

**COLORADO GENERAL ASSEMBLY  
JOINT BUDGET COMMITTEE**



**FY 2009-10 STAFF FIGURE SETTING**

**DEPARTMENT OF LAW**

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

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**FY 2009-10 FIGURE SETTING  
STAFF PRESENTATION TO THE JOINT BUDGET COMMITTEE**

**DEPARTMENT OF LAW**

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

	<b>FY 2006-07 Actual</b>	<b>FY 2007-08 Actual</b>	<b>FY 2008-09 Approp</b>	<b>FY 2009-10 Request</b>	<b>FY 2009-10 Staff Recomm.</b>	<b>Change Request</b>
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DEPARTMENT OF LAW John W. Suthers, Attorney General
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**(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 virtually all of the department's various fund sources. Much of the division's other activity is supported by reappropriated funds that derive from indirect cost recoveries.*

Personal Services	2,465,879	2,523,002	2,795,309	3,013,268	3,013,268	DI#4
FTE	<u>37.7</u>	<u>38.2</u>	<u>41.2</u>	<u>42.2</u>	<u>42.2</u>	
General Fund	9,025	24,150	0	0	0	
Cash Funds	5,000	5,000	0	0	0	
Cash Funds Exempt/RF	2,451,854	2,493,852	2,795,309	3,013,268	3,013,268	
Health, Life and Dental	<u>1,166,472</u>	<u>1,423,679</u>	<u>1,774,106</u>	<u>1,940,668</u>	<u>1,940,668</u>	
General Fund	363,616	461,603	522,880	534,414	534,414	
Cash Funds	63,732	90,556	141,137	152,611	152,611	
Cash Funds Exempt/RF	720,233	847,378	1,063,960	1,194,594	1,194,594	
Federal Funds	18,891	24,142	46,129	59,049	59,049	

	<b>FY 2006-07</b>	<b>FY 2007-08</b>	<b>FY 2008-09</b>		<b>FY 2009-10</b>	<b>FY 2009-10</b>	<b>Change</b>
	<b>Actual</b>	<b>Actual</b>	<b>Approp</b>		<b>Request</b>	<b>Staff Recomm.</b>	<b>Request</b>
Short-term Disability	<u>25,199</u>	<u>31,935</u>	<u>36,340</u>		<u>36,556</u> B	<u>43,841</u>	
General Fund	7,560	9,571	10,672		11,079	12,603	
Cash Funds	1,515	1,832	2,874		2,962	3,218	
Cash Funds Exempt/RF	15,625	19,631	21,660		21,527	26,641	
Federal Funds	499	901	1,134		988	1,379	
S.B. 04-257 Amortization Equalization							
Disbursement	<u>172,286</u>	<u>303,805</u>	<u>440,589</u>	S	<u>562,398</u> B	<u>562,968</u>	
General Fund	51,310	92,272	124,687		170,441	159,903	
Cash Funds	10,027	17,229	35,889		45,576	41,517	
Cash Funds Exempt/RF	107,570	185,792	266,062		331,188	343,756	
Federal Funds	3,379	8,512	13,951		15,193	17,792	
S.B. 06-235 Supplemental Amortization							
Equalization Disbursement	<u>0</u>	<u>62,558</u>	<u>204,308</u>	S	<u>351,500</u> B	<u>350,162</u>	
General Fund	0	17,229	56,229		99,332	98,246	
Cash Funds	0	3,692	16,578		26,026	25,948	
Cash Funds Exempt/RF	0	39,813	124,962		215,022	214,848	
Federal Funds	0	1,824	6,539		11,120	11,120	
Salary Survey for Classified Employees	<u>246,897</u>	<u>278,941</u>	<u>251,113</u>	S	<u>0</u> B	<u>0</u>	
General Fund	104,828	114,731	48,237		0	0	
Cash Funds	31,760	37,397	55,068		0	0	
Cash Funds Exempt/RF	95,857	108,862	128,644		0	0	
Federal Funds	14,452	17,951	19,164		0	0	

	<b>FY 2006-07</b>	<b>FY 2007-08</b>	<b>FY 2008-09</b>		<b>FY 2009-10</b>		<b>FY 2009-10</b>	<b>Change</b>
	<b>Actual</b>	<b>Actual</b>	<b>Approp</b>		<b>Request</b>		<b>Staff Recomm.</b>	<b>Request</b>
Salary Survey for Exempt Employees	<u>987,957</u>	<u>759,834</u>	<u>649,316</u>	S	<u>0</u>	B	<u>0</u>	
General Fund	241,127	196,085	155,259		0		0	
Cash Funds	12,940	12,305	27,694		0		0	
Cash Funds Exempt/RF	723,918	541,856	461,582		0		0	
Federal Funds	9,972	9,588	4,781		0		0	
Performance-based Pay Awards for Classified Employees	<u>0</u>	<u>122,210</u>	<u>109,976</u>	S	<u>0</u>		<u>0</u>	
General Fund	0	25,543	30,751		0		0	
Cash Funds	0	17,488	20,811		0		0	
Cash Funds Exempt/RF	0	71,444	49,054		0		0	
Federal Funds	0	7,735	9,360		0		0	
Performance-based Pay Awards for Exempt Employees	<u>0</u>	<u>256,353</u>	<u>278,881</u>	S	<u>0</u>		<u>0</u>	
General Fund	0	66,582	64,830		0		0	
Cash Funds	0	4,133	11,485		0		0	
Cash Funds Exempt/RF	0	182,369	200,188		0		0	
Federal Funds	0	3,269	2,378		0		0	
Attorney Registration and Continuing Legal Education	<u>0</u>	<u>0</u>	<u>92,626</u>		<u>92,626</u>		<u>92,626</u>	
General Fund	0	0	22,238		22,238		22,238	
Cash Funds	0	0	3,750		3,750		3,750	
Cash Funds Exempt/RF	0	0	66,075		66,075		66,075	
Federal Funds	0	0	563		563		563	

	<b>FY 2006-07</b>	<b>FY 2007-08</b>	<b>FY 2008-09</b>	<b>FY 2009-10</b>	<b>FY 2009-10</b>	<b>Change</b>
	<b>Actual</b>	<b>Actual</b>	<b>Approp</b>	<b>Request</b>	<b>Staff Recomm.</b>	<b>Request</b>
Workers' Compensation	<u>55,453</u>	<u>51,406</u>	<u>64,888</u> S	<u>45,293</u> B	<u>Pending</u>	
General Fund	17,031	16,115	19,236	13,727		
Cash Funds	3,930	3,704	5,833	3,671		
Cash Funds Exempt/RF	33,141	30,119	37,990	26,672		
Federal Funds	1,351	1,468	1,829	1,223		
Operating Expenses	<u>184,591</u>	<u>197,409</u>	<u>192,543</u>	<u>194,679</u> B	<u>194,679</u>	DI#4, NP#3
General Fund	132,919	103,446	0	1,186	1,186	
Cash Funds Exempt/RF	51,672	93,963	192,543	193,493	193,493	
Administrative Law Judges	<u>1,268</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>Pending</u>	
Cash Funds	1,268	0	0	0		
Cash Funds Exempt/RF	0	0	0	0		
Purchase of Services from Computer Center	<u>54,978</u>	<u>48,499</u>	<u>71,185</u>	<u>84,101</u> B	<u>Pending</u>	
General Fund	54,978	0	0	12,916		
Cash Funds Exempt/RF	0	48,499	71,185	71,185		
Payment to Risk Management and Property	<u>89,130</u>	<u>71,197</u>	<u>87,652</u>	<u>56,518</u> B	<u>Pending</u>	
General Fund	89,130	0	0	0		
Cash Funds Exempt/RF	0	71,197	87,652	56,518		
Vehicle Lease Payments	<u>39,904</u>	<u>48,175</u>	<u>65,125</u>	<u>77,027</u> B	<u>Pending</u>	
General Fund	15,637	10,724	12,446	16,981		
Cash Funds	4,724	10,737	11,362	20,444		
Cash Funds Exempt/RF	10,270	18,133	31,571	29,586		
Federal Funds	9,273	8,581	9,746	10,016		

	<b>FY 2006-07</b>	<b>FY 2007-08</b>	<b>FY 2008-09</b>	<b>FY 2009-10</b>		<b>FY 2009-10</b>	<b>Change</b>
	<b>Actual</b>	<b>Actual</b>	<b>Approp</b>	<b>Request</b>		<b>Staff Recomm.</b>	<b>Request</b>
ADP Capital Outlay	<u>29,550</u>	<u>91,325</u>	<u>15,138</u>	<u>13,764</u>	B	<u>13,764</u>	DI#2, DI#4
General Fund	2,725	35,844	6,881	9,176		9,176	
Cash Funds	0	0	0	0		0	
Cash Funds Exempt/RF	26,825	40,350	8,257	4,588		4,588	
Federal Funds	0	15,131	0	0		0	
IT Asset Maintenance	<u>358,296</u>	<u>358,296</u>	<u>432,348</u>	<u>407,667</u>		<u>407,667</u>	
General Fund	0	0	22,935	15,291		15,291	
Cash Funds	37,982	37,699	53,722	47,298		47,298	
Cash Funds Exempt/RF	320,314	320,597	353,620	343,697		343,697	
Federal Funds	0	0	2,071	1,381		1,381	
Leased Space	<u>26,292</u>	<u>29,686</u>	<u>30,001</u>	<u>32,502</u>		<u>32,502</u>	
General Fund	4,372	4,961	4,945	5,357		5,357	
Cash Funds	3,583	3,657	3,295	3,570		3,570	
Cash Funds Exempt/RF	18,337	20,901	21,576	23,374		23,374	
Federal Funds	0	167	185	201		201	
Capitol Complex Leased Space	<u>1,009,085</u>	<u>1,165,178</u>	<u>1,149,527</u>	<u>1,247,366</u>	S	<u>Pending</u>	
General Fund	309,995	367,436	245,252	281,661			
Cash Funds	71,503	83,723	103,172	110,315			
Cash Funds Exempt/RF	603,008	680,846	768,765	820,671			
Federal Funds	24,579	33,173	32,338	34,719			

	<b>FY 2006-07</b>	<b>FY 2007-08</b>	<b>FY 2008-09</b>	<b>FY 2009-10</b>		<b>FY 2009-10</b>	<b>Change</b>
	<b>Actual</b>	<b>Actual</b>	<b>Approp</b>	<b>Request</b>		<b>Staff Recomm.</b>	<b>Request</b>
Communications Services Payments	<u>6,043</u>	<u>5,944</u>	<u>6,208</u>	<u>7,361</u>	B	<u>Pending</u>	
General Fund	2,399	2,435	2,308	2,789			
Cash Funds	431	372	575	630			
Cash Funds Exempt/RF	1,271	1,465	1,773	2,102			
Federal Funds	1,942	1,672	1,552	1,840			
Attorney General Discretionary Fund - GF	0	0	5,000	5,000		5,000	
<b>SUBTOTAL - Administration</b>	<b>6,919,280</b>	<b>7,829,432</b>	<b>8,752,179</b>	<b>8,168,294</b>		<b>6,657,145</b>	<b>-6.7%</b>
FTE	<u>37.7</u>	<u>38.2</u>	<u>41.2</u>	<u>42.2</u>		<u>42.2</u>	<u>1.0</u>
General Fund	1,406,652	1,548,727	1,354,786	1,201,588		863,414	-11.3%
Cash Funds	248,395	329,524	493,245	416,853		277,912	-15.5%
Cash Funds Exempt/RF	5,179,895	5,817,067	6,752,428	6,413,560		5,424,334	-5.0%
Federal Funds	84,338	134,114	151,720	136,293		91,485	-10.2%

**(2) LEGAL SERVICES TO STATE AGENCIES (LSSA)**

*This Division provides legal services to other agencies of state government, earning its appropriations of Cash Funds, Cash Funds Exempt and Reappropriated Funds from the legal fees paid by those state agencies.*

Personal Services	14,391,163	15,831,413	17,805,038	S	18,579,485	B	18,579,485	
FTE	<u>188.7</u>	<u>0.0</u>	<u>216.5</u>		<u>217.5</u>		<u>217.5</u>	
General Fund	0	0	0		0		0	
Cash Funds	945,000	1,000,000	1,000,000		1,000,000		1,000,000	
Cash Funds Exempt/RF	13,446,163	14,831,413	16,805,038	S	17,579,485		17,579,485	
Operating and Litigation - CFE/RF	(956,340)	(1,016,514)	1,372,977	S	1,354,987	B	1,354,987	NP#3



	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Approp	FY 2009-10 Request	FY 2009-10 Staff Recomm.	Change Request
Indirect Cost Assessment - CFE/RF	0	0	2,676,131	2,676,131	Pending	
<b>SUBTOTAL - Legal Services to State</b>						
<b>Agencies</b>	13,434,823	14,814,899	21,854,146	22,610,603	19,934,472	3.5%
FTE	<u>188.7</u>	<u>0.0</u>	<u>216.5</u>	<u>217.5</u>	<u>217.5</u>	<u>1.0</u>
General Fund	0	0	0	0	0	n/a
Cash Funds	945,000	1,000,000	1,000,000	1,000,000	1,000,000	0.0%
Cash Funds Exempt/RF	12,489,823	13,814,899	20,854,146	21,610,603	18,934,472	3.6%

### (3) CRIMINAL JUSTICE AND APPELLATE

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

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

Special Prosecution Unit	1,034,473	1,136,126	1,233,416	S 1,404,931	B 1,363,269	DI#1, DI#2
FTE	<u>0.0</u>	<u>0.0</u>	<u>12.8</u>	<u>13.8</u>	<u>13.8</u>	
General Fund	768,679	971,448	1,019,683	1,104,759	1,090,872	
FTE	0.0	0.0	10.3	10.7	10.7	
Cash Funds	265,794	164,678	213,733	221,805	221,805	
FTE	0.0	0.0	2.5	2.5	2.5	
Cash Funds Exempt/RF	0	0	0	78,367	50,592	
FTE	0.0	0.0	0.0	0.6	0.6	

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Approp	FY 2009-10 Request		FY 2009-10 Staff Recomm.	Change Request
Insurance Fraud Unit	520,376	581,386	619,975	642,335	B	642,335	DI#1
FTE	5.9	0.0	7.6	7.6		7.6	
General Fund	0	0	0	0		0	
Cash Funds Exempt/RF	520,376	581,386	619,975	642,335		642,335	
FTE	5.9	0.0	7.6	7.6		7.6	
Securities Fraud Unit	436,306	456,341	474,293	503,616	S B	503,616	DI#1
FTE	<u>0.0</u>	<u>0.0</u>	<u>5.6</u>	<u>5.6</u>		<u>5.6</u>	
General Fund	118,504	116,799	113,015	128,958		128,958	
FTE	0.0	0.0	2.0	2.0		2.0	
Cash Funds Exempt/RF	317,802	339,542	361,278	374,658		374,658	
FTE	0.0	0.0	3.6	3.6		3.6	
Appellate Unit	2,035,165	2,133,564	2,317,059	2,629,303	S B	2,629,303	NP#3
FTE	<u>26.2</u>	<u>26.4</u>	<u>30.0</u>	<u>31.0</u>		<u>31.0</u>	
General Fund	2,035,165	2,133,564	2,317,059	2,629,303		2,629,303	
Cash Funds Exempt/RF	0	0	0	0		0	
Medicaid Fraud Grant	1,013,653	1,117,461	1,250,808	1,368,866	S	1,368,866	
FTE	<u>0.0</u>	<u>0.0</u>	<u>14.0</u>	<u>14.0</u>		<u>14.0</u>	
General Fund	258,101	275,870	312,703	342,276		342,276	
Federal Funds	755,552	841,591	938,105	1,026,590		1,026,590	
Capital Crimes Prosecution Unit - GF	326,141	330,515	306,643	390,444	S B	390,444	DI#1
FTE	3.8	3.8	4.0	4.0		4.0	

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Approp	FY 2009-10 Request		FY 2009-10 Staff Recomm.	Change Request
Peace Officers Standards and Training Board							
Support	1,115,319	1,165,322	1,257,939	1,246,975	B	1,246,975	NP#3
FTE	<u>6.0</u>	<u>6.0</u>	<u>6.0</u>	<u>6.0</u>		<u>6.0</u>	
General Fund	0	44,638	81,207	50,000		50,000	
Cash Funds	1,110,593	1,120,684	1,176,732	1,196,975		1,196,975	
Cash Funds Exempt/RF	4,726	0	0	0		0	
Victims Assistance	67,519	69,146	72,149	76,086		76,086	NP#3
FTE	<u>1.0</u>	<u>0.0</u>	<u>1.0</u>	<u>1.0</u>		<u>1.0</u>	
General Fund	(1,753)	(45)	0	330		330	
Cash Funds Exempt/RF	47,424	69,191	72,149	75,756		75,756	
FTE	1.0	0.0	1.0	1.0		1.0	
Federal Funds	21,848	0	0	0		0	
Indirect Cost Assessment	<u>0</u>	<u>0</u>	<u>247,395</u>	<u>247,395</u>		Pending	
Cash Funds	0	0	106,744	106,744			
Cash Funds Exempt/RF	0	0	140,651	140,651			
<b>SUBTOTAL - Criminal Justice and Appellate</b>	<b>6,548,952</b>	<b>6,989,861</b>	<b>7,779,677</b>	<b>8,509,951</b>		<b>8,220,894</b>	<b>9.4%</b>
FTE	<u>42.9</u>	<u>36.2</u>	<u>81.0</u>	<u>83.0</u>		<u>83.0</u>	<u>2.0</u>
General Fund	3,504,837	3,872,789	4,150,310	4,646,070		4,632,183	11.9%
Cash Funds	1,376,387	1,285,362	1,497,209	1,525,524		1,418,780	1.9%
Cash Funds Exempt/RF	890,328	990,119	1,194,053	1,311,767		1,143,341	9.9%
Federal Funds	777,400	841,591	938,105	1,026,590		1,026,590	9.4%

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Approp	FY 2009-10 Request	FY 2009-10 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 include the Colorado Water Conservation Board's Litigation Fund and the Hazardous Substance Response Fund.*

Federal and Interstate Water Unit	412,194	436,360	475,555	S 526,872	B 526,872	DI#3
FTE	<u>4.9</u>	<u>4.6</u>	<u>5.5</u>	5.5	<u>5.5</u>	
General Fund	412,194	436,360	475,555	526,872	526,872	
FTE	4.9	4.6	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	 359,106	 333,452	 545,000	 473,329	 473,329	 DI#3
FTE	<u>3.9</u>	<u>3.8</u>	<u>4.0</u>	4.0	<u>4.0</u>	
General Fund	0	(42,664)	0	0	0	
Cash Funds	0	0	545,000	473,329	473,329	
Cash Funds Exempt/RF	359,106	376,116	0	0	0	
 Defense of the Republican River Compact	 0	 23,500	 129,144	 S 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	0	0	129,144	110,000	110,000	
Cash Funds Exempt/RF	0	23,500	0	0	0	

	<b>FY 2006-07</b>	<b>FY 2007-08</b>	<b>FY 2008-09</b>	<b>FY 2009-10</b>	<b>FY 2009-10</b>	<b>Change</b>
	<b>Actual</b>	<b>Actual</b>	<b>Approp</b>	<b>Request</b>	<b>Staff Recomm.</b>	<b>Request</b>
Defense of the Arkansas River Compact	116,339	0	0	0	0	
FTE	0	0.0	0.0	0.0	0.0	
General Fund	45,006	0	0	0	0	
Cash Funds	0	0	0	0	0	
Cash Funds Exempt/RF	71,333	0	0	0	0	
Consultant Expenses	0	36,733	120,000	S 50,000	50,000	
Cash Funds	0	0	120,000	50,000	50,000	
Cash Funds Exempt/RF	0	36,733	0	0	0	
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)	454,157	426,795	402,021	S 391,178	B 391,178	
FTE	<u>4.8</u>	<u>4.8</u>	<u>4.3</u>	<u>3.5</u>	<u>3.5</u>	
General Fund	409,467	382,128	376,143	365,300	365,300	
Cash Funds Exempt/RF	44,690	44,667	25,878	25,878	25,878	
CERCLA Contracts	<u>648,285</u>	<u>537,892</u>	<u>470,000</u>	S <u>500,000</u>	B <u>500,000</u>	
General Fund	223,285	112,892	20,000	75,000	75,000	
Cash Funds Exempt/RF	425,000	425,000	450,000	425,000	425,000	
Natural Resource Damage Claims at Rocky Mountain Arsenal	565,915	902,347	1,212,924	195,000	195,000	BR#1
FTE	<u>1.9</u>	<u>1.9</u>	<u>2.4</u>	<u>0.0</u>	<u>0.0</u>	
General Fund	565,915	(25,960)	0	0	0	
FTE	1.9	0.0	0.0	0.0	0.0	
Cash Funds	0	928,307	1,212,924	195,000	195,000	
FTE	0.0	1.9	2.4	0.0	0.0	

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Approp	FY 2009-10 Request	FY 2009-10 Staff Recomm.	Change Request
Indirect Cost Assessment - CFE/RF	0	0	0	0	0	
<b>SUBTOTAL - Water and Natural Resources</b>	2,555,996	2,697,079	3,354,644	2,246,379	2,246,379	-33.0%
FTE	<u>15.5</u>	<u>15.1</u>	<u>16.2</u>	<u>13.0</u>	<u>13.0</u>	<u>(3.2)</u>
General Fund	1,655,867	862,756	871,698	967,172	967,172	11.0%
Cash Funds	0	928,307	2,007,068	828,329	828,329	-58.7%
Cash Funds Exempt/RF	900,129	906,016	475,878	450,878	450,878	-5.3%

#### (5) CONSUMER PROTECTION

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

Consumer Protection and Anti-Trust	1,249,400	1,511,502	1,735,240	S 1,849,822	B 1,849,822	DI#5, NP#3
FTE	<u>0.0</u>	<u>0.0</u>	<u>20.0</u>	<u>21.0</u>	<u>21.0</u>	
General Fund	726,292	824,385	720,978	928,104	928,104	
FTE	0.0	0.0	11.5	12.5	12.5	
Cash Funds	64,711	65,833	771,557	674,888	674,888	
FTE	0.0	0.0	1.5	1.5	1.5	
Cash Funds Exempt/RF	458,397	621,284	242,705	246,830	246,830	
FTE	0.0	0.0	7.0	7.0	7.0	
Collection Agency Board	223,637	263,610	296,905	314,425	314,425	NP#3
FTE	<u>0.0</u>	<u>5.0</u>	<u>5.2</u>	<u>5.2</u>	<u>5.2</u>	
Cash Funds	171,174	258,667	296,905	314,425	314,425	
Cash Funds Exempt/RF	52,463	4,943	0	0	0	

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Approp	FY 2009-10 Request		FY 2009-10 Staff Recomm.	Change Request
Uniform Consumer Credit Code (UCCC)	777,485	909,557	972,527	1,014,033	B	1,014,033	NP#3
FTE	<u>0.0</u>	<u>11.1</u>	<u>12.3</u>	<u>12.3</u>		<u>12.3</u>	
Cash Funds	708,579	809,451	972,527	1,014,033		1,014,033	
Cash Funds Exempt/RF	68,906	100,106	0	0		0	
Indirect Cost Assessment	<u>0</u>	<u>0</u>	<u>320,232</u>	<u>320,232</u>		<u>Pending</u>	
Cash Funds	0	0	282,558	282,558			
Cash Funds Exempt/RF	0	0	37,674	37,674			
<b>SUBTOTAL - Consumer Protection</b>	<b>2,250,522</b>	<b>2,684,669</b>	<b>3,324,904</b>	<b>3,498,512</b>		<b>3,178,280</b>	<b>5.2%</b>
FTE	<u>0.0</u>	<u>16.1</u>	<u>37.5</u>	<u>38.5</u>		<u>38.5</u>	<u>1.0</u>
General Fund	726,292	824,385	720,978	928,104		928,104	28.7%
Cash Funds	944,464	1,133,951	2,323,547	2,285,904		2,003,346	-1.6%
Cash Funds Exempt/RF	579,766	726,333	280,379	284,504		246,830	1.5%

**(6) SPECIAL PURPOSE**

*This division contains special purpose appropriations and programs that do not fit within the Department's other divisions. Over the years it has also included appropriations for a number of large, one-time lawsuits.*

District Attorneys' Salaries - GF	1,307,731	1,315,985	1,654,706	2,096,078		2,096,078	
Litigation Management and Technology Fund	<u>180,221</u>	<u>330,828</u>	<u>475,000</u>	<u>325,000</u>	S	<u>325,000</u>	
Cash Funds	0	0	475,000	325,000		325,000	
Cash Funds Exempt/RF	180,221	330,828	0	0		0	
Statewide HIPAA Legal Services - GF	20,331	18,578	22,530	7,521	B	7,521	

	<b>FY 2006-07</b>	<b>FY 2007-08</b>	<b>FY 2008-09</b>	<b>FY 2009-10</b>	<b>FY 2009-10</b>	<b>Change</b>
	<b>Actual</b>	<b>Actual</b>	<b>Approp</b>	<b>Request</b>	<b>Staff Recomm.</b>	<b>Request</b>
Tobacco Litigation	<u>90,556</u>	<u>126,245</u>	<u>300,000</u>	<u>300,000</u>	<u>300,000</u>	
General Fund	0	0	0	0	0	
Cash Funds	0	0	300,000	300,000	300,000	
Cash Funds Exempt/RF	90,556	126,245	0	0	0	
Security for State Services Building	<u>0</u>	<u>0</u>	<u>259,032</u>	<u>196,693</u>	<u>196,693</u>	
General Fund	0	0	80,036	60,775	60,775	
Cash Funds	0	0	21,677	16,461	16,461	
Reappropriated Funds	0	0	150,093	113,970	113,970	
Federal Funds	0	0	7,226	5,487	5,487	
Federal Reimbursement for Illegal Immigration						
Costs (S.B. 06S-1014) - GF	<u>6,359</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	
FTE	0.0	0.0	0.0	0.0	0.0	
Referendum K - GF	<u>13,019</u>	<u>10,732</u>	<u>0</u>	<u>0</u>	<u>0</u>	
FTE	0.0	0.0	0.0	0.0	0.0	



	<b>FY 2006-07</b>	<b>FY 2007-08</b>	<b>FY 2008-09</b>	<b>FY 2009-10</b>	<b>FY 2009-10</b>	<b>Change</b>
	<b>Actual</b>	<b>Actual</b>	<b>Approp</b>	<b>Request</b>	<b>Staff Recomm.</b>	<b>Request</b>
<b>SUBTOTAL - Special Purpose</b>	1,618,217	1,802,368	2,711,268	2,925,292	2,925,292	7.9%
<b>FTE</b>	<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	1,347,440	1,345,295	1,757,272	2,164,374	2,164,374	23.2%
FTE	0.0	0.0	0.0	0.0	0.0	0.0
Cash Funds	0	0	796,677	641,461	641,461	-19.5%
FTE	0.0	0.0	0.0	0.0	0.0	0.0
Cash Funds Exempt/RF	270,777	457,073	150,093	113,970	113,970	-24.1%
FTE	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	0	0	7,226	5,487	5,487	-24.1%
FTE	0.0	0.0	0.0	0.0	0.0	0.0
<b>DEPARTMENT OF LAW</b>						
<b>TOTAL FUNDS</b>	33,327,790	36,818,308	47,776,818	47,959,031	43,162,462	0.4%
<b>FTE</b>	<u>284.8</u>	<u>105.6</u>	<u>392.4</u>	<u>394.2</u>	<u>394.2</u>	<u>1.8</u>
General Fund	8,641,088	8,453,952	8,855,044	9,907,308	9,555,247	11.9%
Cash Funds	3,514,246	4,677,144	8,117,746	6,698,071	6,169,828	-17.5%
Cash Funds Exempt/RF	20,310,718	22,711,507	29,706,977	30,185,282	26,313,825	1.6%
Federal Funds	861,738	975,705	1,097,051	1,168,370	1,123,562	6.5%

**FY 2009-10 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, file 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.

**Decision Item #4: New Assistant Solicitor General.**

The Department requests an additional 1.0 FTE attorney to assist the Solicitor General. The appropriation would equal \$93,353, comprised of \$6,882 General Fund and \$86,471 reappropriated funds. The reappropriated funds come from indirect cost recoveries, meaning that they are paid by the cash and federally funded programs within the department.

The Solicitor General is a statutory position created in Section 24-31-203, C.R.S., a section that also designates the Solicitor General as the head of the "Division of State Solicitor General". This division currently has 1.0 FTE, the Solicitor General himself, who is appointed by the Attorney General. The Attorney General defines the duties of the office and the Attorney General has charged the Solicitor General with the following tasks:

1. Reviewing every brief filed by the state in federal and state appellate courts;
2. Reviewing all rules and regulations issued by state agencies (this is a statutory duty assigned to the Department of Law by Section 24-4-103 (8) (b), C.R.S., which states that the Attorney General shall review all new and amended regulations and express an opinion as to their constitutionality and legality);
3. Reviewing requests from state agencies for special assistant attorney general designations;
4. Reviewing every formal opinion and many informal opinions that come from the Attorney General;
5. Providing legal opinions and advice to the Attorney General on state and national legal issues.

The Department states that the duties of the office have grown to such an extent that they can no longer be performed by a single individual.

The Solicitor General's work is diverse; he has recently filed or worked upon briefs in support of the state's positions in such cases as Mesa County v. Dept. of Education (the Mill Levy case), State v. Cash Advance (a payday lending case), Colorado Christian University v. Skaggs (concerning the College Opportunity Fund), Vance v. Simpson (defending the State Engineer's interpretation of water well permitting requirements for coal bed methane operations), and Kenna v. Department. of Revenue (defending Revenue's interpretation of conservation easement statutes against taxpayer challenges in the Supreme Court).

A new assistant Solicitor General would serve mainly to review incoming matters to determine which require the attention of the Solicitor General or other members of the senior staff of the Department of Law. The assistant would also help with research, drafting and editing briefs, and coordinating the office-wide legal analysis and office policies.

In an effort to determine a reasonable staffing level for the Solicitor General's office, staff contacted several other states and spoke with their solicitors general. During these calls, staff discovered that solicitors general have diverse sets of duties that vary from state to state, making comparisons difficult. However it soon became clear that review and/or supervision of a state's appellate cases plus general quality-control work with a special emphasis on the consistency and broad implications of a state's legal positions are among the most important responsibilities. It also became clear that the duties assigned to Colorado's Solicitor General would exceed the capacity of almost any individual, almost certainly forcing him to "cherry pick". One Solicitor General expressed the opinion that the regulation and rule review assignment alone would require several people. Arizona's solicitor general has a staff of three and a half attorneys to handle a somewhat similar set of duties, minus the rule review work.

Based on this analysis **staff recommends that the Committee approve this Decision Item.**

**The Classified–Exempt Distinction.** 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% of the Department's workers, are exempt employees, the remaining 40% 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	FY 2007-08 Actual	FY 2008-09 Approp.	FY 2009-10 Request	FY 2009-10 Recommend.
Office of the Attorney General	8.0	8.0	9.0	9.0
Human Resources	2.5	2.5	2.5	2.5
Fiscal and Accounting	6.2	7.5	7.5	7.5
Information Technology Services	13.7	15.2	15.2	15.2
Legal Support Services	7.8	8.0	8.0	8.0
<b>Total</b>	<b>38.2</b>	<b>41.2</b>	<b>42.2</b>	<b>42.2</b>

The corresponding Option 8 calculation and the resulting staff recommendation, along with the Department's request, are as follows:

Administration Personal Services	Total	GF	CF	RF	FF	FTE
FY 2008-09 Appropriation	2,795,309	0	0	2,795,309	0	41.2
Classified Salary Survey	87,196	87,196	0	0	0	0.0
Exempt Salary Survey	16,034	16,034	0	0	0	0.0
80% of Classified Performance-based Pay	24,403	24,403	0	0	0	0.0
80% of Exempt Performance-based Pay	4,805	4,805	0	0	0	0.0
Decision Item #4, New Assistant Solicitor General	85,521	0	0	85,521	0	1.0
Fund mix adjustment	0	(132,438)	0	132,438	0	0.0
<b>FY 2009-10 Recommendation</b>	<b>3,013,268</b>	<b>0</b>	<b>0</b>	<b>3,013,268</b>	<b>0</b>	<b>42.2</b>
FY 2009-10 Request	3,013,268	0	0	3,013,268	0	42.2

The reappropriated funds derive from indirect cost recoveries. Note that the staff recommendation includes a fund mix adjustments that reduces the use of General Fund, replacing it with increased reappropriated funds derived from indirect cost recoveries.

**Health, Life and Dental.** Staff recommends a total appropriation of \$1,940,668, comprised of \$534,414 General Fund, \$152,611 cash funds, \$1,194,594 reappropriated funds, and \$59,049 federal funds pursuant to common policy as approved by the Committee for this line item.

**Short-term Disability.** Staff recommends a total appropriation of \$43,840, comprised of \$12,603 General Fund, \$3,218 cash funds, \$26,641 cash funds exempt, and \$1,379 federal funds, which accords with Committee common policy.

**Amortization Equalization Disbursement.** Pursuant to Committee common policy, **staff recommends total funding of \$562,968**, comprised of \$159,903 General Fund, \$41,517 cash funds, \$343,756 cash funds exempt, and \$17,792 federal funds.

**Supplemental Amortization Equalization Disbursement.** Pursuant to Committee common policy, **staff recommends total funding of \$350,162**, comprised of \$98,246 General Fund, \$25,948 cash funds, \$214,848 cash funds exempt, and \$11,120 federal funds.

**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.**

**Attorney Registration and Continuing Legal Education.** **The Department requests a continuation appropriation of \$92,626**, comprised of \$22,238 General Fund, \$3,750 cash funds, \$66,075 reappropriated funds, and \$563 federal funds, **which staff recommends.**

**Workers' Compensation.** Staff recommendation is **pending Committee approval of a common policy for Workers' Compensation.**

Workers's 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.**

**Operating Expenses.** The following table shows the staff recommendation and the request:

<b>Administration Operating Expenses</b>	<b>To tal</b>	<b>GF</b>	<b>CF</b>	<b>RF</b>	<b>FF</b>	<b>FTE</b>
FY 2008-09 Appropriation	192,543	0	0	192,543	0	0.0
DI #4 New Assistant Solicitor General	950	0	0	950	0	0.0
DI #NP-3 Postage Increase	1,186	1,186	0	0	0	0.0
<b>FY 2009-10 Recommendation</b>	<b>194,679</b>	<b>1,186</b>	<b>0</b>	<b>193,493</b>	<b>0</b>	<b>0.0</b>
FY 2009-10 Request	194,679	1,186	0	193,493	0	0.0

**Administrative Law Judge Services.** Though staff does not anticipate an appropriation for Administrative Law judges, the recommendation is **pending the approval of a common policy by the Committee** for Administrative Law Judge services.

**Purchase of Services from Computer Center.** 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.** This line item funds leases for 30 department vehicles that are part of the statewide fleet. Three of these vehicles are high mileage cars that are projected to have odometer readings between 116,000 and 155,000 miles by June 2010. The vehicle with the lowest mileage of the three has also been identified as a "high cost" vehicle, based on its repair record. The replacement vehicles would be acquired on lease. Replacement would occur in the spring of 2010. Two of the vehicles eligible for replacement are used by the Capital Crimes unit and one is used by the Legal Services to State Agencies Division. **The three replacement vehicles meet the JBC's criteria for replacement and staff recommends that they be replaced.**

The Department requests an appropriation of \$77,027, comprised of \$16,981 General Fund, \$20,444 cash funds, \$29,586 reappropriated funds, and \$10,016 federal funds for this line, but **the corresponding 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 staff 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. The following table summarizes the staff recommendations; detailed discussion of each of the recommendations is presented with the associated decision item.

Item	Total	GF	CF	RF	FF	FTE
DI #2 (as modified by Budget Amendment-Base Reduction Item #2), Forensic Accountant for Special Prosecutions	6,882	2,294	0	4,588	0	0.0
DI #4, New Assistant Solicitor General	6,882	6,882	0	0	0	0.0
<b>Recommendation</b>	<b>13,764</b>	<b>9,176</b>	<b>0</b>	<b>4,588</b>	<b>0</b>	<b>0.0</b>
<b>Request</b>	<b>13,764</b>	<b>9,176</b>	<b>0</b>	<b>4,588</b>	<b>0</b>	<b>0.0</b>

**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 following table shows the computation of the staff recommendation and the related request.

Item	Total	GF	CF	RF	FF
<b>FY 2008-09 Appropriation</b>	432,348	22,935	53,722	353,620	2,071
Year 2 impact of 2008 session DI #3, IT Asset Base Increase	20,919	6,479	1,476	12,379	585
Year 2 impact of 2008 session DI #4, IT Disaster Recovery	(45,600)	(14,123)	(3,218)	(26,984)	(1,275)
Fund Mix Adjustment	0	0	(4,682)	4,682	0
<b>Recommendation</b>	<b>407,667</b>	<b>15,291</b>	<b>47,298</b>	<b>343,697</b>	<b>1,381</b>
<b>Department Request</b>	<b>407,667</b>	<b>15,291</b>	<b>47,298</b>	<b>343,697</b>	<b>1,381</b>

**Leased Space.** This appropriation pays for 3,286 square feet of off-site document storage space at a location that the Department prefers for security reasons not to disclose. **Staff recommends the Department's request for total funding of \$32,502**, comprised of \$5,357 General Fund, \$3,570 cash funds, \$23,374 reappropriated funds, and \$201 federal funds.

**Capitol Complex Leased Space.** Recently the Department increased the number of square feet of space that it leases at the State Services Building at 1525 Sherman St., however, staff has not received updated square footage information from DPA. **Therefore the amount of leased space and the corresponding appropriation awaits Committee approval of a common policy for capitol complex leased space.**

**Communications Services Payments.** Staff recommendation is **pending the approval of a common policy** for this line item.

**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. 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. When received, such payments are classified as cash funds. For Fiscal Year 2008-09, appropriations for the Legal Services to State Agencies division represent 45.7 percent of the Department's total budget and 55.2 percent of its total FTE. About 95 percent of the Division's funding is reappropriated funds.

**Personal Services.** The appropriation in the Long Bill for personal services in the Legal Services to State Agencies division is, at its most fundamental level, a reflection of the state's demand for legal services. These services derive from legal-services appropriations in the Long Bill and special bills and from "non-appropriated" legal-services demand by 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 or inexperienced they may be and all paralegals bill at a uniform hourly paralegal rate that is 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.

The following table summarizes the legal services change between FY 2008-09 and FY 2009-10.

	<b>Legal Hours</b>	<b>FTE Equivalent</b>
Legal services appropriations in the FY 2008-09 Long Bill	317,732	176.5
Legal services appropriations in 2008 session bills for FY 2008-09 and in the Department of Law's supplemental bill for FY 2008-09	5,687	3.2
Estimate of non-appropriated legal service supplied to state entities for FY 2008-09	12,224	6.8
<b>Total legal services for FY 2008-09</b>	<b>335,643</b>	<b>186.5</b>
Legal services appropriations approved by the JBC for the FY 2009-10 Long Bill	326,432	181.4
Estimate of non-appropriated legal service to be supplied to state entities in FY 09-10	11,418	6.3
<b>Total legal services for FY 2009-10, ignoring this session's special bills</b>	<b>337,850</b>	<b>187.7</b>
<b>Change from FY 2008-09 to FY 2009-10</b>	<b>2,207</b>	<b>1.2</b>

Note that the legal services appropriations approved by the JBC for the FY 2009-10 Long Bill reflect 2009 session decision items and base reduction items as well as the second year impact of 2008 session special bills, 2008 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. These calculations have been performed at the appropriated hours level and converted to FTE at the final step to avoid the cumulative effect of such rounding errors. Finally note that there are additional non-billing FTE in the LSSA division; 4.0 FTE are supervisor attorneys who typically do not bill and 25.8 FTE are support staff who never bill.

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	FY 2007-08 Actual	FY 2008-09 Approp.	FY 2009-10 Request	FY 2009-10 Recommend.
Attorneys	140.6	158.0	159.2	159.2
Paralegals	33.8	32.5	32.5	32.5
Support Staff	23.8	25.8	25.8	25.8
<b>Total</b>	<b>198.2</b>	<b>216.3</b>	<b>217.5</b>	<b>217.5</b>

The corresponding Option 8 calculation and the staff recommendation are as follows:

LSSA Personal Services	Total	GF	CF	RF	FF	FTE
FY 2008-09 Appropriation (including special bills and this session's supplemental)	17,805,038	0	1,000,000	16,805,038	0	216.3
Classified Salary Survey	115,493	0	0	115,493	0	0.0
Exempt Salary Survey	445,619	0	0	445,619	0	0.0
80% of Classified Performance-based Pay	34,399	0	0	34,399	0	0.0
80% of Exempt Performance-based Pay	154,243	0	0	154,243	0	0.0
<b>Subtotal = Current appropriation to division</b>	<b>18,554,792</b>	<b>0</b>	<b>1,000,000</b>	<b>17,554,792</b>	<b>0</b>	<b>216.3</b>
Extra FTE needed to provide the legal services hours appropriated in the FY 2009-10 Long Bill	24,693	0	0	24,693	0	1.2
<b>FY 2009-10 Recommendation</b>	<b>18,579,485</b>	<b>0</b>	<b>1,000,000</b>	<b>17,579,485</b>	<b>0</b>	<b>217.5</b>

**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 Department indicates that it's current appropriation is more than sufficient to support the extra FTE needed to supply the legal services appropriated in the FY 2009-10 Long Bill. The following table presents the staff calculation of the appropriation.

<b>LSSA Operating and Litigation</b>	<b>Total</b>	<b>GF</b>	<b>CF</b>	<b>RF</b>	<b>FF</b>
FY 2008-09 Appropriation (including special bills and this session's supplemental)	1,372,977	0	0	1,372,977	0
Adjustment to support the legal services hours appropriation in the FY 2009-10 Long Bill	(17,990)	0	0	(17,990)	0
<b>FY 2009-10 Recommendation</b>	<b>1,354,987</b>	<b>0</b>	<b>0</b>	<b>1,354,987</b>	<b>0</b>

## CALCULATION OF THE LEGAL SERVICES RATES

As indicated above, attorneys bill at a uniform rate and paralegals bill at a different, uniform rate. These rates can be calculated by first decomposing them into elements:

1. An "attorney" component that brings in enough revenue to pay the salaries, PERA, Amortization Equalization Disbursement, Supplemental Amortization Equalization Disbursement, and Medicare of the attorneys who supply the legal services;
2. A "paralegal" component that pays the salaries and related costs 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:

<b>Attorney and Paralegal Components of the Legal Services Rates</b>			
	a). Salary and related costs	b) Hours billed	a/b = component of legal rate
Attorneys	\$14,849,344	279,379	\$53.15
Paralegals	\$2,236,214	58,500	\$38.23

<b>Common Component of the Legal Services Rates</b>	
Total cost of running the LSSA division	\$25,411,475
– Attorney salary and related costs	(14,849,344)
– <u>Paralegal salary and related costs</u>	<u>(2,236,214)</u>
a) = Common Costs	\$8,325,917
b) Total hours billed by attorneys and paralegals	337,879
a/b = Common component of legal rate	\$24.64

Note that 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:

$$\begin{aligned}\text{Attorney billing rate} &= \text{Attorney component} + \text{Common component} \\ &= \$53.15 + \$24.64 \\ &= \$77.79 \text{ per hour}\end{aligned}$$

$$\begin{aligned}\text{Paralegal billing rate} &= \text{Paralegal component} + \text{Common component} \\ &= \$38.23 + \$24.64 \\ &= \$62.87 \text{ per hour}\end{aligned}$$

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

$$\begin{aligned}&\text{Attorney hourly billing rate} * \text{Proportion of total hours billed by attorneys} \\ &+ \text{Paralegal hourly billing rate} * \text{Proportion of total hours billed by paralegals} \\ &= \text{Blended legal rate} \\ &= \$75.21 \text{ per hour}\end{aligned}$$

As compared with last year, the attorney rate has increased from \$77.15 to \$77.79, the paralegal rate has fallen from \$65.56 to \$62.87, and the blended rate has risen from \$75.10 to \$75.21 per hour. The increased "spread" between the two rates reflects a revision in the method used to calculate the rates; the revised method more accurately reflects the salary differential between attorneys and paralegals.

**Furloughs and Legal Rates.** Furloughs of state employees have been proposed as a possible response to the current economic downturn. These furloughs would reduce the number of legal service hours that can be supplied by the employees of the LSSA division, but because of fixed costs, would not reduce the costs of operating the division by the same amount. This implies that appropriations of legal service hours to state agencies would have to be reduced and a new higher legal rate would have to be computed. General Fund legal service appropriations thus would not decline as much as may have been anticipated.

**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.

**Staff recommends that the indirect cost computation for FY 2009-10 be modified as follows:**

1. Indirect costs should be collected from the Medicaid Fraud unit. The Department has determined that such assessments are a legitimate use of federal Medicaid funds.
2. Security services for the State Services Building, where the Department of Law is housed, should be included in the indirect cost assessment.

**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 eight subdivisions:

- Special Prosecutions Unit
- Insurance Fraud Unit
- Securities Fraud Unit
- Appellate Unit
- Medicaid Fraud Control Unit
- Capital Crimes Prosecution Unit
- Peace Officers Standards and Training (POST) Board Support
- Victims Assistance

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

**Decision Item #2 (as modified by Budget Amendment-Base Reduction Item #2) Forensic Accountant for the Special Prosecutions Unit.** The Department requests \$124,432 and 1.0 FTE, comprised of \$41,477 General Fund and \$82,955 reappropriated funds, to allow it to hire a forensic accountant who will help investigate financial crimes such as securities and insurance fraud cases. The reappropriated funds are from DORA's Division of Insurance Cash Fund and Division of Insurance Cash Fund, received by the Department of Law by a transfer of reappropriated funds from DORA.

The Department states that a forensic accountant would be particularly helpful in the investigation and prosecution of complex financial crimes, providing expertise that the Department's current staff lacks. The accountant would handle crimes involving insurance, securities and general financial fraud, spending a third of his time in each area. The accountant would help answer a question that frequently arises with financial crimes: "Was this just an unlucky investment, or was it fraud?" The department currently has little forensic accounting support; last year, for example, it spent \$5,200 for an outside forensic accountant, as much as its appropriation would allow, but this only bought about 50 hours of accounting services.

The Department notes that an in-house fraud accountant has a big advantage over a contract accountant; an in-house accountant can be "sworn" before the statewide grand jury, which the Department sometimes relies upon to investigate cases. Because grand jury evidence is secret, only those who have been sworn can examine the often large amount of evidence that is gathered. The Department is required by law to keep such evidence secure, meaning that a contract fraud accountant who was sworn before the grand jury would not be permitted to take the evidence to his own office for study because of the risk that it would not be kept secure. The department frequently finds itself with large amounts of evidence that can't be turned over to a contractor accountant for examination. By contrast, it's easy to swear a full time fraud accountant before the grand jury. The accountant would work in the Attorney General's office, giving him secure access to the evidence any time it was needed. Once sworn before the grand jury, he could be able to attend jury meetings, review evidence that the grand jury subpoenas and testify in cases that go to trial. A significant amount to the financial evidence that the Department now receives through its grand jury investigations never receives adequate analysis. A fraud accountant would change this situation.

Staff has spoken with the Director of the Division of Securities at DORA, a division whose investigatory work is similar to that done by the Department of Law. The director confirmed that a forensic accountant is a key part of an investigation team. The Division of Securities has two such forensic accountant who complement its investigators. The investigators are often retired police or sheriff's deputies, people with a good investigatory "nose" but little accounting knowledge.

**Staff recommends that the Committee approve this request with a modification.** By comparison with the forensic accountants at the Division of Securities, the Department has set the salary for a forensic accountant too high. Staff recommends an initial salary of \$68,000 plus PERA and Medicare, which is in step with salaries at the Division of Securities. The relevant calculations will be presented below.

**Withdrawn component of Decision Item #2:** In its November budget submission, in addition to the forensic accountant request, the Department of Law also requested a bilingual, Spanish speaking, criminal investigator. The criminal investigator would have worked for the Department's Foreign Prosecutions Unit, which pursues Mexican nationals who commit murder and other crimes in Colorado and subsequently flee to Mexico. These individuals can be prosecuted and imprisoned for these crimes in Mexico under provisions of Article IV of the Mexican penal code. The Department has received a grant from the Conference of Western Attorneys General (CWAG) to fund this position for the remainder of FY 2008-09 and all of FY 2009-10. A criminal investigator will probably be hired in April. The Department expects to again request funding for this item for FY 2010-11, but no funding is needed now .

**Special Prosecutions Unit.** This unit investigates and prosecutes crimes in five areas:

- *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. The 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 in Colorado and subsequently flee to another country, usually Mexico. Often these individuals are sentenced to prison in Mexico.
- *Workers' Compensation*, 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 Special Prosecutions Unit often focuses on 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. The pursuit of foreign nationals requires specialized knowledge and resources that are often lacking at the local level.

The Special Prosecutions unit is funded by a combination of General Fund and cash funds received under a contract with the State Compensation Insurance Authority (Pinnacol Assurance, which provides workers' compensation insurance services in Colorado and is created in Section 8-45-101(1), C.R.S.). Payments from Pinnacol fund workers' compensation fraud investigations and prosecutions.

The following table summarizes staffing levels within the division.

Staffing Summary	FY 2007-08 Actual	FY 2008-09 Approp.	FY 2009-10 Request	FY 2009-10 Recommend.
Attorneys	5.5	5.8	5.8	5.8
Investigators	4.7	5.0	5.0	5.0
Auditor IV	0.0	0.0	1.0	1.0
Administrative Staff	1.9	2.0	2.0	2.0
<b>Total</b>	<b>12.1</b>	<b>12.8</b>	<b>13.8</b>	<b>13.8</b>

The corresponding Option 8 calculation and the resulting staff recommendation, along with the Department's request, follow:

<b>Special Prosecutions Unit</b>	<b>Total</b>	<b>GF</b>	<b>CF</b>	<b>RF</b>	<b>FF</b>	<b>FTE</b>
FY 2008-09 Appropriation	1,233,416	1,019,683	213,733	0	0	12.8
Reverse General Fund reduction supplemental	10,000	10,000	0	0	0	0.0
Classified Salary Survey	15,602	12,562	3,040	0	0	0.0
Exempt Salary Survey	15,208	12,449	2,759	0	0	0.0
80% of Classified Performance-based Pay	6,167	4,992	1,175	0	0	0.0
80% of Exempt Performance-based Pay	6,988	5,890	1,098	0	0	0.0
DI #2 (as modified by Budget Amendment-Base Reduction Item #2), Forensic Accountant for the Special Prosecutions Unit	75,888	25,296	0	50,592	0	1.0
<b>FY 2009-10 Recommendation</b>	<b>1,363,269</b>	<b>1,090,872</b>	<b>221,805</b>	<b>50,592</b>	<b>0</b>	<b>13.8</b>
FY 2009-10 Request	1,404,931	1,104,759	221,805	78,367	0	13.8

Note that the forensic accountant would be shared one third each by three units: Special Prosecutions, Insurance Fraud and Securities Fraud, so the funding would be one third General Fund and one third each from DORA's Division of Insurance Cash Fund and Division of Securities Cash Fund, received by the Department of Law by a transfer of reappropriated funds from DORA.

**Insurance Fraud Unit.** This unit investigates and prosecutes insurance fraud, including insurance agent fraud, claimant fraud, and bail bondsman violations. About 90 percent of the Unit's cases result from referrals from the Division of Insurance in the Department of Regulatory Agencies.

Funds for the Insurance Fraud Unit are initially appropriated from the Division of Insurance Cash Fund to the Division of Insurance in the Department of Regulatory Agencies on the *Insurance Fraud Prosecution* line, and are then reappropriated to the Department of Law. Much of the revenue for this appropriation derives from a \$425 annual fee paid by each insurance entity regulated by the Division of Insurance pursuant to Section 10-3-207 (1) (e), C.R.S., a fee that raised \$684,250 thousand during FY 2007-08. However, revenues from this fee are not kept separate from other Division of Insurance revenue sources; the revenue is combined with insurance premium tax revenue and revenue from other sources in the Division of Insurance Cash Fund before it is appropriated to the Insurance Fraud Unit.

Pursuant to Section 10-3-209 (4), C.R.S., the Division of Insurance Cash Fund has a close connection to the General Fund. The bulk of the revenues of the Division of Insurance Cash Fund derive from insurance premium tax revenues; these moneys are first appropriated to the Division of Insurance in order to cover its needs, with the remainder of the premium tax revenue flowing to the General Fund. This means that appropriations to the Insurance Fraud Unit reduce the amount of money flowing to the General Fund, whether or not they exceed the revenues raised by the \$425 annual fee; if appropriations to the Insurance Fraud Unit rise by \$1, the amount of premium tax revenue flowing to the General Fund will decline by \$1. Thus appropriations to the Insurance Fraud



unit are akin to General Fund appropriations with one key difference: they do not count toward the 6 percent limit on the growth of General Fund appropriations.

The appropriation for Insurance Fraud Prosecution in the Division of Insurance exceeds the direct appropriation to the Insurance Fraud Unit. This is because the transfer from DORA pays the entire cost of running the Insurance Fraud Unit, including indirect costs and central appropriations for such things as Health, Life and Dental Insurance for Insurance Fraud Unit employees.

The following table presents staffing for the Insurance Fraud Unit.

Staffing Summary	FY 2007-08 Actual	FY 2008-09 Approp.	FY 2009-10 Request	FY 2009-10 Recommend.
Attorneys	2.0	2.1	2.1	2.1
Investigators	3.8	4.0	4.0	4.0
Administrative Staff	1.5	1.5	1.5	1.5
<b>Total</b>	<b>7.3</b>	<b>7.6</b>	<b>7.6</b>	<b>7.6</b>

The corresponding Option 8 calculation and the resulting staff recommendation, along with the Department's request, are presented in the following table:

Insurance Fraud Unit	Total	GF	CF	RF	FF	FTE
FY 2008-09 Appropriation	619,975	0	0	619,975	0	7.6
Classified Salary Survey	10,058	0	0	10,058	0	0.0
Exempt Salary Survey	6,013	0	0	6,013	0	0.0
80% of Classified Performance-based Pay	3,925	0	0	3,925	0	0.0
80% of Exempt Performance-based Pay	2,364	0	0	2,364	0	0.0
<b>FY 2009-10 Recommendation</b>	<b>642,335</b>	<b>0</b>	<b>0</b>	<b>642,335</b>	<b>0</b>	<b>7.6</b>
FY 2009-10 Request	642,335	0	0	642,335	0	7.6

The fund source for the Reappropriated funds is a transfer to from the Department of Regulatory Agencies.

**Securities Fraud Unit.** This unit investigates and prosecutes violations of state securities laws. About a third of the cases that the Division pursues are referrals from the Department of Regulatory Agencies; the remaining cases result from direct complaints that the Unit receives from victims, victims' attorneys, and District Attorneys. The line is funded by the General Fund 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 on the *Securities Fraud Prosecution* line and are then transferred to the Department of Law. As is the case with the Insurance Fraud Unit, the appropriation for Securities Fraud Prosecution in the Division of Securities exceeds the direct

appropriation to the Securities Fraud Unit in the Department of Law. This is because the transfer from the Department of Regulatory Agencies pays the entire cost of running the Securities Fraud Unit, including indirect costs and central appropriations.

The following table presents staffing for the Unit.

Staffing Summary	FY 2007-08 Actual	FY 2008-09 Approp.	FY 2009-10 Request	FY 2009-10 Recommend.
Attorneys	2.1	2.1	2.1	2.1
Investigators	2.0	2.0	2.0	2.0
Administrative Staff	1.3	1.5	1.5	1.5
<b>Total</b>	<b>5.4</b>	<b>5.6</b>	<b>5.6</b>	<b>5.6</b>

The corresponding Option 8 calculation and the resulting staff recommendation, along with the Department's request, are presented in the following table:

Securities Fraud Unit	Total	GF	CF	RF	FF	FTE
FY 2008-09 Appropriation	474,293	113,015	0	361,278	0	5.6
Reverse General Fund reduction supplemental	10,000	10,000	0	0	0	0.0
Classified Salary Survey	7,245	4,152	0	3,093	0	0.0
Exempt Salary Survey	6,723	0	0	6,723	0	0.0
80% of Classified Performance-based Pay	2,710	1,791	0	919	0	0.0
80% of Exempt Performance-based Pay	2,645	0	0	2,645	0	0.0
<b>FY 2009-10 Recommendation</b>	<b>503,616</b>	<b>128,958</b>	<b>0</b>	<b>374,658</b>	<b>0</b>	<b>5.6</b>
FY 2009-10 Request	503,616	128,958	0	374,658	0	5.6

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

**The H.B. 07-1054 portion of Budget Amendment- Base Reduction Item #2.** Pursuant to H.B. 07-1054, which increased the number of Colorado judges, and the bill's Legislative Council Staff Fiscal Note, the Appellate Unit increased in size in FY 2008-09 by \$160,334 General Fund and 2.0 FTE and will further increase in size by \$259,545 General Fund and 3.0 FTE in FY 2009-10 in recognition of the accelerated pace at which cases would reach the appellate courts as a consequence of the increased number of judges. No further increase in staff for the appellate unit was anticipated in the fiscal note.

Due to the State's current General Fund budget constraints, the Department proposes a slower phase in of H.B. 07-1054 by adding one additional FTE each year for FY 2009-10, 2010-11 and 2011-12. This reduces the cost in FY 2009-10 by two thirds. The Department notes that there are risks involved with this strategy. The fiscal note was based on reasonable assumptions and the Department has already seen its caseload rise. Nevertheless, **staff recommends that the Committee approve the Department's request and reduce the FY 2009-10 FTE increase from 3.0 FTE to 1.0 FTE.** The following table presents the resulting cost.

Staffing Summary	FY 2007-08 Actual	FY 2008-09 Approp.	FY 2009-10 Request	FY 2009-10 Recommend.
Attorneys	23.7	27.0	28.0	28.0
Administrative Staff	2.7	3.0	3.0	3.0
<b>Total</b>	<b>26.4</b>	<b>30.0</b>	<b>31.0</b>	<b>31.0</b>

The corresponding Option 8 calculation and the resulting staff recommendation, along with the Department's request, are presented in the following table:

Appellate Unit	Total	GF	CF	RF	FF	FTE
FY 2008-09 Appropriation	2,317,059	2,317,059	0	0	0	30.0
Reverse General Fund reduction supplemental	120,000	120,000	0	0	0	0.0
Classified Salary Survey	4,526	4,526	0	0	0	0.0
Exempt Salary Survey	75,571	75,571	0	0	0	0.0
80% of Classified Performance-based Pay	1,392	1,392	0	0	0	0.0
80% of Exempt Performance-based Pay	23,936	23,936	0	0	0	0.0
3 <sup>rd</sup> year impact of H.B. 07-1054, Increase Number of Judges (as amended by Budget Amendment-Base Reduction Item #2.)	86,515	86,515	0	0	0	1.0
DI #NP-3 Postage Increase	304	304	0	0	0	0.0
<b>FY 2009-10 Recommendation</b>	<b>2,629,303</b>	<b>2,629,303</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>31.0</b>
FY 2009-10 Request	2,629,303	2,629,303	0	0	0	31.0

**Medicaid Fraud Grant.** This line item funds the Medicaid Fraud Unit, which is mandated by federal law. The unit investigates and prosecutes criminal fraud against the Medicaid program as well as misconduct against patients at Medicaid funded facilities, including physical and sexual abuse, threatened abuse, and criminal neglect. In addition to recovering improperly received Medicaid funds, administrative remedies include suspension, sometimes permanently, from the Medicaid program. The program qualifies for an enhanced Medicaid matching rate, which means that the federal government pays 75 percent of the unit's total costs, while the State provides the

remaining 25 percent. 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.

Though the federal government pays 75 percent of the cost of operating the Medicaid Fraud 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 table presents staffing for the program.

Staffing Summary	FY 2007-08 Actual	FY 2008-09 Approp.	FY 2009-10 Request	FY 2009-10 Recommend.
Attorneys	1.9	2.0	2.0	2.0
Investigators	8.8	9.0	9.0	9.0
Administrative Staff	1.7	3.0	3.0	3.0
<b>Total</b>	<b>12.4</b>	<b>14.0</b>	<b>14.0</b>	<b>14.0</b>

The corresponding Option 8 calculation and the resulting staff recommendation, along with the Department's request, follow:

Medicaid Fraud Grant	Total	GF	CF	RF	FF	FTE
FY 2008-09 Appropriation	1,250,808	312,703	0	0	938,105	14.0
Reverse General Fund reduction supplemental	80,000	20,000	0	0	60,000	0.0
Classified Salary Survey	19,164	0	0	0	19,164	0.0
Exempt Salary Survey	6,374	1,593	0	0	4,781	0.0
80% of Classified Performance-based Pay	9,984	2,496	0	0	7,488	0.0
80% of Exempt Performance-based Pay	2,536	634	0	0	1,902	0.0
Fund mix adjustment to achieve a 75% FF and 25% GF funding split	0	4,850	0	0	(4,850)	0.0
<b>FY 2009-10 Recommendation</b>	<b>1,368,866</b>	<b>342,276</b>	<b>0</b>	<b>0</b>	<b>1,026,590</b>	<b>14.0</b>
FY 2009-10 Request	1,368,866	342,276	0	0	1,026,590	14.0

**Capital Crimes Prosecution Unit.** This unit provides investigative and prosecutorial support to local district attorneys who are determining whether the death penalty is appropriate in specific criminal cases. It operates under general statutory authority provided by section 24-31-105, C.R.S. These cases are often complex and require a heavy workload, especially if it is determined that the death penalty is a suitable course of action. This unit also handles appeals of death penalty convictions in both state and federal appellate courts. The unit also includes the Cold Case Group,

which meets quarterly with other enforcement agencies from around the state to review cold cases. The unit is supported by the General Fund. H.B. 09-1274 (Repeal Death Penalty) may alter the appropriation for this unit; the bill currently contains a "skeleton" appropriations clause that appropriates 2.0 FTE to the Department of Law but doesn't specify the corresponding dollar amount.

Staffing Summary	FY 2007-08 Actual	FY 2008-09 Approp.	FY 2009-10 Request	FY 2009-10 Recommend.
Attorneys	1.8	2.0	2.0	2.0
Investigators	1.0	1.0	1.0	1.0
Administrative Staff	1.0	1.0	1.0	1.0
<b>Total</b>	<b>3.8</b>	<b>4.0</b>	<b>4.0</b>	<b>4.0</b>

The corresponding Option 8 calculation and the resulting staff recommendation, along with the Department's request, follow:

Capital Crimes Prosecution Unit	Total	GF	CF	RF	FF	FTE
FY 2008-09 Appropriation	306,643	306,643	0	0	0	4.0
Reverse General Fund reduction supplemental	70,000	70,000	0	0	0	0.0
Classified Salary Survey	3,254	3,254	0	0	0	0.0
Exempt Salary Survey	6,629	6,629	0	0	0	0.0
80% of Classified Performance-based Pay	1,286	1,286	0	0	0	0.0
80% of Exempt Performance-based Pay	2,632	2,632	0	0	0	0.0
<b>FY 2009-10 Recommendation</b>	<b>390,444</b>	<b>390,444</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4.0</b>
FY 2009-10 Request	390,444	390,444	0	0	0	4.0

**Decision Item #1, Consolidate the Special Prosecutions Unit.** The Department requests that the currently separate Long Bill appropriations for the following units within the Criminal Justice and Appellate Division be consolidated into a single line item called the Special Prosecutions Unit:

- the Special Prosecutions Unit,
- the Insurance Fraud Unit,
- the Securities Fraud Unit, and
- the Capital Crimes Prosecution Unit.

There would be no change in the overall level or mix of funding. The numbers pages show these units separately, but they will be combined in the Long Bill if this decision item is approved. The Department also requests that the current pass-through appropriation from DORA to the Insurance

and Securities Fraud Units be replaced with direct appropriations from the Division of Insurance Cash Fund and the Division of Securities Cash Fund.

The goal of the consolidation is to increase the efficiency of the combined units by allowing more flexibility in the use of resources and personnel. This change will allow the Department to put its employees where they are most needed. Currently, situations arise in which an investigator or attorney who is currently restricted to one unit may be best suited to handle a case assigned to another, but the separate Long Bill appropriations for each unit make it very difficult to move the individual. The Department has even seen situations in which a case started in one section and then had to be transferred to another due to a change in the nature of the investigation. When this occurs, the Department often must re-assign the case to a new prosecution team that must start from scratch without be able to bring in the former investigator or prosecutor who already knows the case. This is an inefficient use of resources and can also cause morale problems when individuals who have been working on a case are removed due solely to budget restrictions.

As noted during briefing, these units have, since FY 2001-02, been consolidated, split in response to a request from DORA, and now would be joined again with this decision item. When DORA was asked about re-consolidation during its hearing, it stated that "accountability is paramount, both accountability between the JBC and the Department of Law, as well as accountability between DORA and its fee payers. While the current system has been problematic at times, the Department is supportive of any improvements made to this process." DORA went on to state that it was opposed to direct appropriations from the Division of Insurance Cash Fund and the Division of Securities Cash Funds because direct appropriations would make fee setting more difficult.

Staff has spoken with the Department about the consolidation at length and believes that DORA's concerns about accountability can be adequately addressed. Staff understands that the Department of Law now plans to implement an internal billing system for the combined unit that will allocate costs in a manner similar to the way that costs are now allocated by the Legal Services to State Agencies Division. The system is also akin to that which DORA utilizes within its Division of Registrations. Each subunit of the combined unit will "pay" for the services of investigators and attorneys and these "payments" will be tracked internally. Thus at the end of each year, the Department of Law will be able to place a dollar value on the work done in support of each subdivision and it will, if asked, be able to compare those dollar values with the amounts it receives from DORA and from Pinnacol Assurance, thus providing accountability.

**Staff recommends that the Committee approve the consolidation of these units. Staff further recommends that FTE for this unit be appropriated without regard to fund source,** rather than being appropriated at the fund source level. Without such an appropriation, the Department will still not be able to move FTE freely, even though the units have been consolidated. Staff generally prefers to appropriate FTE by fund source, especially when federal FTE are involved. Because the General Assembly has limited control over federally funded FTE, Staff believes that, whenever possible, federally funded FTE should be appropriated separately from FTE supported by the General Fund, cash funds and reappropriated funds. Since no federal funds are involved present for these lines, this

is not a consideration in the current case. **Staff also recommends that the Long Bill's two step funding process for these units be retained.** Under this arrangement, funds for the Securities and Insurance Fraud units are first appropriated in the Divisions of Insurance and Securities and then reappropriated to the two fraud programs.

<b>Combined Special Prosecutions Unit</b>	<b>Total</b>	<b>GF</b>	<b>CF</b>	<b>RF</b>	<b>FF</b>	<b>FTE</b>
Recommended appropriation for:						
Special Prosecutions Unit	1,363,473	1,090,940	221,805	50,728	0	13.8
Insurance Fraud Unit	642,335	0	0	642,335	0	7.6
Securities Fraud Unit	503,616	128,958	0	374,658	0	5.6
Capital Crimes Prosecution Unit	390,444	390,444	0	0	0	4.0
<b>FY 2009-10 recommendation for combined unit</b>	<b>2,899,868</b>	<b>1,610,342</b>	<b>221,805</b>	<b>1,067,721</b>	<b>0</b>	<b>31.0</b>

The Department believes that the additional flexibility resulting from consolidation, which will allow the department to move staff among programs and assign them to the cases for which they are best suited, will increase the efficiency and effectiveness of its investigations and prosecutions. The Department also requests that the current two-step funding arrangement in the Long Bill, in which funds for the Securities and Insurance Fraud units are first appropriated in the Divisions of Insurance and Securities in the Department of Regulatory Agencies and are then reappropriated to the two fraud programs, be replaced with a direct appropriation to the fraud programs.

**Peace Officers Standards and Training (P.O.S.T.) Board.** This line item provides for certification of peace officers appointed by state and local law enforcement agencies, as well as regulating basic training programs pursuant to the provisions of Sections 24-31-301 through 24 31 310, C.R.S. The P.O.S.T. Board ensures that all peace officers demonstrate proficiency in the use of firearms, arrest control tactics, and law enforcement driving. The Board also maintains approximately 29,000 computerized certification records.

**POST Board portion of Budget Amendment - Base Reduction #2:** The Department requests that the General Fund appropriation for the Post Board, which the Department received for implementation of H.B. 08-1397 be reduced by \$47,500. After consulting with the POST Board and subject matter experts, the Department determined it could develop an on-line DNA training course at less cost than the conventional DNA training course that was envisioned in the Legislative Council Staff Fiscal Note for H.B. 08-1397. **Staff recommends that the Committee approve this reduction.**

Staffing Summary	FY 2007-08 Actual	FY 2008-09 Approp.	FY 2009-10 Request	FY 2009-10 Recommend.
Program Director	1.0	1.0	1.0	1.0
Investigator	2.0	2.0	2.0	2.0
Administrative Staff	3.0	3.0	3.0	3.0
<b>Total</b>	<b>6.0</b>	<b>6.0</b>	<b>6.0</b>	<b>6.0</b>

The corresponding Option 8 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 2008-09 Appropriation	1,257,939	81,207	1,176,732	0	0	6.0
Classified Salary Survey	15,320	0	15,320	0	0	0.0
80% of Classified Performance-based Pay	4,434	0	4,434	0	0	0.0
2 <sup>nd</sup> year impact of H.B. 08-1397, Disposition of Evidence in Criminal Cases. (\$81,207 was provided in the 1 <sup>st</sup> year.)	16,293	16,293	0	0	0	0.0
Budget Amendment-Base Reduction Item #2, Reduce GF for the POST Board to implement H.B. 08-1397, Disposal of Evidence in Criminal Cases	(47,500)	(47,500)	0	0	0	0.0
DI #NP-3 Postage Increase	489	0	489	0	0	0.0
<b>FY 2009-10 Recommendation</b>	<b>1,246,975</b>	<b>50,000</b>	<b>1,196,975</b>	<b>0</b>	<b>0</b>	<b>6.0</b>
FY 2009-10 Request	1,246,975	50,000	1,196,975	0	0	6.0

The cash fund source is the P.O.S.T. Board Cash Fund created in Section 24-31-303 (2) (b), C.R.S. House Bill 09-1036 (Registration Fee for POST Cash Fund), which is currently awaiting a hearing in Senate Appropriations, would increase the motor vehicle registration fee from \$0.25 to \$0.60 beginning on July 1, 2009. This would increase revenue of the POST Cash Fund by a projected \$1,494,995.

**Victims Assistance.** The Victim Rights Amendment, which voters approved in 1992 as Article 2, Section 16a of the Colorado Constitution, states that crime victims have the "right to be heard when relevant, informed, and present at all critical stages of the criminal justice process." The Victims' Services Coordinator carries out these duties when the Department handles criminal appeals and when it prosecutes individuals in a trial court. The Coordinator, appointed under the authority of Section 24-31-106, C.R.S., helps over 1200 victims annually, telling them what is going on with their cases, explaining time lines, possible outcomes, and generally helping victims understand the legal process. Sometimes the Coordinator even accompanies victims to court. Section 24-33.5-506, C.R.S., establishes the Victims Assistance and Law Enforcement (VALE) Fund, which is administered by the VALE Advisory Board, and mandates that a portion of the moneys in the fund be allocated to the Department to pay for the Coordinator. The VALE Fund receives revenues from



offender surcharges ordered by Colorado courts. A percentage of each local fund at the District Court level is remitted to the State VALE fund.

Staffing Summary	FY 2007-08 Actual	FY 2008-09 Approp.	FY 2009-10 Request	FY 2009-10 Recommend.
General Professional	1.0	1.0	1.0	1.0
<b>Total</b>	<b>1.0</b>	<b>1.0</b>	<b>1.0</b>	<b>1.0</b>

The Option 8 calculation is as follows:

Victims Assistance	Total	GF	CF	RF	FF	FTE
FY 2008-09 Appropriation	72,149	0	0	72,149	0	1.0
Classified Salary Survey	2,960	2,960	0	0	0	0.0
80% of Classified Performance-based Pay	845	845	0	0	0	0.0
DI #NP-3 Postage Increase	132	132	0	0	0	0.0
Fund Mix Adjustment	0	(3,607)	0	3,607	0	0.0
<b>FY 2009-10 Recommendation</b>	<b>76,086</b>	<b>330</b>	<b>0</b>	<b>75,756</b>	<b>0</b>	<b>1.0</b>
FY 2009-10 Request	76,086	330	0	75,756	0	1.0

**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.

<b>Staffing Summary</b>	<b>FY 2007-08 Actual</b>	<b>FY 2008-09 Approp.</b>	<b>FY 2009-10 Request</b>	<b>FY 2009-10 Recommend.</b>
Attorneys	3.6	4.5	4.5	4.5
Legal Assistants	1.0	1.0	1.0	1.0
<b>Total</b>	<b>4.6</b>	<b>5.5</b>	<b>5.5</b>	<b>5.5</b>

The Option 8 calculation, the Department request, and the staff recommendation are as follows:

<b>Federal and Interstate Water Unit</b>	<b>Total</b>	<b>GF</b>	<b>CF</b>	<b>RF</b>	<b>FF</b>	<b>FTE</b>
FY 2008-09 Appropriation	475,555	475,555	0	0	0	5.5
Reverse Supplemental	30,000	30,000	0	0	0	0.0
Classified Salary Survey	2,852	2,852	0	0	0	0.0
Exempt Salary Survey	13,025	13,025	0	0	0	0.0
80% of Classified Performance-based Pay	811	811	0	0	0	0.0
80% of Exempt Performance-based Pay	4,629	4,629	0	0	0	0.0
<b>FY 2009-10 Recommendation</b>	<b>526,872</b>	<b>526,872</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>5.5</b>
FY 2009-10 Request	526,872	526,872	0	0	0	5.5

**Background on the Colorado Water Conservation Board and the Colorado Water Conservation Board's Litigation Fund:** The next two appropriations, Defense of the Colorado River Basin Compact and Defense of the Republican River Compact, are funded from the Colorado Water Conservation Board's Litigation Fund. Staff has included the following information in case the Committee needs to know more about this funding source.

The Colorado Water Conservation Board is established in Section 37-60-102, C.R.S. 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 \$2.9 million, derives from periodic appropriations and transfers that the General Assembly makes into the Fund. The most recent transfer into the fund occurred in 2006 when Section 17 of H.B. 06-1313 transferred \$2 million from the Operational Account of the Severance Tax Trust Fund into the Litigation Fund. Senate Bill 09-125 (Water Conservation Board Construction Fund), which is currently at awaiting a hearing in the House Appropriations Committee, would transfer enough from the Colorado Water Conservation Board Construction Fund to restore the balance in the Litigation Fund to \$4 million, with a maximum transfer of \$2,200,000. Scheduled hearing in House Ag. 3-11. Moneys in the Litigation Fund are continuously appropriated to the Colorado Water Conservation 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 uses its continuous spending authority to allocate funds to the Department of Law. The second step occurs when the General Assembly gives the Department the authority to expend the moneys allocated by the Colorado Water Conservation Board. The Joint Budget Committee could approve an appropriation that is less than the amount approved by the Water Conservation Board. If the Committee approves an appropriation that exceeds the amount approved by the Board, the Board would probably revisit its allocation decision. Note that the Water Conservation Board often makes appropriations that cover the entire life of a project; for example, in November 2007 it approved \$240,000 for the Defense of the Republican River with no specification as to fiscal year.

**Defense of the Colorado River Basin Compact.** The Department uses this appropriation to defend Colorado's interests in the 1922 Colorado River Compact, which apportioned Colorado River water between Upper and Lower Basin states, and the 1948 Upper Colorado River Basin Compact, which apportioned upper basin water among Colorado, Utah, Wyoming and New Mexico. Water from the Colorado River and its tributaries constitutes more than 75% of the total water supply of the entire state.

The line item was created in the Department's FY 2005-06 supplemental in response to the Department's assertion that major legal action concerning the Colorado River Compacts was imminent. The appropriation was designed to prepare the state for and represent the state in Colorado-river litigation.

Though the anticipated legal battles did not materialize, the Department now believes that the State has entered a period in which the Colorado River requires continuous monitoring and legal work, with the ever-present prospect that a large legal battle could develop, especially if a drought develops. The Department bases this conclusion on several factors:

1. The Department must regularly respond to claims by lower basin states, particularly Arizona, that potentially threaten some portion of Colorado's water allocation.
2. Average Colorado River flow is too low to satisfy Compact requirements. Recent studies have shown that the projected water flow that lies at the heart of the 1922 Compact is too high.
3. Colorado's growing population is close to fully utilizing its share of river water for the first time in history. Growing populations in the lower basin states are also pushing against the limits of their own shares.
4. Environmental organizations are increasingly pressuring on the federal government to operate the river in a manner that benefits endangered and threatened species, potentially reducing the amount of water available for agriculture, human consumption, power generation, and other uses.

During the three years since this line item was added to the Long Bill, the Department has used the appropriation to:

- Develop a litigation-support database that will cover the entire historical record of the river compacts. Development costs are being shared by the other Upper Basin states, which each contributed \$50,000 towards its development. The database makes it much easier to identify and retrieve relevant documents when disputes arise. Databases of this sort are commonly used by legal professionals in cases involving large bodies of substantive information. The database will probably be finished by the end of FY 2009-10.
- Research legal questions that have a significant probability of arising in the future. For example, how are the water storage rules of Section 602 (a) of the 1968 Colorado River Basin Project Act to be interpreted in the event of a drought?
- 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.
- Participate in seminars, talks and negotiations that identify key concerns of river constituents and address river management and water allocation issues.
- 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.

Thanks to the lack of major litigation, expenditures from the line have been consistently less than appropriations.

The following table show the grants that have been received from the Colorado Water Conservation Board's litigation fund:

Date	Grant
2005	\$250,000
3/2006	758,880
9/2007	615,452
11/2008	191,000
Totals	\$1,815,332

In addition, the CWCB has also made approximately \$222,681 of expenditures this grant total. Appropriations for the line and actual expenditures have been as follows:

Fiscal Year	Appropriation:		Actual:	
	Dollars	FTE	Expenditure	FTE
2005-06	\$152,262	1.3	\$50,437	0.5
2006-07	758,880	4.0	359,106	3.9
2007-08	758,880	4.0	333,452	3.8
2008-09*	545,000	4.0	388,000	4.0

\*The numbers in the FY 2008-09 actual columns are projections.

Staff estimates that \$462,000 of the grant total will remain at the end of FY 2008-09 and be available to the Department of Law in FY 2009-10. Another \$75,000 is available from moneys received from other upper basin states for development of a litigation support database.

The following table summarizes program staffing:

Staffing Summary	FY 2007-08 Actual	FY 2008-09 Approp.	FY 2009-10 Request	FY 2009-10 Recommend.
Attorneys	2.8	3.0	3.0	3.0
Legal Assistants	1.0	1.0	1.0	1.0
<b>Total</b>	<b>3.8</b>	<b>4.0</b>	<b>4.0</b>	<b>4.0</b>

The Option 8 calculation, the Department request, and the staff recommendation follow.

Defense of the Colorado River Basin Compact	Total	GF	CF	RF	FF	FTE
FY 2008-09 Appropriation	545,000	0	545,000	0	0	4.0
Classified Salary Survey	2,866	2,866	0	0	0	0.0
Exempt Salary Survey	9,128	9,128	0	0	0	0.0
80% of Classified Performance-based Pay	818	818	0	0	0	0.0
80% of Exempt Performance-based Pay	2,534	2,534	0	0	0	0.0
Base Reduction	(87,017)	(15,346)	(71,671)	0	0	0.0
<b>FY 2009-10 Recommendation</b>	<b>473,329</b>	<b>0</b>	<b>473,329</b>	<b>0</b>	<b>0</b>	<b>4.0</b>
FY 2009-10 Request	473,329	0	473,329	0	0	4.0

The fund source is the Colorado Water Conservation Board's Litigation Fund. As the fund balance calculation above indicates, there will be sufficient fund balance to support this appropriation. However, the program will require General Fund in future years if there are no further grants from the CWCB.

**Decision Item #3 (as modified by Budget Amendment 4a): Consolidate the Federal and Interstate Water Unit and the Colorado River Unit.** The Department requests that the currently

separate Long Bill appropriations for the Federal and Interstate Water Unit and for the Colorado River Unit be combined into a single appropriation. The Department notes that the two units do similar work and states that consolidation will increase efficiency. Pointing to factors like those outlined above, the Department also makes a strong case that the Colorado River now requires continuous monitoring and legal work; a continuing appropriation for the Defense of the Colorado River Compact has likely become a necessity.

**Staff recommends that the Committee not approve this decision item.** While staff believes that continuing Colorado River Unit appropriations are probably required, staff finds the current case for combining the two units is weaker than the case for combining the Special Prosecutions Unit with the Securities Fraud, Insurance Fraud and Capital Crimes units. There are obvious efficiencies from combining those criminal units; a combination allows the department to shift FTE to the tasks for which they are best suited. Staff doesn't believe that a combination involving the Federal and Interstate Water Unit and the Colorado River Unit is as likely to generate savings. In addition, a transition from cash funds to General Fund support for the Colorado River Unit is very likely to occur next year and staff believes that the transition deserves careful consideration – consideration that may be obscured by a consolidation in the current year.

**Defense of the Republican River Compact.** The Republican River Compact between Colorado, Kansas, and Nebraska governs the use of water in the Republican River Basin, which lies in northeastern Colorado, southwestern Nebraska and northwestern Kansas. In 1998, Kansas sued Nebraska and Colorado, alleging overuse of river water. In 2003, the three states entered into a settlement decree to resolve the dispute, but in 2007 Kansas began legal action against Nebraska, claiming that state was not doing enough to comply. Believing that Colorado would likely be drawn into the proceedings, and that appropriate action could minimize Colorado's involvement and its liabilities, the Department of Law requested and the Colorado Water Conservation Board approved a \$240,000 grant from the Board's Litigation Fund to prepare. The General Assembly subsequently appropriated this grant to the Department of Law, providing \$130,000 in a FY 2007-08 supplemental bill and the remaining \$110,000 in the FY 2008-09 Long Bill. The appropriation has been used to pay for negotiation and litigation expenses and the hiring of hydrology experts. With timely negotiation and the help of its experts, the Department of Law hopes that Colorado will be able to basically stay on the sidelines during an essentially Kansas-Nebraska dispute.

In January 2009, the Department requested and received another grant from the Colorado Water Conservation Board, this time for \$110,000,. The arbitration proceeding has already begun and the Department requests an appropriation of this \$110,000 in order to finance its FY 2009-10 arbitration efforts.

**Staff recommends that the Committee approve an appropriation of appropriation of \$110,000 cash funds for the Defense of the Republican River Compact.**

**Consultant Expenses.** This line item is being used to make payments to the private counsel that has represented Colorado during its 24-year legal fight with Kansas over the Arkansas River Compact.

**Background:** 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. A court-appointed Special Master subsequently concluded that Colorado had indeed violated the Compact by pumping too much water from wells near the river. The Supreme Court basically agreed with the Special Master's findings, and, following a lengthy damages and remedies phase, ordered Colorado to pay Kansas approximately \$34 million in damages, including interest. In January 2008, the Special Master issued a final recommendation that included complex rules designed to assure Colorado's compliance with the Compact. Once finalized, Colorado will have to comply with these rules for the indefinite future, which will require continuing legal work.

Since the beginning of this dispute, Colorado has relied on the same outside counsel for legal work. Believing that the case was finally winding down, in its FY 2007-08 budget submission the Department requested that it gradually reduce reliance on outside counsel and shift the legal work in-house, a rapid transition being impossible because of the case's complexity. The appropriation approved by the JBC added 0.5 FTE and \$40,654 to the Federal and Interstate Water Unit's appropriation for the in-house work and reduced payments to outside counsel from \$140,000 to \$50,000. The decision item anticipated that the in-house costs would continue indefinitely while the expense for outside counsel would fall to \$25,000 in FY 2008-09 and remain at that level for 2 to 5 years before disappearing. The department expected that its new staff would pick up new Arkansas-river issues as they arose and leave the outside counsel to focus on issues that had arisen earlier.

To the Department's surprise, Kansas decided to contest an number of issues that Colorado believed to be settled, forcing the Department to rely on outside counsel more than had been anticipated. The key Kansas assertions were: (1) Colorado owes an additional \$9 million in expert witness fees; (2) the Lower Arkansas Water Management Association decree violates the compact; (3) the Use Rules that regulate well-pumping are not adequate to prevent Compact violations; and (4) increased efficiency of surface water irrigation systems violates the Compact. Thus far, only the first of these claims has been adjudicated; in a March 9<sup>th</sup> opinion, the U.S. Supreme Court upheld the Special Master's ruling that fees for expert witnesses should be \$162,927 (\$40 per day, based on an old law), not the \$9.2 million extra sought by Kansas.

In June 2008, the Department requested and received a \$70,000 supplemental appropriation that increased the \$50,000 FY 2007-08 appropriation for outside counsel to \$120,000. For FY 2008-09, the Department requested and received a \$50,000 appropriation, rather than the \$25,000 appropriation that had been anticipated. For FY 2009-10, the Department has again requested \$50,000 and strongly asserts that this appropriation is necessary in light of the issues Kansas has raised. The funding source for this appropriation is the Attorney Fees and Costs Fund, which obtains revenues from court-ordered awards to the Department of attorneys fees and costs.

**Staff recommends a \$50,000 cash funds appropriation for this line item**, which corresponds to the Department request. The fund source is the Attorney Fees and Costs Cash Fund.

**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, providing legal advice and, where possible, helping it 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	FY 2007-08 Actual	FY 2008-09 Approp.	FY 2009-10 Request	FY 2009-10 Recommend.
Attorneys	2.5	3.5	3.5	3.5
Legal Assistants	2.3	0.8	0.0	0.0
<b>Total</b>	<b>4.8</b>	<b>4.3</b>	<b>3.5</b>	<b>3.5</b>

Note that the CERCLA Litigation Unit shrunk more than 75 percent in the last decade; in 1994, the Unit had 19.0 FTE. The reduction in CERCLA work reflects the following factors:

1. Colorado has worked through the backlog of big cases that existed when CERCLA became federal law in 1980. Concerned that the statute of limitations might expire, the Department filed lots of cases in the early years. It took years to work through them.
2. Colorado now detects polluters more quickly, before the pollution grows large and requires more extensive legal work.



3. Companies that own older industrial sites sometimes avoid doing things at those sites that could uncover hazardous waste and thus produce a CERCLA case – ignorance can be bliss when potential CERCLA liabilities are involved.
4. As cases mature, the work is transitioning to Natural Resources Damages claims and away from cleanup, which often requires quick, intense legal action. Natural Resources Damages can be pursued more leisurely, with fewer attorneys, since they involve no imminent risk to health.

**CERCLA portion of Budget Amendment-Base Reduction Item #2:** For the reasons outlined above, the Department requests and **Staff recommends that the General Fund appropriation for the CERCLA line be reduced by \$30,606 General Fund**, i.e. by 10 percent, and by 0.8 FTE, which continues reductions approved during supplementals.

The next table presents the corresponding Option 8 calculation and the resulting staff recommendation:

<b>CERCLA</b>	<b>To tal</b>	<b>GF</b>	<b>CF</b>	<b>RF</b>	<b>FF</b>	<b>FTE</b>
FY 2008-09 Appropriation (as reduced by the negative \$70,000 GF and 0.5 FTE January supplemental)	402,021	376,143	0	25,878	0	4.3
Classified Salary Survey	7,888	7,888	0	0	0	0.0
Exempt Salary Survey	7,138	7,138	0	0	0	0.0
80% of Classified Performance-based Pay	2,247	2,247	0	0	0	0.0
80% of Exempt Performance-based Pay	2,490	2,490	0	0	0	0.0
CERCLA portion of Budget Amendment-Base Reduction Item #2 (continues reductions approved during supplementals)	(30,606)	(30,606)	0	0	0	(0.8)
<b>FY 2009-10 Recommendation</b>	<b>391,178</b>	<b>365,300</b>	<b>0</b>	<b>25,878</b>	<b>0</b>	<b>3.5</b>
FY 2009-10 Request	391,178	365,300	0	25,878	0	3.5

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.

<b>CERCLA Contracts</b>	<b>Total</b>	<b>GF</b>	<b>CF</b>	<b>RF</b>	<b>FF</b>	<b>FTE</b>
FY 2008-09 Appropriation before supplementals	600,000	175,000	0	425,000	0	0.0
+ Supplemental Adjustments	<u>(130,000)</u>	<u>(155,000)</u>	<u>0</u>	<u>25,000</u>	<u>0</u>	<u>0.0</u>
= Final FY 2008-09 Appropriation	470,000	20,000	0	450,000	0	0.0
+ CERCLA portion of Budget Amendment - Base Reduction Item #2. Reverses \$30,000 GF reduction from supplementals.	30,000	55,000	0	(25,000)	0	0.0
<b>FY 2009-10 Recommendation</b>	500,000	75,000	0	425,000	0	0.0
FY 2009-10 Request	500,000	75,000	0	425,000	0	0.0

The Department indicates that the \$25,000 of reappropriated funds obtained from CDPHE during supplementals, which allowed \$25,000 of General Fund to be refinanced as shown in the table above, was a one time transfer that it was not expected to continue.

**Natural Resource Damage Claims at Rocky Mountain Arsenal.** The State has, for the last five years, been in the second phase of its CERCLA case against Shell Oil Company and the U.S. Army over pollution at the Rocky Mountain Arsenal, attempting to win compensatory Natural Resource Damages – i.e. damages for the environmental degradation that remains after years of cleanup.

Appropriations for a Natural Resource Damages action began in FY 2005-06 and totaled \$880,000 General Fund over two years. In FY 2007-08, the General Assembly began financing the action from the Hazardous Substance Response fund, with appropriations of \$2,661,667 and \$1,212,924 in FY 2007-08 and 2008-09.

**Budget Reduction Item #1, Natural Resource Damage Claims at Rocky Mountain Arsenal.** The State has reached settlements with the Army and Shell concerning these Natural Resource Damages. Together the settlements are valued at \$35 million. As a result the Department no longer needs funding to litigate the case and it requests that the appropriation be reduced to \$195,000 cash funds, which will allow it to assist the State's Natural Resource Trustees in deciding how to allocate the settlement moneys. Under Federal law, the state must use the natural resource damage awards to acquire or improve similar natural resources.

The Department notes that it could not have won this settlement without the appropriations that it received in support of this action, which made its litigation threats credible. Of the total appropriation of \$3,874,591 from the Hazardous Substance Response Fund in FY 2007-08 and 2008-09, the Department expects to expend about \$1,090,000, the remainder of the appropriation for litigation now being unnecessary. While the \$35 million award cannot be used to directly reimburse the Hazardous Substance Response Fund, the award has been temporarily deposited in the Fund and

interest earned on the \$35 million is expected to fully repay the Fund by the time the money is expended.

The following table shows staffing for the Natural Resource Damage Claims at Rocky Mountain Arsenal line item:

Staffing Summary	FY 2007-08 Actual	FY 2008-09 Approp.	FY 2009-10 Request	FY 2009-10 Recommend.
Attorneys	1.9	2.4	0.0	0.0
<b>Total</b>	<b>1.9</b>	<b>2.4</b>	<b>0.0</b>	<b>0.0</b>

The corresponding Option 8 calculation, the Department request, and the staff recommendation are as follows:

Natural Resource Damage Claims at RMA	Total	GF	CF	RF	FF	FTE
FY 2008-09 Appropriation	1,212,924	0	1,212,924	0	0	2.4
Base Reduction Item #1, Natural Resource Damages Claims at Rocky Mountain Arsenal	(1,017,924)	0	(1,017,924)	0	0	(2.4)
<b>FY 2009-10 Recommendation</b>	<b>195,000</b>	<b>0</b>	<b>195,000</b>	<b>0</b>	<b>0</b>	<b>0.0</b>
FY 2009-10 Request	195,000	0	195,000	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.

**Decision Item #5 (as modified by Budget Amendment 6a): Call Center FTE for the Consumer Protection Unit.** The Department requests \$10,832 General Fund and 1.0 FTE for an Administrative Assistant II position in the Consumer Protection call center. This replaces the earlier request for \$54,004 General Fund and 1.0 FTE for a legal assistant (i.e. a paralegal) for the Consumer Protection Unit. In FY2008-09, the Department spent \$25,000 on temporary employees to staff the call center. The cost of a permanent Administrative Assistant II position is \$36,158 but the Department only needs \$10,832 to fill the "gap" between the wages paid to temps and the cost of a permanent Administrative Assistant II position.

The Call Center operates the "Colorado Consumer Line", a toll-free service established and maintained by the Attorney General's Office that received 9,796 calls in 2008, approximately half of which were handled by the Center's FTE. Call Center staff also accept written consumer complaints (3,000 to 4,000 in a typical year) and respond to inquires and complaints submitted via stopfraud@state.co.us.

In the mid-1990's the Department of Law requested approximately \$20,000 and an FTE for the Consumer Protection call center. The Joint Budget Committee denied the FTE but approved the \$20,000 appropriation, telling the Department to use it to hire work-study students. This arrangement, which the Department describes as "awkward", continued until two years ago when the work-study program ended and the Department turned to temps. Since temps can work no more than six months, the Department now must hire and retrain a new temp twice a year, which requires a considerable amount of time from the program assistant who supervises the position. The Department notes that many consumer complaint calls are complicated and thorough training is vital.

**Staff recommends that the Committee approve this request;** an appreciable gain in efficacy and efficiency is likely to be obtained at a moderate cost.

**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, H.B. 07-1322, S.B. 07-203 and S.B. 07-216, 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 constitute deceptive trade practices under the Act.

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.

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

H.B. 09-1173 (Contraband Cigarettes and Tobacco Products) which is currently awaiting a hearing before the House Appropriations Committee, would, according to the Legislative Council Staff Fiscal Note, increase the amount of work that must be done to comply with the non-participating manufacturer provisions of the Master Settlement Agreement. The fiscal note envisions appropriations of \$223,923 and 2.5 FTE in FY 2009-10, and \$158,517 and 2.4 FTE in FY 2010-11

<b>Staffing Summary</b>	<b>FY 2007-08 Actual</b>	<b>FY 2008-09 Approp.</b>	<b>FY 2009-10 Request</b>	<b>FY 2009-10 Recommend.</b>
Attorneys	9.4	12.0	12.0	12.0
Legal Assistants	2.0	2.0	2.0	2.0
Investigators	2.6	2.0	2.0	2.0
Administrative Staff	4.0	4.0	5.0	5.0
<b>Total</b>	<b>18.0</b>	<b>20.0</b>	<b>21.0</b>	<b>21.0</b>

The Option 8 calculation, the Department's request, and staff's recommendation follow:

<b>Consumer Protection and Anti-Trust</b>	<b>Total</b>	<b>GF</b>	<b>CF</b>	<b>RF</b>	<b>FF</b>	<b>FTE</b>
FY 2008-09 Appropriation	1,735,240	720,978	771,557	242,705	0	20.0
Reverse Supplemental	33,495	153,495	(120,000)	0	0	0.0
Classified Salary Survey	17,181	10,043	7,138	0	0	0.0
Exempt Salary Survey	37,270	22,820	11,223	3,227	0	0.0
80% of Classified Performance-based Pay	4,958	2,580	2,378	0	0	0.0
80% of Exempt Performance-based Pay	10,336	6,846	2,592	898	0	0.0
DI #5 as amended by Budget Amendment 6a, Call Center Administrative Assistant for Consumer Protection	10,832	10,832	0	0	0	1.0
DI #NP-3 Postage Increase	510	510	0	0	0	0.0
<b>FY 2009-10 Recommendation</b>	<b>1,849,822</b>	<b>928,104</b>	<b>674,888</b>	<b>246,830</b>	<b>0</b>	<b>21.0</b>

Consumer Protection and Anti-Trust	Total	GF	CF	RF	FF	FTE
FY 2009-10 Request	1,849,822	928,104	674,888	246,830	0	21.0

The cash funds in this recommendation derive from

- The Public Utilities Commission for Colorado No-call-list work
- 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.

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 derive from Section 12-61-904.5, C.R.S.

**Recommended modification to a figure setting decision that the Committee made for the Department of Regulatory Agencies.** During figure setting for the Department of Regulatory Agencies' Division of Real Estate, the Department of Regulatory Agencies Analyst recommended a \$309,495 cash funds appropriation from the Mortgage Brokers Cash Fund for the line item titled *Mortgage Broker Consumer Protection*. This appropriation is transferred to the Department of Law to pay for the Department's mortgage-broker duties. Due to a misunderstanding, this \$309,495 appropriation did not adjust for changes in the Department of Law's indirect costs or central appropriations of pots. Because indirect cost calculations for the Department cannot be computed until common policy figure setting is complete, **Staff recommends that the Committee change its appropriation for *Mortgage Broker Consumer Protection* in DORA's portion of the Long Bill from \$309,495 to "Pending" so that these extra appropriations can be taken into account. Staff requests permission to compute the full appropriation in the Long Bill once indirect cost assessments have been determined.**

**Collection Agency Board.** This line item supports the Collection Agency Board Unit, which 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 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 Collection Agency Board Unit's staffing summary follows:

Staffing Summary	FY 2007-08 Actual	FY 2008-09 Approp.	FY 2009-10 Request	FY 2009-10 Recommend.
Attorneys	0.9	1.2	1.2	1.2
Compliance Investigators	2.0	2.0	2.0	2.0
Administrative Staff	2.1	2.0	2.0	2.0
<b>Total</b>	<b>5.0</b>	<b>5.2</b>	<b>5.2</b>	<b>5.2</b>

The corresponding Option 8 calculation, the Department request, and the staff recommendation follow:

Collection Agency Board	Total	GF	CF	RF	FF	FTE
FY 2008-09 Appropriation	296,905	0	296,905	0	0	5.2
Classified Salary Survey	7,553	0	7,553	0	0	0.0
Exempt Salary Survey	4,988	0	4,988	0	0	0.0
80% of Classified Performance-based Pay	2,219	0	2,219	0	0	0.0
80% of Exempt Performance-based Pay	2,006	0	2,006	0	0	0.0
DI #NP-3 Postage Increase	754	0	754	0	0	0.0
<b>FY 2009-10 Recommendation</b>	<b>314,425</b>	<b>0</b>	<b>314,425</b>	<b>0</b>	<b>0</b>	<b>5.2</b>
FY 2009-10 Request	314,425	0	314,425	0	0	5.2

The fund source for both the cash funds is the Collection Agency Cash Fund.

**Uniform Consumer Credit Code (UCCC).** This line item supports the Consumer Credit Unit, which derives the majority of its duties from the Consumer Credit Code in Title 5 of the Colorado Revised Statutes. The unit's name derives from the Uniform Consumer Credit Code ("UCCC"), upon which substantial parts of Title 5 are based. 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; 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. H.B. 09-1141, which awaits the Governor's signature, simplified the fee structure, removed statutory caps on program fees and set a reserve limit equal to one third of annual program expenditures.

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.

<b>Staffing Summary</b>	<b>FY 2007-08 Actual</b>	<b>FY 2008-09 Approp.</b>	<b>FY 2009-10 Request</b>	<b>FY 2009-10 Recommend.</b>
Attorneys	1.9	2.0	2.0	2.0
Financial Credit Examiner	7.1	8.0	8.0	8.0
Administrative Staff	2.1	2.3	2.3	2.3
<b>Total</b>	<b>11.1</b>	<b>12.3</b>	<b>12.3</b>	<b>12.3</b>

The corresponding Option 8 calculation, the staff recommendation, and the Department request follow:

<b>Uniform Consumer Credit Code</b>	<b>Total</b>	<b>GF</b>	<b>CF</b>	<b>RF</b>	<b>FF</b>	<b>FTE</b>
FY 2008-09 Appropriation	972,527	0	972,527	0	0	12.3
Classified Salary Survey	22,017	0	22,017	0	0	0.0
Exempt Salary Survey	8,724	0	8,724	0	0	0.0
80% of Classified Performance-based Pay	6,442	0	6,442	0	0	0.0
80% of Exempt Performance-based Pay	3,491	0	3,491	0	0	0.0
DI #NP-3 Postage Increase	832	0	832	0	0	0.0



Uniform Consumer Credit Code	Total	GF	CF	RF	FF	FTE
<b>FY 2009-10 Recommendation</b>	1,014,033	0	1,014,033	0	0	12.3
FY 2009-10 Request	1,014,033	0	1,014,033	0	0	12.3

The fund source for both the cash fund portion of the appropriations is 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. In the past it has often included appropriations for large one-time lawsuits.

**District Attorneys' Salaries.** Pursuant to Section 20-1-306, C.R.S., which was amended by H.B. 07-1170, the state pays 80 percent of the base salary set forth in Section 20-1-301, C.R.S. of each of the State's 22 district attorneys. The state only subsidizes the salary of the district attorney; it does not contribute to 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 cost. Beginning with the 2012 legislative session and every fourth session thereafter, the House and Senate Judiciary Committees must review these base salaries and recommend a possibly revised base salary to the General Assembly. There is no requirement that adjustments after January 1, 2012 occur on January 1.

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 some of the salary increases dictated by the above schedule. However, the Office of Legislative Legal Services has concluded that a district attorney's salary can be changed according a schedule of changes that has been approved before the district attorney's term of office begins. Since all Colorado district attorneys will stand for election in November 2008, the above schedule of changes does not conflict with the Constitution.

**Staff recommends an appropriation of \$2,096,078 General Fund for this line item, which corresponds to the Department's request.**

**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 unanticipated legal costs that arise over the course of the fiscal year, especially when the General Assembly is out of session. In FY 2001-02, during the economic downturn, the line was temporarily eliminated in order to increase revenues to the General Fund, but it was subsequently restored. 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 2008-09, for example, will not be known with certainty until July of FY 2009-10, 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 2008-09 will be known with certainty during FY 2009-10 supplementals next January, meaning that it will be a reliable funding source for supplementals.
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.**

**Statewide HIPAA Legal Services.** This line item was created in FY 2004-05 to fund statewide General Fund legal expenses related to the Health Insurance Portability and Accountability Act (HIPAA). If a General Fund agency or program in the state needs HIPAA legal work, the legal work

will be done by a Department of Law attorney and the hourly cost of the work will be paid from this appropriation. This line was created because HIPAA legal work done for one agency often can be applied to situations within other agencies and thus benefits multiple departments of state government. Cash funded programs that need HIPAA legal work must still pay an hourly rate for that work, just as they pay for other legal work.

**HIPAA portion of Budget Amendment - Base Reduction Item #2.** Due to a reduction in inquiries, the Department requests a 200 hour reduction in the legal services hours that underlie this appropriation. This will still leave the Department with 100 hours to answer statewide questions about HIPAA, which the Department believes will be sufficient.

**The Department requests and staff recommends an appropriation for 100 hour of legal services for this line. Based on the blended legal rate determined above, the corresponding General Fund appropriation equals \$7521 = 100 \* \$75.21, the blended legal services rate times 100 hours.**

Statewide HIPAA Legal Services	To tal	GF	CF	RF	FF	FTE
FY 2008-09 Appropriation	22,530	22,530	0	0	0	0.0
HIPPA portion of Budget Amendment-Base Reduction Item #2.	(15,009)	(15,009)	0	0	0	0.0
<b>FY 2009-10 Recommendation</b>	<b>7,521</b>	<b>7,521</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>
FY 2009-10 Request = 100 legal service hours						

**Tobacco Litigation.** For three years, Colorado has been involved in a legal dispute with the manufacturers who participate in the Master Settlement Agreement. The disagreement concerns Colorado's enforcement of its statutes pertaining to "non-participating manufacturers" -- tobacco manufacturers that are not parties to the agreement. Colorado was required to enact these laws when it signed the Master Settlement Agreement. Due to this dispute, some tobacco companies have withheld a portion of their settlement payments in each of the last two years, placing them in escrow.

As of February, the participating states and manufacturers have made significant progress concerning the ground rules for arbitration. As a consequence, the manufacturers have authorized the release of a portion of the payments previously withheld, with Colorado's share of the release equal to \$7.4 million. In light of this development, the Department now believes that preparations for arbitration will begin in earnest in the fall of 2009, though Colorado's "trial" before the arbitrators won't occur until 2010 or later. The arbitrators will decide whether Colorado has "diligently enforced" its non-participating manufacturer statutes. If the arbitrators rule that Colorado diligently enforced these laws, the state will receive the remaining escrowed amounts, plus interest. If the arbitrators rule that Colorado did not diligently enforce these laws, the state will lose everything placed in escrow, possibly much more. The Attorney General has engaged outside council for this proceeding because it cannot represent itself in this matter; attorneys at the Department of Law helped develop, and continue to monitor and assist the non-participating-manufacturer enforcement program in the

Department of Revenue and are likely to be called upon to provide testimony during the arbitration proceeding. These efforts by the Department of Law will be on "trial" before the arbitrators.

**The Department has requested an appropriation of \$300,000 cash funds for this line item,** a continuation level of funding, though much of the FY 2008-09 appropriation is likely to lapse unused. Staff has spoken with the attorney who oversees tobacco litigation for the Department and has concluded that **a \$300,000 continuation appropriation is still recommended;** the appropriation last year was set at a level that would cover the costs of arbitration preparation.

This appropriation will be paid from the Defense Account of the Tobacco Litigation Settlement Cash Fund. The Defense 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. The Account currently has a balance of \$4.1 million.

**Security for State Services Building.** This appropriation, which resulted from a 2008 Decision Item, pays for security at the State Services Building, the Capital Complex building that houses the Department of Law. A uniformed State Patrol trooper provides in-building security from 8 a.m. to 5 p.m. daily. The troopers rotate during the course of the day.

The following table shows the implementation plan for the 2008 decision item:

<b>Security for State Services Building Implementation Plan</b>	<b>FY 2008-09</b>	<b>FY 2009-10</b>	<b>FY 2010-11</b>
1.5 FTE of uniformed State Patrol troopers to provide in-building security from 8 a.m. to 5 p.m. daily. (The cost is higher in the first year because of training and equipment costs.)	\$147,807	\$128,693	\$128,693
Enhanced card/keypad access control	111,225	68,000	0
<b>Total</b>	<b>\$259,032</b>	<b>\$196,693</b>	<b>\$128,693</b>

The following table shows the implementation plan for the decision item.

<b>Security for State Services Building</b>	<b>Total</b>	<b>GF</b>	<b>CF</b>	<b>RF</b>	<b>FF</b>	<b>FTE</b>
FY 2008-09 Appropriation	259,032	80,036	21,677	150,093	7,226	0.0
2 <sup>nd</sup> year impact of 2008 DI #1a, Security for the Attorney General's Office	(62,339)	(19,261)	(5,216)	(36,123)	(1,739)	0.0
<b>FY 2009-10 Recommendation</b>	<b>196,693</b>	<b>60,775</b>	<b>16,461</b>	<b>113,970</b>	<b>5,487</b>	<b>0.0</b>
FY 2009-10 Request	196,693	60,775	16,461	113,970	5,487	0.0

Though there is no FTE appropriation to the Department of Law, 1.5 FTE of state troopers are assigned to the building.

**Staff recommends that this security appropriation be moved to the Administration division, the location of other appropriations that benefit the entire department.**

When this appropriation is moved to the Administration division, some of the General Fund appropriation will be offset by indirect cost assessments in the usual manner in which indirect cost assessments are used to offset general fund, though the exact amount of the offset cannot be determined until indirect costs are determined.

## **Long Bill Footnotes and Requests for Information**

### **Requests for Information**

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

- 98 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, 2008~~: NOVEMBER 1, 2009.

**Comment:** This footnote provides useful information on the effectiveness of the State's participation in the Medicaid Fraud Control Grant program. This information is particularly valuable for monitoring the Department's performance following the approval in 2007 of Decision Item #6, which added 3.0 FTE to this line item. Staff recommends continuing this footnote.

### **Footnotes**

Staff recommends that the following footnotes be **continued and amended**:

- 97 Department of Law, Legal Services to State Agencies --** In making this appropriation, it is the intent of the General Assembly that hourly billing rates charged by the Department for legal services to state agencies not exceed ~~\$77.15~~ \$77.79 per hour for attorneys and not exceed ~~\$65.56~~ \$62.87 per hour for paralegals, which equates to a blended rate of ~~\$75.10~~ \$75.21 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.

- 99 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 2008-09~~, FY 2009-10, as well as information technology asset maintenance needs that would otherwise require General Fund appropriations during ~~FY 2008-09~~, FY 2009-10. It is also the intent of the General Assembly that moneys spent from this fund shall not require the appropriation of additional FTE and will not be used for any type of salary increase, promotion, reclassification, or bonus related to any present or future FTE employed by the Department of Law. It is furthermore the intent of the General Assembly that moneys spent from this fund will not be used to offset present or future personal services deficits in any division in the Department. The Department is requested to submit a quarterly report to the Joint Budget Committee detailing the purpose for which moneys from this fund have been expended. Such a report is also requested with any supplemental requests for additional legal services funding within or outside of the Legal Services to State Agencies program.

**Comment:** As discussed above, this footnote allows the Department to retain the excess earnings of the Legal Services to State Agencies (LSSA) program and use it in the next year to pay for unanticipated state legal expenses and for information technology asset maintenance expenditures that would otherwise be paid from the General Fund. Without this footnote these excess earnings would revert to the General Fund and the reverted moneys would in many cases be appropriated right back to the Department in order to fill the resulting budgetary gap, in the process counting toward the six percent limit on the growth of General Fund appropriations.

## Balancing Options

These options are presented without staff recommendation in order to maximize the Committee's choices. The Committee may wish to consider these options now or in the future.

Options with <i>Revenue Impacts</i>	GF	CF	RF	FF	Total	FTE
1	( 128,958)		128,958		0	
<p><b>Refinance the GF that supports the Securities Fraud Unit with an increased transfer from DORA</b></p> <p>The Securities Fraud Unit is partially funded by the General Fund 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 on the Securities Fraud Prosecution line and are then transferred to the Department of Law. The amount of the transfer from DORA could be increased.</p>						
2	( 365,300)		365,300		0	
<p><b>Finance CERCLA with Tipping Fees</b></p> <p>"Tipping fees" are paid by trucks when they dump at land fills. During the last economic downturn, these fees financed much of the CERCLA appropriation until they automatically sunsetted.</p>						
3	(50,000)		50,000		0	
<p><b>Refinance the GF that supports the POST board after H.B. 09-1036 becomes law</b></p> <p>House Bill 09-1036 (Registration Fee for POST Cash Fund), which is currently awaiting a hearing in Senate Appropriations, would increase the motor vehicle registration fee from \$0.25 to \$0.60 beginning on July 1, 2009. This would increase revenue of the POST Cash Fund by a projected \$1,494,995. The extra revenue could be used to reduce the GF appropriation to the POST board.</p>						