governor, its appropriation clause will make the following change to the Department's Health, Life, and Dental appropriation:

Pro-rata Benefits Adjustment	Total	GF	CF	RF	FF
Pro-rata benefits	(13,387)	0	0	(13,387)	0

Short-term Disability. The Staff recommendation, which is calculated in accord with Committee-approved common policy, is as follows:

Short-term Disability	Total	GF	CF	RF	FF
FY 2010-11 Appropriation	42,246	11,893	3,829	25,271	1,253
Common policy adjustment	6,950	1,371	628	4,600	351
DI #1, Refinance Securities Fraud Unit FTE	0	(256)	0	256	0
FY 2011-12 Recommendation	49,196	13,008	4,457	30,127	1,604

S.B. 04-257 Amortization Equalization Disbursement (AED). The Staff recommendation, which is calculated in accord with Committee-approved common policy, is as follows:

Amortization Equalization Disbursement (AED)	Total	GF	CF	RF	FF
FY 2010-11 Appropriation	654,314	183,131	58,252	393,530	19,401
Common policy adjustment	121,442	24,200	12,253	79,009	5,980
DI #1, Refinance Securities Fraud Unit FTE	0	(4,052)	0	4,052	0
FY 2011-12 Recommendation	775,756	203,279	70,505	476,591	25,381

S.B. 06-235 Supplemental Amortization Equalization Disbursement (SAED). The Staff recommendation, which is calculated in accord with Committee-approved common policy, is as follows:

Supplemental Amortization Equalization Disbursement (SAED)	Total	GF	CF	RF	FF
FY 2010-11 Appropriation	477,318	133,747	42,475	286,950	14,146
Common policy adjustment	144,943	31,743	14,181	92,769	6,250
DI #1, Refinance Securities Fraud Unit FTE	0	(3,256)	0	3,256	0
FY 2011-12 Recommendation	622,261	162,234	56,656	382,975	20,396

Salary Survey for Classified Employees. In accord with Committee-approved common policy, staff recommends no appropriation for this line item.

Salary Survey for Exempt Employees. In accord with Committee-approved common policy, staff recommends no appropriation for this line item.

Performance-based Pay for Classified Employees. In accord with Committee-approved common policy, staff recommends no appropriation for this line item.

Performance-based Pay for Exempt Employees. In accord with Committee-approved common policy, **staff recommends no appropriation for this line item.**

Workers' Compensation. Staff recommendation is **pending Committee approval of a common policy for Workers' Compensation.** Please note that Decision Item #1, Refinance Securities Fraud Unit FTE, would reduce the General Fund appropriation for Workers' Compensation by \$399 and increase reappropriated funds by an offsetting amount.

Workers' Compensation is the first of several pending common policy items. **Staff requests permission to apply Committee common policy for pending items that are approved later and include the resulting appropriations in the Long Bill.**

Attorney Registration and Continuing Legal Education. The Department requests and Staff recommends a continuation appropriation of **\$92,626**, comprised of \$22,238 General Fund, \$4,538 cash funds, \$65,287 reappropriated funds, and \$563 federal funds.

Operating Expenses. As noted above, **Staff recommends that \$5,000 of the 1.5 percent personal services reduction be taken from this line item, which reduces the reappropriated funds appropriation to from last year's \$194,679 to \$189,679 for FY 2011-12.**

Purchase of Services from Computer Center. The Department requests \$75,727 cash funds, Staff recommendation is **pending the approval of a common policy by the Committee** related to Purchase of Services from Computer Center.

Payment to Risk Management and Property Funds. Staff recommendation is **pending the approval of a common policy by the Committee** regarding Payment to Risk Management and Property Funds.

Vehicle Lease Payments. The Department leases 30 vehicles from state fleet. Fourteen are used by the Criminal Justice and Appellate Division, nine by the Legal Services for State Agencies Division, six by the Consumer Protection Division, and one by the Attorney General. None of these vehicles is scheduled for replacement during FY 2011-12.

The Department requests an appropriation of \$68,661, comprised of \$18,579 General Fund, \$23,426 cash funds, \$23,907 reappropriated funds, and \$2,749 federal funds, which represents a reduction of \$4,152 relative to FY 2010-11. The requested adjustments to this appropriation are due to some of these vehicles moving to different points in their lease cycles while others are coming off lease, and to changes in fleet management fees.

The staff recommendation is pending Committee approval of a common policy for vehicle lease payments.

ADP Capital Outlay. The ADP Capital Outlay line item funds one-time expenditures for personal computers, office equipment, and other items that are needed by the new FTE who are added by Long Bill decision items and by special bills. The appropriations on this line are one-year expenditures that will not continue the next year, hence the appropriation for this line is not built from the prior-year Long Bill. Since none of this year's decision items require ADP capital outlay, **the Department requests and Staff recommends no appropriation for this line item.**

IT Asset Maintenance. This appropriation funds the maintenance and replacement of computer equipment as well as software maintenance and licensing agreements. The requested amount provides for the replacement of the Department's information technology according to a regular schedule in accord with OIT guidelines. 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. The Department requests and Staff recommends a continuation appropriation for this line item of \$407,667, comprised of \$15,291 General Fund, \$59,588 cash funds, \$331,407 reappropriated funds, and \$1,381 federal funds.

Leased Space. This appropriation pays for 3,286 square feet of off-site document storage space at a location that the Department prefers not to disclose for security reasons. **The Department requests and Staff recommends an appropriation of \$26,220 for this line item, comprised of \$4,321 General Fund, \$2,880 cash funds, \$18,857 reappropriated funds, and \$162 federal funds.**

Capitol Complex Leased Space. The Department leases 101,685 square feet of capital complex space in the State Services Building at 1525 Sherman St. The Department's request, which includes the impact of Decision Item #1, is for \$1,340,779 for this line item, comprised of \$373,262 General Fund, \$138,099 cash funds, \$787,395 reappropriated funds, and \$42,023 federal funds. The Committee has not yet set the rate for capital complex space so **the corresponding appropriation is pending Committee approval of a common policy for capitol complex leased space.**

Please note that Decision Item #1, Refinance Securities Fraud Unit FTE, would reduce the General Fund appropriation for Capitol Complex Leased Space by \$6,592 and increase reappropriated funds by an offsetting amount.

Security for State Services Building. 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. The following table computes the appropriation.

Operating Expenses	Total	GF	CF	RF	FF
FY 2010-11 Appropriation	120,919	34,587	11,976	71,164	3,192
Change of Colorado State Patrol's cost for providing building security (from Department of Public Safety figure setting)	2,836	302	708	1,158	668
DI #1, Refinance Securities Fraud Unit FTE	(605)	(605)	0	0	0

Operating Expenses	Total	GF	CF	RF	FF
FY 2011-12 Recommendation	123,150	34,284	12,684	72,322	3,860
FY 2011-12 Request	123,150	34,284	12,684	72,322	3,860
Recommendation - Request	0	0	0	0	0

The increased security cost is due to (1) increased costs that the State Patrol must pay for Health, Life and Dental, AED, and SAED for the troopers who provide security and (2) increased indirect costs at the Department of Public Safety. The Department of Law's continuation request does not take into account these increases. Note that 1.5 FTE of state troopers are assigned to the building. The fund split calculations underlying this recommendation are approximate. Staff requests permission to consult with the Department and adjustment the fund split as necessary.

Communications Services Payments. The Department requests an appropriation of \$7,920, comprised of \$2,810 General Fund, \$2,140 cash funds, \$1,080 reappropriated funds, and \$1,890 federal funds. Staff recommendation is **pending the approval of a common policy** for this line item.

Please note that Decision Item #1, Refinance Securities Fraud Unit FTE, would reduce the General Fund appropriation for Communications Services Payments by \$605 and increase reappropriated funds by an offsetting amount.

Attorney General Discretionary Fund. Staff recommends \$5,000 General Fund for this line item. 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.

(2) LEGAL SERVICES TO STATE AGENCIES (LSSA)

The Legal Services to State Agencies (LSSA) division provides legal services to other state agencies as authorized by Section 24-31-203, C.R.S. The Attorney General's office operates under the "Oregon" plan; state agencies purchase legal services from the Department much as they would purchase legal services from a private-sector law firm. These client agencies receive legal-services appropriations in their section of the Long Bill. 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. In most cases, the appropriation to the Department of Law is classified as reappropriated funds. In some instances, the Department receives payments from other parts of state government that have not been appropriated, such as legal work for the State Fair or for a university. When received, such payments are classified as cash funds. For Fiscal Year 2009-10, appropriations for the Legal Services to State Agencies division represent 52 percent of the Department's total budget and 55 percent of its total FTE. About 93 percent of the Division's funding is reappropriated funds, the remainder is cash funds.

Personal Services. The appropriation in the Long Bill for personal services in the Legal Services to State Agencies division is a reflection of the state's need for legal services. These services derive from legal-services appropriations in the Long Bill and special bills and from "non-appropriated" legal-services needs of such entities as PERA and state institutions of higher education.

The LSSA division has two classes of employees who bill client agencies: attorneys and paralegals, who are also called legal assistants. Each "billing" attorney and paralegal provides 1800 hours of legal services annually. Attorneys bill at a uniform hourly attorney rate, no matter how experienced they may be and all paralegals bill at a uniform hourly paralegal rate that is also independent of experience. The blended legal rate, presented later, is a weighted average of these two rates; it is used to compute the Long Bill appropriations for legal services for the various agencies of state government as well as the legal services appropriations in special bills.

Note that 1800 hours is a rather ambitious billing objective. After vacations and holidays, a new attorney at the Department needs to bill 7.5 hours daily to reach that mark. The Department's personnel evaluations are based in part on hours billed. Staff understands that most attorneys work more than 8 hours per day or periodically work on weekends or holidays to reach this billing objective.

The following table summarizes the legal services change between FY 2010-11 and FY 2011-12.

Appropriation of billing FTE	Legal Hours	Billing FTE Equivalent
Legal services appropriations in the FY 2010-11 Long Bill	339,965	188.9
Estimate of non-appropriated legal service to be supplied in FY 2010-11 (These are appropriated to the Department of Law so it has enough spending authority to supply the legal services, but there is no corresponding appropriation to an agency that purchases the services. The primary clients are higher education institutions.)	11,418	6.3
FY 2010-11 legal services appropriations in 2010 session bills and in the Department's supplemental bill for FY 2010-11	26,022	14.5
Total legal services for FY 2010-11	377,405	209.7
Legal services appropriations approved by the JBC for the FY 2011-12 Long Bill (This includes the second year impact of FY 2010-11 special bills and decision items, which were part of department requests and staff recommendations.)	345,866	192.1
Estimate of non-appropriated legal service to be supplied in FY 2011-12	12,632	7.0
Total legal services for FY 2011-12, ignoring this session's special bills	358,498	199.2
Change from FY 2010-11 to FY 2011-12	(18,907)	(10.5)

Note that this table only shows the attorneys and paralegals in the LSSA division who bill; there are additional non-billing FTE in the division: 4.0 FTE are supervisor attorneys who typically do not bill and 23.4 FTE are support staff who never bill.

Also note that the legal services appropriations approved by the JBC for the FY 2011-12 Long Bill reflect 2011 session decision items and base reduction items as well as the second year impact of 2010 session special bills, 2010 session decision items, and supplemental requests. Also note that FTE appropriations in special bills, decision items and supplementals are rounded to the nearest tenth so the sum of the corresponding FTE appropriations often deviates from the FTE that are needed to supply the necessary hours. The calculations in the table above use appropriated hours and are then converted to FTE in the final step to avoid such rounding errors.

Based on a review of the current staffing of the LSSA division, including the ratio of billing attorneys to paralegals and the level of support staff, the Department requests that these extra FTE be added as assistant Attorneys General, the Department's entry-level attorney position. The Department states that the current support staff is sufficient to support these added attorneys. This leads to the following staffing levels and the associated staff recommendation:

Staffing Summary Legal Services to State Agencies	FY 09-10 Actual	FY 10-11 Approp.	FY 11-12 Request	FY 11-12 Recommend.
Attorneys	159.1	173.5	169.8	168.8
Paralegals and Administrative Staff	53.6	57.8	57.8	57.8
Total	212.7	231.3	227.6	226.6

A 1.5 percent reduction for LSSA personal services equates to \$286,512, but Staff does not recommend a reduction of this magnitude because this line item was adjusted downward by 1.82 percent during FY 2009-10 figure setting (at adjustment that equaled \$337,710), but, at the Department's request, this adjustment was not reversed for the FY 2010-11 Long Bill, as it was for similar personal services appropriations to state agencies. After consulting with the Department, Staff concludes that a reduction of \$188,000, which equals approximately one percent, is appropriate. Staff further recommends that \$25,000 of this reduction be allocated to operating expenses, where it will cause fewer adjustment difficulties.

The resulting personal services calculation and the staff recommendation are as follows:

LSSA Personal Services	Total	GF	CF	RF	FF	FTE
FY 2010-11 Appropriation	20,393,608	0	1,582,388	18,811,220	0	237.5
Reverse one-time legal services supplementals	(806,828)	0	0	(806,828)	0	(6.2)
State PERA contribution back to 10.15%	414,871	0	0	414,871	0	0.0
Base reduction taken in lieu of the 1.5% reduction (\$25,000 of this reduction comes from Operating Expenses below)	(163,000)	0	0	(163,000)	0	0.0
2 nd year impact of prior year bills and decision items	(483,941)	0	0	(483,941)	0	(4.7)
Legal Services for Decision Items and Base Reduction Items in other departments	118,859	0	0	118,859	0	1.0
Adjustment for FTE rounding errors and changed mix of billing and non-billing FTE	0	0	0	0	0	(1.0)

LSSA Personal Services	Total	GF	CF	RF	FF	FTE
Fund split adjustment to reflect expected need for cash-funded vs reappropriated-funded legal services	0	0	76,752	(76,752)	0	0.0
State PERA contribution down to 7.65%	(416,933)	0	0	(416,933)	0	0.0
FY 2011-12 Recommendation	19,056,636	0	1,659,140	17,397,496	0	226.6
FY 2011-12 Request	19,636,569	0	1,659,140	17,977,429	0	226.6
Recommendation - Request	(579,933)	0	0	(579,933)	0	(1.0)

Operating and Litigation. The Department of Law's operating and litigation expenses have been consolidated in a single line item since the FY 2003-04 Long Bill. The following table presents Staff's calculation of the appropriation.

LSSA Operating and Litigation	Total	GF	CF	RF	FF
FY 2010-11 Appropriation	1,648,676	0	0	1,648,676	0
Reverse one-time legal services supplementals	(103,670)	0	0	(103,670)	0
2 nd year impact of prior year bills and decision items	(53,769)	0	0	(53,769)	0
Base reduction taken in lieu of the 1.5% reduction (most of this reduction comes from Personal Services)	(25,000)	0	0	(25,000)	0
Legal Services for Decision Items and Base Reduction Items in other departments	13,207	0	0	13,207	0
FY 2011-12 Recommendation	1,479,444	0	0	1,479,444	0
FY 2011-12 Request	1,505,284	0	0	1,505,284	0
Recommendation - Request	(25,840)	0	0	(25,840)	0

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 paralegals bill at a different, uniform rate. These rates can be calculated by decomposing them into elements:

1. An "attorney" component that covers the salaries, PERA, and Medicare of the attorneys who supply the legal services;
2. A "paralegal" component that pays the salaries, PERA and Medicare of the paralegals who supply the legal services; and
3. A "common" component, that covers the LSSA division's other costs, such as support staff, supervisory staff, operating expenses, leased space, etc. – i.e. a component that covers the costs that are common to attorneys and paralegals.

The following tables compute these components:

Attorney and Paralegal Components of the Legal Services Rates			
	a = Salary and related costs	b = Hours billed	^a / _b = Attorney or paralegal component of legal rate
Attorneys	\$15,287,816	296,640	\$51.54
Paralegals	2,215,370	61,920	35.78

Common Component of the Legal Services Rates	
Total cost of running the LSSA division	\$26,750,121
– Salary and related costs of attorneys	(15,287,816)
– <u>Salary and related costs of paralegals</u>	<u>(2,215,370)</u>
a = Common Costs	9,246,935
b Total hours billed by attorneys and paralegals	358,560
^a / _b = Common costs per billed hour	25.79
= Common component of legal rate	

The total cost of running the LSSA division includes allocations of centrally appropriated items ("Pots") and indirect cost recoveries from the LSSA division.

The legal rates are then computed as follows:

$$\begin{aligned}
 \text{Attorney billing rate} &= \text{Attorney component} + \text{Common component} \\
 &= \$51.54 + \$25.79 \\
 &= \$77.33 \text{ per hour}
 \end{aligned}$$

$$\begin{aligned}
 \text{Paralegal billing rate} &= \text{Paralegal component} + \text{Common component} \\
 &= \$35.78 + \$25.79 \\
 &= \$61.57 \text{ per hour}
 \end{aligned}$$

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 paralegal rates:

$$\begin{aligned}
 &\text{Attorney hourly billing rate} * \text{Proportion of total hours billed by attorneys} \\
 &+ \text{Paralegal hourly billing rate} * \text{Proportion of total hours billed by paralegals} \\
 &= \text{Blended legal rate} \\
 &= \$74.60 \text{ per hour}
 \end{aligned}$$

This represents a \$1.23 per hour increase as compared to the FY 2010-11 blended legal rate of \$73.37. The increase reflects increased costs for AED, SAED, Health, Life and Dental insurance,

and other factors. This blended rate is lower than the FY 2008-09 blended rate of \$75.10 and the FY 2009-10 blended rate of \$75.38.

Staff calculated the blended legal rate before the Committee approved some of the appropriations that are used in the computation; in several cases Staff used the common policy requests that OSPB submitted. **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. Indirect cost assessments are the means by which the Department charges its cash and federally funded programs for the services provided by its Administration Division. The indirect assessments are based upon the number of cash and federally funded FTE who work in each division. The source of these funds is revenue collected from other State agencies for legal services provided by the Department of Law.

The indirect cost assessment will be computed after the Committee makes its final decisions on all pending common policy items. Staff requests permission to insert the resulting appropriation in the Long Bill.

(3) CRIMINAL JUSTICE AND APPELLATE

This division is comprised of the following units:

- Special Prosecutions Unit
- Auto Theft Prevention Grant
- Appellate Unit
- Medicaid Fraud Control Unit
- Peace Officers Standards and Training (POST) Board Support
- Safe2Tell

Each of these subdivisions is a program, meaning that it receives a single appropriation that the Department allocates between personal services and operating expenses.

Special Prosecutions Unit. This multi-program unit operates under the general authorization of Section 24-31-105, C.R.S., and other specific provisions of statute. It investigates and prosecutes crimes in a number of areas.

Programs supported by the General Fund:

- *Complex Crimes*, which deals with a wide variety of criminal activity including methamphetamine rings, auto theft rings, white collar crime, and tax fraud.

- *Gang Prosecutions*, which deals with criminal activity by gangs. This group often works collaboratively with local law enforcement and often prosecutes cases under the Colorado Organized Crime Control Act, which is similar to federal racketeering laws. The unit also conducts training and outreach programs that combat gang activity.
- *Environmental Crimes*, which investigates and prosecutes illegal discharge and disposal of hazardous waste.
- *Foreign Prosecutions*, which pursues 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.
- *Homicide Assistance Team*, which provides investigative and prosecutorial support to local district attorneys for active, cold-case, and death-penalty-eligible homicides. A local district attorney must request the assistance and the Attorney General must approve. Requests for assistance generally exceed available resources. The team also handles appeals of death penalty convictions in both state and federal appellate courts.
- *Multi-jurisdictional 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 outside of their jurisdictions.

Programs supported exclusively by cash funds:

- *Workers' Compensation Fraud*, which investigates and prosecutes employees who fraudulently claim workers' compensation payments from Pinnacol Assurance and employers who fail to pay required workers' compensation insurance premiums. The program's cash funds come from payments made by Pinnacol Assurance.
- *Insurance Fraud*, which investigates and prosecutes insurance fraud, including insurance agent fraud and claimant fraud, and violations by bail bonding agents. In recent years, cases have broken down as follows:

17 percent bail bonding agents,
22 percent producers/insurance industry employees,
61 percent individuals or businesses with fraudulent claims.

About 90 percent of the Unit's cases result from referrals from the Division of Insurance in the Department of Regulatory Agencies. Funding for the program comes from a fee paid by each insurance entity regulated by the Division of Insurance as required by Section 10-3-207 (1) (e), C.R.S. These moneys are appropriated on the *Insurance Fraud Prosecution* line within the Division of Insurance and then reappropriated to the Department of Law.

Programs supported by a combination of cash funds and General Fund:

- *Securities Fraud*, which investigates and prosecutes violations of state securities laws. About a third of the securities cases that the Division pursues are referrals from the Division of Securities in the Department of Regulatory Agencies; the remaining cases come from complaints that the Unit receives directly from victims, victims' attorneys, and District Attorneys. The program is funded by a General Fund appropriation plus reappropriated funds that are initially appropriated from the Division of Securities Cash Fund to the Division of Securities in the Department of Regulatory Agencies and are then transferred to the Department of Law pursuant to Section 11-51-603.5, C.R.S. The cash funds derive from the fees paid by individuals and firms who are regulated by the Division of Securities.

Decision Item #1: The Department requests that \$194,949 of General Fund appropriations that currently support 2.0 Criminal Investigator FTE in the Department of Law's Securities Fraud Unit be replaced with an equal amount of reappropriated funds from the Division of Securities Cash Fund, which is administered by the Department of Regulatory Agencies. As a result, the Securities Fraud Unit, which has 5.6 FTE, would be completely funded by industry fees. This change would increase fees for Division of Securities fee payers by approximately 5 percent.

As Staff noted in a January 2010, appearance before the Committee, there are two ways that this could be accomplished:

1. The non-statutory solution is to increase the transfer in the Long Bill and eliminate the General Fund appropriation. No bill is required
2. The Department's preferred solution is to establish a new cash fund within the Department of Law into which these fees would be deposited and put rules into statute saying that the fee paid by regulated stockbrokers and investment advisors must include a component that is sufficient to cover the cost of operating the Securities Fraud Unit as set by the General Assembly in the Long Bill.

Staff recommended that the Committee adopt approach 2. The Committee agreed and voted to have a bill drafted. In broad concept this bill would have been similar to last year's H.B. 10-1385, a JBC bill that supplied increased cash funding to the Department of Law's Insurance Fraud Unit and also plugged a statutory hole that supplied General Fund to the Insurance Fraud Unit. When staff recommended the bill to the Committee, staff believed that it would not be significantly more complex than H.B. 10-1385. Staff turned out to be wrong and now recommends adoption of approach 1. The problem arose because of the complexity of the fee setting process for securities. While H.B. 10-1385 involved a single fee, the Securities bill would have required the Department of Law to get involved in the setting of the 25 separate fees that DORA's division of securities imposes, something that Staff believes the Department of Law should not try to do. While the Department of Law was willing to give this fee-setting task to DORA, Staff does not believe that such a handoff is appropriate.

Staff recommends that the Committee approve this request and increase the Long Bill transfer from DORA to the Department of Law by an amount sufficient to eliminate the General Fund appropriation. Of the 28.3 state FTE who are currently involved in securities work at DORA and at the Department of Law, all but two are supported by fees paid by securities dealers and investment advisers. It makes little sense to support those two with the General Fund when there is a clear nexus between the fee payer and the enforcement activity, especially in an environment in which large budget cuts must be made in other areas because of a lack of General Fund. The surge in reports of securities fraud during the current economic downturn also underlines the importance of this enforcement activity.

Appropriation for the Special Prosecutions Unit: The following table summarizes staffing levels within the division:

Staffing Summary Special Prosecutions Unit	FY 09-10 Actual	FY 10-11 Approp.	FY 11-12 Request	FY 11-12 Recommend.
Attorneys	12.0	12.0	12.0	12.0
Investigators	11.8	13.0	13.0	13.0
Administrative Staff	5.3	6.0	6.0	5.5
Total	29.1	31.0	31.0	30.5

The corresponding personal services calculation and the resulting staff recommendation, along with the Department's request, are in the following table. Based on discussions with the Department, Staff recommends that this line item also be reduced by a further \$35,000 General Fund and 0.5 FTE to take advantage of recent vacancy savings.

Special Prosecutions Unit	Total	GF	CF	RF	FF	FTE
FY 2010-11 Appropriation	2,844,966	1,578,099	872,706	394,161	0	31.0
State PERA contribution back to 10.15%	60,648	34,158	18,604	7,886	0	0.0
DI #1, Refinance Securities Fraud Unit FTE	0	(166,276)	0	166,276	0	0.0
1.5% base reduction	(40,294)	(19,694)	(12,271)	(8,329)	0	0.0
Additional General Fund Reduction	(35,000)	(35,000)	0	0	0	(0.5)
State PERA contribution down to 7.65%	(56,055)	(31,984)	(17,328)	(6,743)	0	0.0
FY 2011-12 Recommendation	2,774,265	1,359,303	861,711	553,251	0	30.5
FY 2011-12 Request	2,905,728	1,446,041	891,351	568,336	0	31.0
Recommendation - Request	(131,463)	(86,738)	(29,640)	(15,085)	0	(0.5)

Auto Theft Prevention Grant. This appropriation gives the Department the authority to spend a multi-year auto-theft-prevention grant that was awarded a year ago by the Colorado Automobile Theft Prevention Authority. The Authority's grants are funded by a \$1 annual fee on Colorado auto insurance policies. Because these grant moneys are first appropriated to the Department of Public Safety, they are classified as reappropriated funds when expended by the Department of Law. The

Department of Law's grant funds 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.

The following table presents staffing for the program.

Staffing Summary Auto Theft Prevention Grant	FY 09-10 Actual	FY 10-11 Approp.	FY 11-12 Request	FY 11-12 Recommend.
Attorneys	0.3	1.0	1.0	1.0
Administrative Staff	0.3	1.0	1.0	1.0
Total	0.6	2.0	2.0	2.0

The corresponding personal services calculation and the resulting staff recommendation, along with the Department's request, are presented in the following table. Note that AED and SAED are not centrally appropriated for this line item; all costs associated with this grant, including AED and SAED, are appropriated on this line in order to keep costs together in one place. Thus the calculation includes an adjustment for the higher FY 2011-12 AED and SAED rates.

Auto Theft Prevention Grant	Total	GF	CF	RF	FF	FTE
FY 2010-11 Appropriation	246,976	0	0	246,976	0	2.0
State PERA contribution back to 10.15%	4,534	0	0	4,534	0	0.0
1.5% base reduction	(3,312)	0	0	(3,312)	0	0.0
Adjustments for increased AED and SAED rates	1,632	0	0	1,632	0	0.0
End of initial equipment cost expenditures paid during the first year of the grant	(10,755)	0	0	(10,755)	0	0.0
State PERA contribution down to 7.65%	(4,370)	0	0	(4,370)	0	0.0
FY 2011-12 Recommendation	234,705	0	0	234,705	0	2.0
FY 2011-12 Request	242,388	0	0	242,388	0	2.0
Recommendation - Request	(7,683)	0	0	(7,683)	0	0.0

Appellate Unit. This unit represents the State in criminal cases that are appealed to state and federal appellate courts. The cases include homicides, assaults, sexual assaults, kidnaping, theft, burglary, drug related crimes, and crimes against children. The vast majority of the cases are appeals of convictions obtained by the State's 22 District Attorneys. This portion of the Appellate Unit is funded exclusively by the General Fund.

The appellate unit also employs a Victims' Services Coordinator, who assures compliance with the Victim Rights Amendment of Article 2, Section 16a of the Colorado Constitution. This amendment 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 is involved in a criminal appeal or a trial-court prosecution, 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 the Victims Assistance and Law Enforcement (VALE) Fund, which is established in Section 24-33.5-506, C.R.S., and is administered the Department of Public Safety's VALE Advisory Board. The Fund receives revenues from offender surcharges ordered by Colorado courts. Statute mandates that a portion of the moneys in the fund be allocated to the Department of Law to pay for the Coordinator.

Deferred implementation of H.B. 07-1054. Pursuant to H.B. 07-1054, which increased the number of Colorado judges, the Appellate Unit increased in size in FY 2008-09 by \$160,334 General Fund and 2.0 FTE. The Unit was also scheduled to increase in size by \$259,545 General Fund and 3.0 FTE in FY 2009-10. The extra staffing, which was identified in the bill's Legislative Council Staff Fiscal Note, is a consequence of the accelerated pace at which cases would reach the appellate courts due to the increased number of trial-court judges.

In response to the current economic downturn, during the 2009 session the Department requested delayed implementation of H.B. 07-1054; it asked that 1.0 additional FTE be added in each of Fiscal Years 2009-10, 2010-11 and 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.

The following table presents staffing for the Appellate Unit.

Staffing Summary Appellate Unit	FY 09-10 Actual	FY 10-11 Approp.	FY 11-12 Request	FY 11-12 Recommend.
Attorneys	27.8	28.0	28.0	28.0
General Professional (Includes Victims Asst)	1.0	1.0	1.0	1.0
Administrative Staff	2.9	3.0	3.0	3.0
Total	31.7	32.0	32.0	32.0

The corresponding personal services calculation and the resulting staff recommendation, along with the Department's request, are presented in the following table. Staff does not recommend a 1.5 percent base reduction for the reappropriated funds portion of this appropriation because there is no reappropriated funds vacancy savings in this line item; the entire appropriation is used to pay the salary, PERA and Medicare of the Coordinator, if it is reduced, the Department will have to backfill with General Fund from its Pots allocations to pay the Coordinator's salary.

Appellate Unit	Total	GF	CF	RF	FF	FTE
FY 2010-11 Appropriation*	2,648,687	2,450,093	0	198,594	0	32.0

Appellate Unit	Total	GF	CF	RF	FF	FTE
State PERA contribution back to 10.15%	54,768	53,230	0	1,538	0	0.0
1.5% base reduction	(37,428)	(34,426)	0	(3,002)	0	0.0
State PERA contribution down to 7.65%	(54,234)	(54,234)	0	0	0	0.0
FY 2011-12 Recommendation	2,611,793	2,414,663	0	197,130	0	32.0
FY 2011-12 Request	2,703,575	2,503,443	0	200,132	0	32.0
Recommendation - Request	(91,782)	(88,780)	0	(3,002)	0	0.0

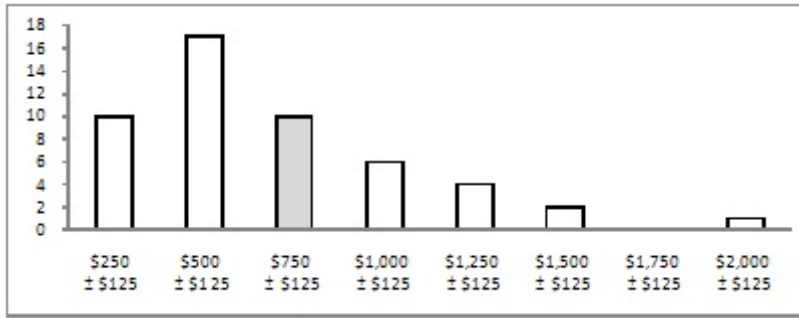
*For FY 2010-11, \$124,214 of the Department's indirect cost recoveries were used to offset General Fund appropriations to the Appellate Unit. Because indirect cost recoveries have not been finalized for FY 2011-12, the amount available to offset General Fund Appellate appropriations in FY 2011-12 is not yet known. Staff anticipates that the FY 2011-12 offset will be at least this large.

Medicaid Fraud Control Unit. This unit, which is mandated by federal law, investigates and prosecutes criminal fraud that is committed by individuals or companies who provide services to Medicaid clients. (Fraud committed by Medicaid clients is investigated by counties through the local office of the Department of Human Services.) The Unit also investigates and prosecutes misconduct against patients at Medicaid-funded facilities, including actual and threatened physical and sexual abuse, and criminal neglect. In addition to recovering improperly received Medicaid funds, remedies include suspension, sometimes permanently, from the Medicaid program. The Medicaid fraud program qualifies for an enhanced Medicaid matching rate; the federal government pays 75 percent of the unit's total costs, while the State provides the remaining 25 percent. Federal law requires that the unit 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 unit be kept separate from all other units at the Department of Law, thus the unit could not be combined with other units.

Though the federal government pays 75 percent of the cost of operating the Medicaid Fraud Control Unit, the State keeps at least 50 percent of the recovered funds, in some cases more. 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 chart, based on data in the *2009 Medicaid Fraud Control Unit Survey* published by the National Association of Medicaid Fraud Control Units (the most recently available report), compares Colorado's Medicaid Fraud Control Unit spending with that of other states. For the year depicted, Colorado spent \$694 on its Medicaid Fraud Control program per \$1 million spent on its Medicaid program, placing it in the chart's shaded column.

Spending for Medicaid Fraud Control Per \$1 Million Spent on Medicaid



Colorado is in the shaded column. The number of states is presented on the vertical axis. The table shows, for example, that 17 states spent \$500 ± \$125 on Medicaid Fraud Control for each \$1 million spent on Medicaid, while 10 states spent \$750 ± \$125.

The following table presents staffing for the program.

Staffing Summary Medicaid Fraud Grant	FY 09-10 Actual	FY 10-11 Approp.	FY 11-12 Request	FY 11-12 Recommend.
Attorneys	1.9	3.0	3.0	3.0
Investigators/Auditor/Gen Prof	10.0	12.0	12.0	12.0
Administrative Staff	2.0	2.0	2.0	2.0
Total	13.9	17.0	17.0	17.0

The corresponding personal services calculation and the resulting staff recommendation, along with the Department's request, follow:

Medicaid Fraud Control Unit	Total	GF	CF	RF	FF	FTE
FY 2010-11 Appropriation	1,618,187	404,547	0	0	1,213,640	17.0
State PERA contribution back to 10.15%	27,259	6,815	0	0	20,444	0.0
2 nd year impact of S.B. 10-167, False Claims Act	(28,896)	(7,226)	0	0	(21,670)	0.0
1.5% base reduction	(22,223)	(5,556)	0	0	(16,667)	0.0
Additional General Fund Reduction	(14,816)	(3,704)	0	0	(11,112)	0.0
State PERA contribution down to 7.65%	(30,537)	(7,634)	0	0	(22,903)	0.0
FY 2011-12 Recommendation	1,548,974	387,242	0	0	1,161,732	17.0
FY 2011-12 Request	1,616,613	404,152	0	0	1,212,461	17.0
Recommendation - Request	(67,639)	(16,910)	0	0	(50,729)	0.0

Peace Officers Standards and Training (P.O.S.T.) Board. Pursuant to Sections 24-31-301, C.R.S., and following sections, the P.O.S.T. Board certifies peace officers appointed by state and local law enforcement agencies and regulates peace officer training academies. The Board's duties include ensuring that all peace officers are proficient in the use of firearms, arrest control tactics, law enforcement driving, and the collection of DNA evidence.

Staffing Summary P.O.S.T. Board	FY 09-10 Actual	FY 10-11 Approp.	FY 11-12 Request	FY 11-12 Recommend.
Program Director	0.9	1.0	1.0	1.0
Investigator	3.9	4.0	4.0	4.0
Administrative Staff	1.7	2.0	2.0	2.0
Total	6.5	7.0	7.0	7.0

The corresponding personal services calculation, the resulting staff recommendation, and the Department's request are as follows:

P.O.S.T. Board	Total	GF	CF	RF	FF	FTE
FY 2010-11 Appropriation	2,681,744	0	2,681,744	0	0	7.0
State PERA contribution back to 10.15%	10,226	0	10,226	0	0	0.0
1.5% base reduction	(8,350)	0	(8,350)	0	0	0.0
State PERA contribution down to 7.65%	(8,920)	0	(8,920)	0	0	0.0
FY 2011-12 Recommendation	2,674,700	0	2,674,700	0	0	7.0
FY 2011-12 Request	2,691,996	0	2,691,996	0	0	7.0
Recommendation - Request	(17,296)	0	(17,296)	0	0	0.0

Safe2Tell. The Safe2Tell program operates a toll-free hotline and a web site where students and others can anonymously provide tips on potential safety issues at school and elsewhere, such as drug dealing, weapons, or a suicide threat. The 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. Since its inception Safe2Tell has also made presentations to over 60,000 youngsters around the state. These presentations are an integral part of its mission; among other things, they 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. It was exclusively supported by private grants prior to FY 2008-09 when the Department of Public Safety, through a decision item, received a \$97,186 General Fund, 1.0 FTE appropriation with which it hired the program director, a former Colorado Springs Police Department officer. Safe2Tell has at two other full time employees who do not work for the state. In FY 2009-10, another decision item transferred the program to the Department of Law.

As recently as a month ago there was concern that Safe2Tell might be forced to stop operating due to a lack of funding from non-state sources. The most significant funding loss is the expiration of a \$237,000 U.S. Department of Justice grant that runs out this month. However, the Department of Law indicates that sufficient funding has now been lined up to maintain current program staffing levels for the remainder of calendar year 2011. The new funders include schools, from whom \$15,000 has been received with another \$10,650 of commitments, and the Colorado School District

Self Insurance Pool, which has provided another \$25,000. The Department is optimistic about Safe2Tell's long term funding prospects and notes that the program will remain viable even if funding declines moderately.

The following table presents staffing levels for the program.

Staffing Summary Safe2Tell	FY 09-10 Actual	FY 10-11 Approp.	FY 11-12 Request	FY 11-12 Recommend.
Program Director	0.0	1.0	1.0	1.0
Total	0.0	1.0	1.0	1.0

The personal services calculation is as follows. Staff does not recommend a base reduction for this line item because there is no vacancy savings in the appropriation; the entire appropriation goes toward salary, PERA and Medicare; if it is reduced, the Department will have to backfill with General Fund from its Pots allocations in order to pay the Director's salary.

Safe2Tell	Total	GF	CF	RF	FF	FTE
FY 2010-11 Appropriation	98,351	98,351	0	0	0	1.0
State PERA contribution back to 10.15%	2,335	2,335	0	0	0	0.0
1.5% base reduction - not recommended	0	0	0	0	0	0.0
State PERA contribution down to 7.65%	(2,335)	(2,335)	0	0	0	0.0
FY 2011-12 Recommendation	98,351	98,351	0	0	0	1.0
FY 2011-12 Request	98,351	98,351	0	0	0	1.0
Recommendation - Request	0	0	0	0	0	0.0

Indirect Cost Assessment. The indirect cost assessment will be calculated after the Committee makes its final decisions on all pending common policy items.

(4) WATER AND NATURAL RESOURCES

The Natural Resources and Environment Division protects and defends Colorado and its citizens in matters relating to natural resource and water law, including the use of surface and groundwater, 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.

Federal and Interstate Water Unit. This unit specializes in matters that involve Colorado's water compacts and interstate decrees, defending Colorado's interests against water rights claims made by the federal government and other states and claims involving endangered species issues. The unit provides legal counsel and representation for the Colorado Water Conservation Board, the State Engineer, the Department of Natural Resources, and the State of Colorado in matters involving federal water rights claims (such as U.S. Forest Service reserved water rights cases), compliance with

federal regulatory programs (such as the federal endangered species act), and interstate water allocations.

Staffing Summary Federal and Interstate Water Unit	FY 09-10 Actual	FY 10-11 Approp.	FY 11-12 Request	FY 11-12 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

The personal services calculation, the Department request, and the staff recommendation are as follows:

Federal and Interstate Water Unit	Total	GF	CF	RF	FF	FTE
FY 2010-11 Appropriation	516,519	516,519	0	0	0	5.5
State PERA contribution back to 10.15%	10,353	10,353	0	0	0	0.0
1.5% base reduction	(6,989)	(6,989)	0	0	0	0.0
Additional General Fund Reduction	(6,000)	(6,000)	0	0	0	0.0
State PERA contribution down to 7.65%	(9,389)	(9,389)	0	0	0	0.0
FY 2011-12 Recommendation	504,494	504,494	0	0	0	5.5
FY 2011-12 Request	526,892	526,892	0	0	0	5.5
Recommendation - Request	(22,398)	(22,398)	0	0	0	0.0

Background on the Colorado Water Conservation Board's Litigation Fund. The Colorado Water Conservation Board, established in Section 37-60-102, C.R.S., 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, which is established in 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's balance, which currently equals approximately \$3.4 million, derives from periodic appropriations and transfers that the General Assembly makes into the Fund. The most recent transfer into the fund occurred when S.B. 09-125 (Water Conservation Board Construction Fund), transferred \$1.9 million from the Colorado Water Conservation Board Construction Fund to the Litigation Fund. Moneys in the Litigation Fund are continuously appropriated to the Board and all expenditures from the fund must be approved by the Board. By statute, 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.

Appropriations to the Department of Law from the Litigation Fund require two steps. The first step occurs when the Colorado Water Conservation Board, following a request from the Attorney General, uses its continuous spending authority to allocate funds to the Department of Law. Often these allocations cover the entire life of a project with no specification as to fiscal year. The second

step occurs when the General Assembly gives the Department the authority to expend the moneys allocated by the Colorado Water Conservation Board.

Defense of the Colorado River Basin Compact. The Department uses this appropriation to defend Colorado's interests in the 1922 Colorado River Compact (found in Section 37-61-101, C.R.S.), which apportioned Colorado River water between Upper and Lower Basin states, and the 1948 Upper Colorado River Basin Compact (Section 37-62-101, C.R.S.), which apportioned upper basin water among Colorado, Utah, Wyoming and New Mexico. Water from the Colorado River and its tributaries constitutes more than 75 percent of the state's total water supply. This line item was created in FY 2005-06 following a string of dry years that led some to conclude that major legal action involving the Colorado River Compacts was imminent. The appropriation was designed to prepare for river litigation and then fund legal representation when litigation began. Since its creation, the line item has been funded with grants from the Colorado Water Conservation Board.

Though the threat of a major legal battle receded when rainfall returned to normal levels, the threat did not end. Colorado is now involved on a continuous basis in numerous negotiations to defend and protect its allocations of Colorado river basin water. Without these negotiations, significantly more costly litigation is likely to ensue.

Since this line item was added to the Long Bill, the Department has used the appropriation to:

- Develop a litigation-support database that covers the entire historical record of the river compacts, making it much easier to identify and retrieve relevant documents when disputes arise.
- Help the State Engineer develop a set of rules that specify how Colorado would deal with in-state curtailment of water rights resulting from a Colorado River Compact call.
- Monitor and when necessary join legal cases involving the river and participate in relevant talks and negotiations.
- Monitor operation of the river, river storage facilities, water projects, and plans affecting the river, participating in these matters when necessary to protect Colorado's rights.

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

Colorado River Decision Item, BA-1. The Colorado Water Conservation Board has approved a \$700,000 grant to the Department of Law, \$350,000 for FY 2011-12 and \$350,000 for FY 2012-13, from the Colorado Water Conservation Board's Litigation Fund. The Department of Law requests a FY 2011-12 appropriation of \$350,00 so it can expend this grant.

The Department will use this funding to hire water resource engineers, including some specializing in computer modeling, who will conduct 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 explores the technical and legal implications of various strategies that Colorado could pursue to deal with these possibilities.

Staff Recommends that the Committee approve this request and appropriate this grant on the Consultant Expenses line.

The following table summarizes staffing for the *Defense of the Colorado River Basin Compact* line item:

Staffing Summary Defense of the Colorado River Basin Compact	FY 09-10 Actual	FY 10-11 Approp.	FY 11-12 Request	FY 11-12 Recommend.
Attorneys	2.4	2.0	2.0	2.0
Legal Assistants	1.0	1.0	1.0	1.0
Total	3.4	3.0	3.0	3.0

The personal services calculation, the Department request, and the Staff recommendation follow.

Defense of the Colorado River Basin Compact	Total	GF	CF	RF	FF	FTE
FY 2010-11 Appropriation	333,017	0	333,017	0	0	3.0
State PERA contribution back to 10.15%	6,983	0	6,983	0	0	0.0
1.5% base reduction	(4,802)	0	(4,802)	0	0	0.0
State PERA contribution down to 7.65%	(4,278)	0	(4,278)	0	0	0.0
FY 2011-12 Recommendation	330,920	0	330,920	0	0	3.0
FY 2011-12 Request	340,011	0	340,011	0	0	3.0
Recommendation - Request	(9,091)	0	(9,091)	0	0	0.0

The fund source is the Colorado Water Conservation Board's Litigation Fund.

Defense of the Republican River Compact. The Republican River Compact between Colorado, Kansas, and Nebraska, which can be found in Section 37-67-101, C.R.S., governs the use of water in the Republican River Basin, which lies in northeastern Colorado, southwestern Nebraska and

northwestern Kansas. In 1998, Kansas sued Nebraska and Colorado, alleging over use 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. Staff notes that Nebraska is far from compliance while Colorado is either in compliance or is close to being in compliance.

The Department of Law expects additional Republican River litigation during FY 2011-12. Kansas has filed in the United State Supreme Court, which has original jurisdiction; the Court has not acted on Kansas' petition but is expected to act prior to the end of the term. If the Court accepts the petition, expenses for a Court appointed special master are probable. The Department also continues to negotiate with Kansas over the Compact Pipeline, which would divert water from the Platt to the Republican River to fulfil Colorado's compact obligations. Disagreements over this pipeline may lead Kansas or Colorado to invoke arbitration, which will require expenditures for outside experts as well as other litigation expenses, including travel and payment of the arbitrator's fees.

Staff recommends that the Committee approve an appropriation of \$110,000 cash funds for the Defense of the Republican River Compact, which continues the FY 2010-11 funding level. The funding source is the Colorado Water Conservation Board litigation fund.

Consultant Expenses. This line item is being used to make payments to the private counsel that has represented Colorado during its 25-year legal fight with Kansas over the Arkansas River Compact.

Background on 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. The Department's request for \$50,000 of funding will pay the outside counsel as he helps the State Engineer deal with various disputes, such as the Kansas' proposed change to the Hydrologic-Institute Model. Kansas has invoked arbitration for this proposed change.

The following table shows the Staff recommendation for Consultant Expenses.

Consultant Expenses	Total	GF	CF	RF	FF
FY 2010-11 Appropriation	75,000	0	75,000	0	0
Return appropriation to base level following one-time FY 2010-11 supplemental for U.S. Supreme Court Amicus Brief	(25,000)	0	(25,000)	0	0
Colorado Water Conservation Board Grant	350,000	0	350,000	0	0
FY 2011-12 Recommendation	400,000	0	400,000	0	0
FY 2011-12 Request	400,000	0	400,000	0	0
Recommendation - Request	0	0	0	0	0

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This line item provides funding for the Department's CERCLA Litigation Unit, which uses the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to direct and finance clean up and restoration of sites that have been contaminated by hazardous substances.

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, the CERCLA Litigation Unit works closely with the Department of Public Health and Environment (CDPHE), providing legal advice and, where possible, helping CDPHE to induce the responsible party, via negotiation or litigation, to undertake appropriate cleanup measures. In some cases the Unit is also able to recover costs that the state incurred while dealing with the polluted site and the polluter; since its inception in FY 1984-85, the CERCLA Litigation Unit has recovered more than \$28 million for the General Fund and \$10 million for the Hazardous Substance Response Fund. The Unit is involved with 10 CERCLA sites in the state, including Rocky Mountain Arsenal and California Gulch, which are rapidly winding down, and Summitville Mine.

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's rules, any recovery that the state receives must be spent on the restoration, replacement or acquisition of equivalent natural resources; the state could not, for example, use a recovery to support the General Fund.

Staffing for the CERCLA Litigation Unit is as follows:

Staffing Summary CERCLA	FY 09-10 Actual	FY 10-11 Approp.	FY 11-12 Request	FY 11-12 Recommend.
Attorneys	2.9	3.0	3.0	3.0
Legal Assistants	0.5	0.5	0.5	0.5

Staffing Summary CERCLA	FY 09-10 Actual	FY 10-11 Approp.	FY 11-12 Request	FY 11-12 Recommend.
Total	3.4	3.5	3.5	3.5

Decision Item #2: Water and Natural Resources Division. House Bill 10-1329 authorized the Colorado Department of Public Health and Environment (CDPHE) to set the per cubic yard fee paid by hazardous waste haulers when they dispose of waste. Previously the fee was established in statute. CDPHE transfers up to 3.5 cents of this per-cubic-yard fee to the CERCLA Unit to pay part of the cost of the Unit's operations. For budgeting clarity, the Department of Law requests that \$75,000 of appropriations related to this transfer be moved from the "CERCLA Contracts" line item to the "CERCLA" line item, which will consolidate expenditures of the transfers into a single line in the Long Bill without changing the overall level of appropriations.

Staff recommends that the Committee approve this realignment of the appropriation.

The next table presents the corresponding personal services calculation and the resulting staff recommendation:

CERCLA	Total	GF	CF	RF	FF	FTE
FY 2010-11 Appropriation	382,962	0	0	382,962	0	3.5
State PERA contribution back to 10.15%	8,216	0	0	8,216	0	0.0
Shift \$75,000 appropriation to this line item from the CERCLA Contracts line item	75,000	0	0	75,000	0	0.0
1.5% base reduction	(5,549)	0	0	(5,549)	0	0.0
State PERA contribution down to 7.65%	(7,947)	0	0	(7,947)	0	0.0
FY 2011-12 Recommendation	452,682	0	0	452,682	0	3.5
FY 2011-12 Request	466,191	0	0	466,191	0	3.5
Recommendation - Request	(13,509)	0	0	(13,509)	0	0.0

The reappropriated funds portion of this appropriation comes from the Hazardous Substance Response Fund, which is administered by the Department of Public Health and Environment. The corresponding appropriation is in the Department of Public Health and Environment's Hazardous Materials Division.

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

As with the previous line item, the reappropriated funds portion of this appropriation comes from an appropriation in the Department of Public Health and Environment's Hazardous Materials Division.

CERCLA Contracts	Total	GF	CF	RF	FF
FY 2010-11 Appropriation	500,000	0	0	500,000	0
Shift \$75,000 appropriation from this line item to the CERCLA line item	(75,000)	0	0	(75,000)	0
FY 2011-12 Recommendation	425,000	0	0	425,000	0
FY 2011-12 Request	425,000	0	0	425,000	0
Recommendation - Request	0	0	0	0	0

Natural Resource Damage Claims at Rocky Mountain Arsenal. In 2008 the Department of Law and the State Natural Resource Trustees settled their natural resource damage case against Shell Oil Company and the U.S. Army over pollution at the Rocky Mountain Arsenal. The Trustees must now expend 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 and Staff recommends that that the appropriation be reduced by \$100,000, as shown in the following table:

Natural Resource Damage Claims at Rocky Mountain Arsenal	Total	GF	CF	RF	FF
FY 2010-11 Appropriation	150,000	0	150,000	0	0
Additional Reduction	(100,000)	0	(100,000)	0	0
FY 2011-12 Recommendation	50,000	0	50,000	0	0
FY 2011-12 Request	50,000	0	50,000	0	0
Recommendation - Request	0	0	0	0	0

The source for this appropriation is the Hazardous Substance Response Fund.

Indirect Cost Assessment.

There are two sources of cash funds within the Water and Natural Resources Division: (1) The Colorado Water Conservation Board's Litigation Fund, which supports the appropriations for the Defense of the Republican River Compact and the Defense of the Colorado River Compact, and (2) The Hazardous Substance Response Fund, which either directly or indirectly supports the Division's CERCLA line items. **The Department has never charged indirect costs to these fund sources and staff recommends that this practice continue.** Almost all of the Hazardous Substance Response Fund appropriations are going directly to contractors, which means that these appropriations impose little overhead on the Department. Appropriations from the Colorado Water Conservation Board's Litigation Fund should not be charged overhead for two reasons: (1) the Water Conservation Board allocated these moneys believing that they would not be charged overhead, (2) the Department of Law has never charged overhead to special litigation line items.

(5) CONSUMER PROTECTION

The Consumer Protection Division protects Colorado consumers and business against fraud and maintains a competitive business environment. It does this by enforcing state and federal laws regarding consumer protection, antitrust, consumer lending, mortgage fraud, predatory lending, debt collection, rent-to-own, and credit repair.

Consumer Protection and Anti-Trust. The Anti-trust and Consumer Fraud Unit investigates and prosecutes fraudulent trade and advertising practices in a variety of areas, such as telephone solicitation (including Colorado's "no-call" list), automobile repossession, health clubs, and manufactured homes. Much of the statutory authority for its fraud-enforcement activities stems from the Colorado Consumer Protection Act of Article 1, Title 6, C.R.S., which enumerates a wide variety of deceptive trade practices. Three mortgage-broker bills enacted during the 2007 session expanded the Consumer Protection Act and added to the Unit's funding. As a consequence of these bills, unconscionable actions by a mortgage broker or a mortgage broker's failure to act in good faith and deal fairly with clients are now classified as deceptive trade practices.

The Unit's anti-trust responsibilities stem from the Colorado Antitrust Act in Article 4 of Title 6, C.R.S. and from federal anti-trust laws, such as the Sherman Act. The Unit uses this authority to investigate and prosecute price fixing, bid rigging, and illegal attempts to monopolize industries.

Pursuant to Section 24-31-402, C.R.S., the Anti-trust and Consumer Fraud Unit also works with the Department of Revenue to enforce the laws that govern "non-participating" tobacco manufacturers, i.e. manufacturers who have not joined the tobacco Master Settlement Agreement. These laws are contained in Section 39-28-201, C.R.S., and following sections.

Staffing Summary Consumer Protection and Anti-Trust	FY 09-10 Actual	FY 10-11 Approp.	FY 11-12 Request	FY 11-12 Recommend.
Attorneys	9.6	10.0	10.0	10.0
Legal Assistants	1.8	2.0	2.0	2.0
Investigators	4.0	4.0	4.0	4.0
Administrative Staff	4.1	5.0	5.0	5.0
Total	19.5	21.0	21.0	21.0

The personal services calculation, the Department's request, and staff's recommendation follow:

Consumer Protection and Anti-Trust	Total	GF	CF	RF	FF	FTE
FY 2010-11 Appropriation	1,814,069	907,056	664,957	242,056	0	21.0
State PERA contribution back to 10.15%	35,753	21,048	9,931	4,774	0	0.0
1.5% base reduction - the GF reduction, which would equal \$9,425, is taken from CF to facilitate the FTE adjustment discussed below.	(25,342)	0	(22,217)	(3,125)	0	0.0

Consumer Protection and Anti-Trust	Total	GF	CF	RF	FF	FTE
Additional Reduction	(8,528)	0	(8,528)	0	0	0.0
State PERA contribution down to 7.65%	(34,271)	(19,506)	(9,991)	(4,774)	0	0.0
FY 2011-12 Recommendation	1,781,681	908,598	634,152	238,931	0	21.0
FY 2011-12 Request	1,849,900	928,148	674,911	246,841	0	21.0
Recommendation - Request	(68,219)	(19,550)	(40,759)	(7,910)	0	0.0

The cash funds for this recommendation derive from:

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

The reappropriated funds come from an appropriation in the Department of Regulatory Agencies' Division of Real Estate from the Mortgage Brokers Cash Fund that is transferred to the Department of Law to support the Unit's 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.

Requested FTE realignment: The Department requests that the Consumer Protection and Anti-Trust Unit's 21.0 FTE be reallocated in the manner shown in the following table:

Fund sources supporting the Consumer Protection and Anti-Trust Unit's FTE	Number of FTE supported by this fund source	
	In FY 10-11 Long Bill	Request for FY 11-12 Long Bill
General Fund	12.5	10.0
Cash Funds (from court awards)	1.5	8.0
Reappropriated Funds (transferred from DORA for mortgage work)	7.0	3.0
Total	21.0	21.0

The 10.0 General-Fund-supported FTE in the FY 2011-12 column of this table would all be attorneys or investigators, while the FTE who are paid from court-awarded settlements would all be support staff. The objective of this realignment is to avoid conflicts of interest by assuring that no attorney or investigator needs to think about recovering his own salary when pursuing a case.

The Department has long been uncomfortable about funding a portion of its Consumer Protection activities with court awards. It argues that such funding creates a potential conflict of interest; when enforcing consumer protection and antitrust laws, the Attorney General must be free to choose cases on their merits, without regard to potential recoveries. The focus in many such cases should be on

injunctive relief, restitution, and civil or criminal penalties, rather than on recoveries. The allocation of FY 2011-12 FTE that underlies the above table assures that attorneys and investigators, who make the decisions in consumer protection cases, are all supported by the General Fund, while support staff, who have a much smaller decision-making role, are supported by court awards.

Staff believes that the Department's request has merit and recommends that the Committee approve it.

Consumer Credit Unit. This appropriation supports the Collection Agency Board Unit and the Consumer Credit Unit.

The *Collection Agency Board* enforces the 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 two Acts protect (1) creditor firms and parents who engage collection agencies to collect debts on their behalf, and (2) the debtor consumers and parents who are the subject of the collection efforts of those agencies. The two acts 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 and parents will receive funds recovered on their behalf. The Collection Agency Board Unit licenses over 600 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, pay the costs of operating the Unit. These fees are set by the Department and are adjusted annually to cover the Unit's costs, pursuant to Section 12-14-119 (5), C.R.S. Thus the General Assembly's appropriations for this line item drive the licensing fees. Penalties assessed against licensees are typically split between the General Fund and the Collection Agency Board Custodial Fund.

The *Consumer Credit Unit* enforces the Consumer Credit Code in Title 5 of the Colorado Revised Statutes, which is based in substantial part on the Uniform Consumer Credit Code ("UCCC"). Among the more important components of the Consumer Credit Code are:

1. The Consumer Equity Protection Act in Article 3.5, which governs certain high cost mortgages, i.e. mortgages with interest rates and/or fees that exceed triggers that are tied to other interest rates in the economy. This Act applies to high rate or high fee home equity loans and high rate or high fee mortgage refinancing, but does not apply to mortgages that are used to initially acquire a home.
2. The Deferred Deposit Loan Act in Article 3.1, which applies to payday lenders, including internet payday lenders; and
3. The Rental Purchase Agreement Act in Article 10, which governs rent-to-own agreements.

Lenders who are subject to the Consumer Credit Code are licensed by the Department and are known as "supervised lenders." Approximately 38 percent of these supervised lenders are high rate or high fee mortgage lenders and 47 percent are payday lenders. License fees, which are set under authority

of Section 5-2-302, C.R.S., and are deposited in the Uniform Consumer Credit Code Cash Fund established in Section 5-6-204, C.R.S., cover the cost of operating the program. These fees are adjusted annually by the Department pursuant to Section 5-6-203 (5), C.R.S., and are set at levels that cover the cost of running the Unit.

The Consumer Credit Unit protects borrowers from abusive practices by these lenders, 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. The Consumer Credit Unit also enforces the Credit Services Organization Act contained in Part 1, Article 14.5 of Title 12, which substantially limits "credit repair" services. As a consequence of the restrictive rules, very few companies offer such services. Appropriations from the Uniform Consumer Credit Code Cash Fund pay the cost of operating the program. In 2008, the Unit began enforcing the Uniform Debt Management Services Act contained in Part 2 of Article 14.5 of Title 12, which was added to statute by S.B. 08-57. The Act regulated debt management services, which attempt to negotiate reduced interest rates and balance reductions on behalf of financially stressed creditors. A substantial portion of debt management service providers are internet based.

Staffing for the Consumer Credit Unit is as follows:

Staffing Summary Consumer Credit Unit	FY 09-10 Actual	FY 10-11 Approp.	FY 11-12 Request	FY 11-12 Recommend.
Attorneys	2.9	3.0	3.0	3.0
Compliance Investigators	2.0	2.0	2.0	2.0
Financial Credit Examiners	7.4	8.0	8.0	8.0
Administrative Staff	5.0	5.0	5.0	5.0
Total	17.3	18.0	18.0	18.0

The corresponding personal services calculation, the Department request, and the staff recommendation follow:

Consumer Credit Unit	Total	GF	CF	RF	FF	FTE
FY 2010-11 Appropriation	1,350,707	0	1,350,707	0	0	18.0
State PERA contribution back to 10.15%	27,965	0	27,965	0	0	0.0
1.5% base reduction	(18,966)	0	(18,966)	0	0	0.0
State PERA contribution down to 7.65%	(28,499)	0	(28,499)	0	0	0.0
FY 2011-12 Recommendation	1,331,207	0	1,331,207	0	0	18.0
FY 2011-12 Request	1,378,738	0	1,378,738	0	0	18.0
Recommendation - Request	(47,531)	0	(47,531)	0	0	0.0

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

Indirect Cost Assessment. The indirect cost assessment will be calculated after the Committee makes its final decisions on all pending common policy items.

(6) SPECIAL PURPOSE

This division contains appropriations and programs that do not fit within the Department's other divisions. The section often includes appropriations for large one-time lawsuits.

District Attorneys' Salaries. Pursuant to Section 20-1-306, C.R.S., the state pays 80 percent of the base salary established in Section 20-1-301, C.R.S. for the State's 22 district attorneys. The state only subsidizes the salary of the district attorney; it does not contribute to deputy or assistant district attorney salaries. The state also pays 80 percent of the PERA, AED and SAED (but not the Medicare) on each district attorney's base salary, though statute is silent concerning these extra payments. A district attorney's actual salary is set by the commissioners of the county or counties that make up the district attorney's judicial district, subject to the requirement in Section 20-1-301, C.R.S., that the salary equal or exceed the following base amounts:

- \$100,000 beginning January 1, 2009;
- \$110,000 beginning January 1, 2010;
- \$120,000 beginning January 1, 2011; and
- \$130,000 beginning January 1, 2012.

If a judicial district sets the salary higher than the base, the district's county or counties must pay all of the extra costs.

Section 11 of Article 12 of the Colorado Constitution states that the salary of an elected public official cannot be increased or decreased during the term of office for which the official was elected. 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 Legislative Legal Services, an elected official's salary can be changed while in office according 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. Anticipating such opportunities, statute requires that the House and Senate Judiciary Committees, beginning with the 2012 legislative session and every fourth session thereafter, recommend a base salary schedule to the General Assembly that covers the next four years.

District Attorneys' Salaries	Total	GF	CF	RF	FF
FY 2010-11 Appropriation	2,263,228	2,263,228	0	0	0

District Attorneys' Salaries	Total	GF	CF	RF	FF
State PERA contribution back to 10.15%	50,600	50,600	0	0	0
Statutory base salary increase, including PERA, AED and SAED	220,968	220,968	0	0	0
State PERA contribution down to 7.65%	(55,000)	(55,000)	0	0	0
FY 2011-12 Recommendation	2,479,796	2,479,796	0	0	0
FY 2011-12 Request	2,479,796	2,479,796	0	0	0
Recommendation - Request	0	0	0	0	0

Litigation Management and Technology Fund. This line item, which despite its name does not involve a cash fund, was added to the Department's portion of 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 to pay for (2) technology costs that would otherwise require General Fund appropriations. This appropriation has reduced the need for legal services supplementals related to the Legal Services to State Agencies program and other unanticipated litigation.

Moneys for this appropriation come from two sources:

1. Excess earnings of the Legal Services to State Agencies (LSSA) program during the previous fiscal year. Excess LSSA earnings arise when the revenues earned by the LSSA program exceed the costs of operating the program. Without the Litigation Management and Technology Fund appropriation and the related footnote, or other appropriations from excess earnings of the LSSA program, this excess would revert to the General Fund. The Litigation Management and Technology Fund appropriation allows the Department to keep some of this excess and use it in the next year. 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 2010-11, for example, will not be known with certainty until July 2011, the first month of the fiscal year in which those earnings can be expended. In recent years, excess earnings have been as high as \$470,000 and as low as \$260,000. Hence aggressive appropriations from this funding source before the actual amount is known could result in a partially funded line item. Note, however, that the amount of excess earnings for FY 2010-11 will be known with certainty during FY 2011-12 supplementals next January, meaning that it will become a reliable funding source at that time.
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., and is a cash funds source of expenditure. The Attorneys Fees and Costs Account 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. For example, if the Litigation Management and Technology Fund appropriation equals \$325,000 and LSSA excess earnings exceed \$325,000, then no money will be taken from the Attorney Fees and Cost Account. If LSSA excess earnings equal \$290,000, then \$35,000 will be taken from the Attorney Fees and Cost Account.

Staff recommends the Department's request of \$325,000 cash funds for this line item, which is a continuation appropriation.

Tobacco Litigation. When the Master Settlement Agreement 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 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 Master Settlement Agreement 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 non-participating-manufacturer 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.

The current arbitration proceeding, which began last summer, is likely to last through 2012. The Department of Law has engaged outside counsel (Hale, Westfall, LLP) for this matter because it cannot represent itself; attorneys at the Department of Law helped develop and continue to assist the non-participating-manufacturer enforcement program that is operated by the Department of Revenue. The Department of Law's efforts are "on trial" before the arbitrators; attorneys from the Department of Law are likely to be called to testify during the arbitration proceeding.

At this time, Colorado's outside counsel is dealing with preliminary legal and procedural issues as well as discovery, and is preparing for later briefing and argument before the Arbitration panel. The Department estimates that legal costs will average \$85,000 per month for the period from February 2011 to October 2011 and then will drop to \$67,500 monthly for the remainder of FY 2011-12.

The FY 2010-11 appropriation for Tobacco Litigation was based on the assumption that expenditures for outside counsel would equal \$62,500 monthly. Actual expenses have averaged \$83,541, which is \$21,041 higher than anticipated. Coupled with the expectation of monthly expenditures equaling \$85,000 for the remainder of FY 2010-11, this implies the need for a supplemental appropriation of \$259,790 for FY 2010-11.

FY 2010-11 Long Bill Supplemental request and recommendation. The Department requests and Staff recommends a supplemental appropriation of \$259,790 cash funds for this line item for FY 2010-11. This Long Bill Supplemental would be included in a separate section of this year's Long Bill.

FY 2011-12 request and recommendation. The Department requests and Staff recommends an appropriation of \$880,000 cash funds for this line item, a \$130,000 increase over the FY 2010-11 appropriation of \$750,000. This appropriation will support the projected 4 months of expenditures at a rate of \$85,000 per month and the subsequent 8 months of expenditures at a rate of \$67,500 per month.

Staff recommends that the Committee approve the FY 2010-11 Long Bill supplemental request and the FY 2011-12 request because tens of millions of dollars, possibly much more, rest on the outcome of this case.

The funding source is the Defense Account of the Tobacco Litigation Settlement Cash Fund. This account was established out of Master Settlement Agreement moneys received in compensation for attorney fees, and other costs that Colorado incurred in its legal action against tobacco manufacturers. As of the end of February 2011, the Defense Account has a balance of \$2.1 million. At projected expenditure rates, Staff estimates that the Defense Account will be exhausted by mid to late FY 2012-13, at which time General Fund appropriations will be needed to support the litigation effort and the 1.0 FTE at the Department of Law who works on the state's non-participating-manufacturer enforcement program.

Recommended Legislation. If the Committee chooses to sponsor a tobacco-settlement bill this year that redirects settlement revenue, Staff recommends that the Committee consider directing some settlement revenue into the Defense Account of the Tobacco Litigation Settlement Cash Fund in order to replenish it. Without replenishment General Fund appropriations may be needed to support the litigation efforts by FY

Lobato Litigation Expenses. During figure setting for the Governor's office, the Committee approved two appropriations for the Lobato case, in which the plaintiffs assert that Colorado's current school funding system fails to provide a thorough and uniform system of free public education as required by the Colorado Constitution. The first of these appropriations was for 7,200 hours of legal services by attorneys at the Department of Law. The second appropriation was for \$432,500 of other litigation expenses, such as expert witnesses, transcripts, and the supplemental use of contract attorneys. These moneys will be transmitted to the Department of Law, which requires an appropriation in order to spend the funds it receives. The appropriation for legal services hours was included in the recommendation for personal services for Legal Services to State Agencies, which was presented earlier. The appropriation for other litigation expenses also requires an appropriation.

Staff recommends that the Committee approve an appropriation of \$432,500 reappropriated funds to the Department of Law so that it can expend these funds when it receives them.

Long Bill Footnotes and Requests for Information

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

Medicaid Fraud Request for Information

- 2 Department of Law, Criminal Justice and Appellate, Medicaid Fraud Grant --** The General Assembly requests that the Department of Law's Medicaid Fraud Control Unit produce a progress report on the Department's efforts to reduce Medicaid fraud and abuse in Colorado. The report should include: (1) the most recent estimates on the total amount of Medicaid fraud and abuse in Colorado; (2) a summary of total fines, costs, and restitutions recovered, attributable to the Medicaid Fraud Control Unit's efforts; (3) a detailed explanation of the Medicaid Fraud Control Unit's participation in global or national Medicaid fraud settlements, including total awards received due to them; and (4) evidence of the effectiveness of the Medicaid Fraud Control Unit in reducing the amount of Medicaid fraud and abuse in Colorado. The Medicaid Fraud Control Unit is requested to submit the report to the Joint Budget Committee by ~~November 1, 2010~~ NOVEMBER 1, 2011.

Comment: This footnote provides useful information on the effectiveness of the State's Medicaid Fraud Control Unit. Staff recommends continuing this request.

Legal Rate Footnote

- 32 Department of Law, Legal Services to State Agencies --** In making this appropriation, it is the intent of the General Assembly that hourly billing rates charged by the Department for legal services to state agencies not exceed ~~\$76.36~~ \$77.33 per hour for attorneys and not exceed ~~\$60.03~~ \$61.57 per hour for paralegals, which equates to a blended rate of ~~\$73.37~~ \$74.60 per hour.

Comment: The blended legal rate is used to compute the Long Bill appropriations for legal services for the various agencies of state government. The blended rate is also used to compute legal-service appropriations in 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.

Litigation Management and Technology Fund Footnote

- 33 Department of Law, Special Purpose, Litigation Management and Technology Fund --** It is the intent of the General Assembly to grant the Department of Law additional flexibility by allowing the Department to use funds appropriated in this line item to address unanticipated state legal needs that arise during ~~FY-2010-11~~ FY

2011-12, as well as information technology asset maintenance needs that would otherwise require General Fund appropriations during ~~FY 2010-11~~ FY 2011-12. It is also the intent of the General Assembly that moneys spent from this fund shall not require the appropriation of additional FTE and will not be used for any type of salary increase, promotion, reclassification, or bonus related to any present or future FTE employed by the Department of Law. It is furthermore the intent of the General Assembly that moneys spent from this fund will not be used to offset present or future personal services deficits in any division in the Department. The Department is requested to submit a quarterly report to the Joint Budget Committee detailing the purpose for which moneys from this fund have been expended. Such a report is also requested with any supplemental requests for additional legal services funding within or outside of the Legal Services to State Agencies program.

Comment: This footnote has appeared in the Long Bill since 2003 and it reflects what Staff believes to be the continuing intent of the Committee regarding the use of this appropriation. Since the Litigation Management and Technology Fund is non statutory, this footnote provides the only guidance to the Department concerning the use of these moneys.

MEMORANDUM

TO: Members of the Joint Budget Committee

FROM: Steve Allen, JBC Staff

SUBJECT: Indirect Cost Assessments for the Water and Natural Resources Division at the Department of Law

DATE: March 17, 2011

The Staff figure setting document for the Department of Law incorrectly recommended that there be no indirect cost assessments for the Department's Water and Natural Resources Division. Staff should have recommended that indirect costs be assessed on the transfers from the Department of Public Health and Environment in support of the Department of Law's CERCLA line item and that the amount of the indirect cost assessments are pending.

Background. This division has three sources of cash funds:

1. Grants from the Colorado Water Conservation Board's Litigation Fund, which supports legal work relating to the Arkansas, Colorado, and Republican rivers,
2. The Hazardous Substance Response Fund, which supports the CERCLA Contracts line item and Natural Resource Damage Claims at Rocky Mountain Arsenal, and
3. Transfers from the Department of Public Health and Environment, which support the CERCLA line item.

Though assessments have never been collected from the first two of these sources, assessments have been collected from the third, transfers from the Department of Public Health and Environment. Staff recommends similar treatment this year. The rationale for this treatment is as follows: Hazardous Substance Response Fund appropriations go directly to contractors; they impose little overhead cost on the Department. Grants from the Colorado Water Conservation Board's Litigation Fund were made by the Board with the understanding that there would be no assessments. Finally, the Department of Law has never charged overhead to special litigation line items.