

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



**FISCAL YEAR 2008-09 FIGURE-SETTING:
DEPARTMENT OF LAW**

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

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**FY 2008-09 FIGURE SETTING
STAFF PRESENTATION TO THE JOINT BUDGET COMMITTEE:**

DEPARTMENT OF LAW

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	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09		DI	
	Actual	Actual	Appropriation	Request	Staff Rec. Old Format		Staff Rec. New Format
DEPARTMENT OF LAW							
John W. Suthers, Attorney General							
(1) ADMINISTRATION							
<i>Primary Functions are comprised of Department administration including budgeting, accounting, and information technology.</i>							
Personal Services	2,404,272	2,431,972	2,630,408	2,788,007	2,795,309	2,795,309	DI # 2
FTE	<u>36.7</u>	<u>38.7</u>	<u>39.7</u>	<u>40.7</u>	<u>41.2</u>	<u>41.2</u>	
General Fund	0	0	0	0	0	0	
Cash Funds	5,000	5,000	5,000	4,990	34,105	0	
Cash Funds Exempt/RF	2,399,272	2,426,972	2,625,408	2,783,017	2,761,204	2,795,309	
Health, Life and Dental	<u>918,370</u>	<u>1,166,472</u>	<u>1,423,679</u>	<u>1,619,043</u>	<u>1,783,219</u>	<u>1,783,219</u>	
General Fund	263,367	363,616	461,603	494,799	531,993	531,993	
Cash Funds	73,885	63,732	90,556	108,300	113,224	141,137	
Cash Funds Exempt/RF	566,360	720,233	847,378	988,496	1,091,873	1,063,960	
Federal Funds	14,758	18,891	24,142	27,448	46,129	46,129	
Short-term Disability	<u>31,786</u>	<u>25,199</u>	<u>31,935</u>	<u>36,361</u>	<u>36,340</u>	<u>36,340</u>	
General Fund	8,310	7,560	9,571	10,673	10,672	10,672	
Cash Funds	2,743	1,515	1,832	2,420	2,417	2,874	
Cash Funds Exempt/RF	19,370	15,625	19,631	22,126	22,117	21,660	
Federal Funds	1,363	499	901	1,142	1,134	1,134	
S.B. 04-257 Amortization Equalization disbursement	<u>52,568</u>	<u>172,286</u>	<u>303,805</u>	<u>449,368</u>	<u>444,510</u>	<u>444,510</u>	
General Fund	7,448	51,310	92,272	132,252	128,608	128,608	
Cash Funds	5,124	10,027	17,229	29,790	29,742	35,889	
Cash Funds Exempt/RF	38,512	107,570	185,792	273,265	272,209	266,062	
Federal Funds	1,484	3,379	8,512	14,061	13,951	13,951	

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09		DI
	Actual	Actual	Appropriation	Request	Staff Rec. Old Format	
S.B. 06-235 Supplemental Amortization Equalization						
Disbursement	n/a	n/a	<u>62,558</u>	<u>147,798</u>	<u>206,226</u>	206,226
General Fund			17,229	44,626	58,147	58,147
Cash Funds			3,692	10,272	13,942	16,578
Cash Funds Exempt/RF			39,813	88,133	127,598	124,962
Federal Funds			1,824	4,767	6,539	6,539
Salary Survey for Classified Employees	<u>233,165</u>	<u>246,897</u>	<u>278,941</u>	<u>342,501</u>	<u>341,175</u>	<u>341,175</u>
General Fund	95,590	104,828	114,731	134,509	138,299	138,299
Cash Funds	33,861	31,760	37,397	51,948	50,100	55,068
Cash Funds Exempt/RF	87,853	95,857	108,862	133,304	133,612	128,644
Federal Funds	15,861	14,452	17,951	22,740	19,164	19,164
Salary Survey for Exempt Employees	<u>806,921</u>	<u>987,957</u>	<u>759,834</u>	<u>663,252</u>	<u>658,445</u>	<u>658,444</u>
General Fund	189,218	241,127	196,085	166,975	164,387	164,387
Cash Funds	12,937	12,940	12,305	18,039	18,387	27,694
Cash Funds Exempt/RF	598,087	723,918	541,856	471,157	470,890	461,582
Federal Funds	6,679	9,972	9,588	7,081	4,781	4,781
Performance-based Pay Awards for Classified Employees	<u>84,436</u>	<u>0</u>	<u>122,210</u>	<u>142,813</u>	<u>133,803</u>	<u>133,803</u>
General Fund	32,647	0	25,543	56,672	54,578	54,578
Cash Funds	11,757	0	17,488	20,604	18,613	20,811
Cash Funds Exempt/RF	34,114	0	71,444	55,516	51,252	49,054
Federal Funds	5,918	0	7,735	10,021	9,360	9,360
Performance-based Pay Awards for Exempt Employees	<u>201,260</u>	<u>0</u>	<u>256,353</u>	<u>286,937</u>	<u>282,048</u>	<u>282,048</u>
General Fund	44,132	0	66,582	68,603	67,997	67,997
Cash Funds	3,153	0	4,133	8,084	8,245	11,485
Cash Funds Exempt/RF	152,212	0	182,369	206,730	203,428	200,188
Federal Funds	1,763	0	3,269	3,520	2,378	2,378

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09		DI	
	Actual	Actual	Appropriation	Request	Staff Rec. Old Format		Staff Rec. New Format
Attorney Registration and Continuing Legal Education	n/a	n/a	<u>0</u>	<u>92,626</u>	<u>92,626</u>	<u>92,626</u>	DI #1
General Fund			0	22,238	22,238	22,238	
Cash Funds			0	2,250	2,250	3,750	
Cash Funds Exempt/RF			0	67,575	67,575	66,075	
Federal Funds			0	563	563	563	
Workers' Compensation	<u>45,668</u>	<u>55,453</u>	<u>51,406</u> S	<u>66,606</u>	<u>Pending</u>	<u>Pending</u>	
General Fund	13,728	17,031	16,115	20,226			
Cash Funds	3,161	3,930	3,704	5,220			
Cash Funds Exempt/RF	27,667	33,141	30,119	39,302			
Federal Funds	1,112	1,351	1,468	1,858			
Operating Expenses	<u>184,865</u>	<u>184,592</u>	<u>190,643</u>	<u>191,593</u>	<u>192,543</u>	<u>191,593</u>	DI #2
General Fund	21,164	170,978	0	0	0	0	
Cash Funds	0	0	0	0	950	0	
Cash Funds Exempt/RF	163,701	13,614	190,643	191,593	191,593	191,593	
Administrative Law Judges	<u>0</u>	<u>1,268</u>	<u>0</u> S	<u>0</u>	<u>Pending</u>	<u>Pending</u>	
Cash Funds	0	1,268	0	0			
Cash Funds Exempt/RF	0	0	0	0			
Purchase of Services from Computer Center	<u>29,862</u>	<u>54,978</u>	48,499 S	<u>36,606</u>	<u>Pending</u>	<u>Pending</u>	
General Fund	29,862	54,978	0	0			
Cash Funds Exempt/RF	0	0	48,499	36,606			
Payment to Risk Management and Property Funds	<u>26,082</u>	<u>89,130</u>	71,197 S	<u>86,255</u>	<u>Pending</u>	<u>Pending</u>	
General Fund	26,082	89,130	0	0			
Cash Funds Exempt/RF	0	0	71,197	86,255			
Vehicle Lease Payments	<u>25,353</u>	<u>39,904</u>	<u>48,175</u> S	<u>61,043</u>	<u>Pending</u>	<u>Pending</u>	NP DI
General Fund	7,448	15,637	10,724	12,446			
Cash Funds	3,543	4,724	10,737	11,753			
Cash Funds Exempt/RF	6,452	10,270	18,133	27,098			
Federal Funds	7,910	9,273	8,581	9,746			

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09		DI
	Actual	Actual	Appropriation	Request	Staff Rec. Old Format	
ADP Capital Outlay	<u>49,543</u>	<u>23,385</u>	<u>91,325</u>	<u>15,138</u>	<u>15,138</u>	DI #2, DI #5
General Fund	0	2,725	35,844	6,881	6,881	
Cash Funds	2,165	0	0	0	0	
Cash Funds Exempt/RF	1,083	20,660	40,350	8,257	8,257	
Federal Funds	46,295	0	15,131	0	0	
IT Asset Maintenance	<u>322,625</u>	<u>358,296</u>	<u>358,296</u>	<u>432,348</u>	<u>432,348</u>	DI #3, DI #4
General Fund	0	0	0	22,935	22,935	
Cash Funds	1	37,982	37,699	47,236	47,236	
Cash Funds Exempt/RF	316,311	320,314	320,597	360,106	360,106	
Federal Funds	6,313	0	0	2,071	2,071	
Leased Space	<u>26,292</u>	<u>26,292</u>	<u>29,686</u>	<u>30,001</u>	<u>30,001</u>	
General Fund	4,372	4,372	4,961	4,945	4,945	
Cash Funds	3,583	3,583	3,657	3,295	3,295	
Cash Funds Exempt/RF	0	18,337	20,901	21,576	21,576	
Federal Funds	18,337	0	167	185	185	
Capitol Complex Leased Space	<u>976,506</u>	<u>1,009,085</u>	<u>1,165,178</u> S	<u>1,156,773</u>	<u>Pending</u>	<u>Pending</u>
General Fund	294,071	309,995	367,436	351,273		
Cash Funds	67,717	71,503	83,723	90,661		
Cash Funds Exempt/RF	590,939	603,008	680,846	682,570		
Federal Funds	23,779	24,579	33,173	32,269		
Communications Services Payments	<u>4,624</u>	<u>6,042</u>	<u>5,944</u> S	<u>6,297</u>	<u>Pending</u>	<u>Pending</u>
General Fund	1,986	2,399	2,435	2,341		
Cash Funds	318	431	372	300		
Cash Funds Exempt/RF	1,166	1,270	1,465	2,082		
Federal Funds	1,154	1,942	1,672	1,574		
Attorney General Discretionary Fund - GF	5,000	4,983	5,000	5,000	5,000	5,000

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09		DI
	Actual	Actual	Appropriation	Request	Staff Rec. Old Format	
SUBTOTAL - Administration	6,429,198	6,884,191	7,935,072	8,656,366	7,448,731	7,447,780
FTE	<u>36.7</u>	<u>38.7</u>	<u>39.7</u>	<u>40.7</u>	<u>41.2</u>	<u>41.2</u>
General Fund	1,044,425	1,440,669	1,426,131	1,557,394	1,216,680	1,216,680
Cash Funds	228,948	248,395	329,524	415,162	342,506	372,303
Cash Funds Exempt/RF	5,003,099	5,110,789	6,045,303	6,544,764	5,783,290	5,752,542
Federal Funds	152,726	84,338	134,114	139,046	106,255	106,255

(2) LEGAL SERVICES TO STATE AGENCIES (LSSA)

Primary Functions include the representation of state agencies in disputes and general legal advice for all areas of.

Cash Funds Exempt/RF are earned from state agencies through the blended hourly rate for the provision of legal

Cash Funds are earned from non-state agencies and state enterprises such as PERA and the State Lottery Commi:

Personal Services	14,055,579	14,414,186	16,573,769 S	17,471,104	17,377,012	17,377,012	DI #5, DI #5A
FTE	<u>186.2</u>	<u>188.7</u>	<u>205.4</u>	<u>207.4</u>	<u>213.2</u>	<u>213.2</u>	
Cash Funds	1,000,000	945,000	1,000,000	1,000,000	1,000,000	1,000,000	
Cash Funds Exempt/RF	13,055,579	13,469,186	15,573,769	16,471,104	16,377,012	16,377,012	
Operating and Litigation - CFE	690,050	895,240	1,188,470 S	1,273,327	1,293,569	1,293,569	
Indirect Cost Assessment - CFE	2,088,238	2,109,083	2,458,442	2,474,186	<u>Pending</u>	<u>Pending</u>	
SUBTOTAL - Legal Services to State Agencies	16,833,867	17,418,509	20,220,681	21,218,617	18,670,581	18,670,581	
FTE	<u>186.2</u>	<u>188.7</u>	<u>205.4</u>	<u>207.4</u>	<u>213.2</u>	<u>213.2</u>	
Cash Funds	1,000,000	945,000	1,000,000	1,000,000	1,000,000	1,000,000	
Cash Funds Exempt/RF	15,833,867	16,473,509	19,220,681	20,218,617	17,670,581	17,670,581	

(3) CRIMINAL JUSTICE AND APPELLATE

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09		DI
	Actual	Actual	Appropriation	Request	Staff Rec. Old Format	
Special Prosecution Unit	1,006,677	1,037,044	1,194,091	1,241,118	1,243,416	1,243,416
FTE	<u>11.5</u>	<u>11.2</u>	<u>12.8</u>	<u>12.8</u>	<u>12.8</u>	<u>12.8</u>
General Fund	822,591	841,248	990,007	1,027,780	1,029,683	1,029,683
FTE		8.7	10.3		10.3	10.3
Cash Funds	184,086	195,796	204,084	213,338	213,733	213,733
FTE		2.5	2.5		2.5	2.5
Cash Funds Exempt/RF	0	0	0	0	0	0
Insurance Fraud Unit - CFE/RF	221,422	520,376	594,563	618,916	619,975	619,975
FTE	2.6	5.9	7.6	7.6	7.6	7.6
Securities Fraud Unit	411,977	436,306	463,762	483,389	484,293	484,293
FTE	<u>5.3</u>	<u>5.3</u>	<u>5.6</u>	<u>5.6</u>	<u>5.6</u>	<u>5.6</u>
General Fund	89,264	101,424	116,799	122,785	123,015	123,015
FTE		2.0	2.0	2.0	2.0	2.0
Cash Funds Exempt/RF	322,713	334,882	346,963	360,604	361,278	361,278
FTE		3.3	3.6	3.6	3.6	3.6
Appellate Unit - GF	1,857,271	2,025,366	2,177,260	2,454,388	2,437,059	2,437,059
FTE	25.1	26.2	28.0	30.0	30.0	30.0
Medicaid Fraud Grant	928,786	1,013,655	1,281,613	1,328,336	1,330,808	1,330,808
FTE	<u>11.0</u>	<u>11.0</u>	<u>14.0</u>	<u>14.0</u>	14.0	14.0
General Fund	236,137	266,408	320,372	332,353	332,703	332,703
Federal Funds	692,649	747,247	961,241	995,983	998,105	998,105
Capital Crimes Prosecution Unit - GF	330,535	323,225	361,781	375,974	376,643	376,643
FTE	3.9	3.8	4.0	4.0	4.0	4.0
Peace Officers Standards and Training Board Support	1,155,937	1,115,318	1,208,125	1,176,008	1,176,732	1,176,732
FTE	<u>6.0</u>	<u>6.0</u>	<u>6.0</u>	<u>6.0</u>	6.0	6.0
General Fund	0	0	44,638	0	0	0
Cash Funds	1,144,444	1,115,318	1,163,487	1,176,008	1,176,732	1,176,732
Cash Funds Exempt/RF	11,493	0	0	0	0	0

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09		DI
	Actual	Actual	Appropriation	Request	Staff Rec. Old Format	
Victims Assistance	65,718	67,519	69,191	72,149	72,149	72,149
FTE	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>	1.0	1.0
General Fund	0	0		2,958	0	0
Cash Funds Exempt/RF	65,718	67,519	69,191	69,191	72,149	72,149
Federal Funds	0	0	0	0	0	0
Indirect Cost Assessment	<u>141,503</u>	<u>158,262</u>	<u>241,673</u>	<u>241,673</u>	<u>Pending</u>	<u>Pending</u>
Cash Funds	76,396	91,512	104,275	104,275		
Cash Funds Exempt/RF	65,107	66,750	137,398	137,398		
SUBTOTAL - Criminal Justice and Appellate	6,119,826	6,697,071	7,592,059	7,991,951	7,741,075	7,741,075
FTE	<u>66.4</u>	<u>70.4</u>	<u>79.0</u>	<u>81.0</u>	<u>81.0</u>	<u>81.0</u>
General Fund	3,335,798	3,557,671	4,010,857	4,316,238	4,299,103	4,299,103
Cash Funds	1,404,926	1,402,626	1,471,846	1,493,621	1,390,465	1,390,465
Cash Funds Exempt/RF	686,453	989,527	1,148,115	1,186,109	1,053,402	1,053,402
Federal Funds	692,649	747,247	961,241	995,983	998,105	998,105

(4) WATER AND NATURAL RESOURCES

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

Federal and Interstate Water Unit - GF	404,926	406,164	437,426 S	504,608	505,555	505,555
FTE	4.6	4.9	5.5	5.5	5.5	5.5
Defense of Arkansas River Compact	<u>140,000</u>	<u>140,000</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
General Fund	68,667	68,667	0	0	0	0
Cash Funds Exempt/RF	71,333	71,333	0	0	0	0
Defense of Republican River Compact	<u>0</u>	<u>0</u>	<u>130,000</u>	<u>0</u> b	<u>110,000</u>	<u>110,000</u>
General Fund	0	0	0	0	0	0
Cash Funds			0		0	110,000
Cash Funds Exempt/RF	0	0	130,000	0	110,000	0

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09		DI
	Actual	Actual	Appropriation	Request	Staff Rec. Old Format	
Defense of the Colorado River Basin Compact	10,307	359,106	758,880	772,153	545,000	545,000
FTE	<u>0.5</u>	<u>3.9</u>	<u>4.0</u>	<u>4.0</u>	4.0	4.0
General Fund	0	0	0	13,273	0	545,000
Cash Funds Exempt/RF	10,307	359,106	758,880	758,880	545,000	
Consultant Expenses	<u>0</u>	<u>0</u>	<u>50,000</u>	<u>50,000</u>	50,000	50,000
Cash Funds	0	0	0	0	0	50,000
Cash Funds Exempt/RF	0	0	50,000	50,000	50,000	0
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)	412,100	439,286	452,001	471,129	472,021	472,021
FTE	<u>4.8</u>	<u>4.8</u>	<u>4.8</u>	<u>4.8</u>	4.8	4.8
General Fund	30,129	413,286	426,123	445,299	446,143	446,143
Cash Funds Exempt/RF	381,971	26,000	25,878	25,830	25,878	25,878
CERCLA Contracts	<u>736,850</u>	<u>600,000</u>	<u>600,000</u>	<u>600,000</u>	<u>600,000</u>	<u>600,000</u>
General Fund	0	175,000	175,000	175,000	175,000	175,000
Cash Funds Exempt/RF	736,850	425,000	425,000	425,000	425,000	425,000
Natural Resource Damage Claims at Rocky Mountain Arsenal	n/a	565,915	2,661,667	1,212,924 b	1,212,924	1,212,924
FTE		<u>1.9</u>	2.0	<u>2.0</u>	<u>2.4</u>	<u>2.4</u>
General Fund		565,915	0	0	0	0
FTE		1.9	0.0	0.0	0.0	0.0
Cash Funds		0	2,661,667	1,212,924	1,212,924	1,212,924
FTE		0.0	2.0	0.0	2.4	2.4
Indirect Cost Assessment - CFE	46,205	0	0	0	0	0
SUBTOTAL - Water and Natural Resources	1,750,388	2,510,471	5,089,974	3,610,814	3,495,500	3,495,500
FTE	<u>9.9</u>	<u>15.5</u>	<u>16.3</u>	<u>16.3</u>	<u>16.7</u>	<u>16.7</u>
General Fund	503,722	1,629,032	1,038,549	1,138,180	1,126,698	1,671,698
Cash Funds	0	0	2,661,667	1,212,924	1,212,924	1,372,924
Cash Funds Exempt/RF	1,246,666	881,439	1,389,758	1,259,710	1,155,878	450,878

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09		DI
	Actual	Actual	Appropriation	Request	Staff Rec. Old Format	
(5) CONSUMER PROTECTION						
<i>Primary Functions include investigative duties and legal services associated with consumer protection and anti-trust litigation as well as enforcement of statutes related to collection agencies and the uniform consumer credit code.</i>						
Consumer Protection and Anti-Trust	1,273,739	1,249,400	1,746,314	S 1,781,939	1,768,735	1,768,735
FTE	<u>15.8</u>	<u>15.1</u>	<u>20.0</u>	<u>20.0</u>	<u>20.0</u>	<u>0.0</u>
General Fund	680,423	620,160	841,874	881,053	874,473	874,473
FTE			11.5	11.5	11.5	0.0
Cash Funds	63,605	64,737	65,799	68,004	62,048	651,557
FTE			1.5	1.5	1.5	0.0
Cash Funds Exempt/RF	529,711	564,503	838,641	832,882	832,214	242,705
FTE			7.0	7.0	7.0	0.0
Collection Agency Board	186,236	230,759	285,667	296,905	296,905	296,905
FTE	<u>3.5</u>	<u>4.5</u>	<u>5.2</u>	<u>5.2</u>	5.2	5.2
Cash Funds	142,118	230,759	238,098	249,336	296,905	296,905
Cash Funds Exempt/RF	44,118		47,569	47,569	0	0
Uniform Consumer Credit Code (UCCC)	718,844	792,521	943,154	971,854	972,527	972,527
FTE	<u>8.9</u>	<u>10.3</u>	<u>12.3</u>	<u>12.8</u>	12.3	12.8
Cash Funds	718,844	737,382	836,323	865,219	865,696	972,527
Cash Funds Exempt/RF	0	55,139	106,831	106,635	106,831	0
Indirect Cost Assessment	<u>182,894</u>	<u>212,631</u>	<u>263,756</u>	<u>263,756</u>	<u>Pending</u>	<u>Pending</u>
Cash Funds	140,890	169,567	214,685	214,685		
Cash Funds Exempt/RF	42,004	43,064	49,071	49,071		
SUBTOTAL - Consumer Protection	2,361,713	2,485,311	3,238,891	3,314,454	3,038,167	3,038,167
FTE	<u>28.2</u>	<u>29.9</u>	<u>37.5</u>	<u>38.0</u>	37.5	18.0
General Fund	680,423	620,160	841,874	881,053	874,473	874,473
Cash Funds	1,065,457	1,202,445	1,354,905	1,397,244	1,224,649	1,920,989
Cash Funds Exempt/RF	615,833	662,706	1,042,112	1,036,157	939,045	242,705

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09		DI	
	Actual	Actual	Appropriation	Request	Staff Rec. Old Format		Staff Rec. New Format
(6) SPECIAL PURPOSE							
<i>Primary Functions are comprised of the investigation and legal services associated with various special purpose pro one-time lawsuits. Funding also includes the State subsidy for district attorney salaries.</i>							
District Attorneys' Salaries - GF	1,301,835	1,307,731	1,313,037	1,654,706	1,654,706	1,654,706	
Litigation Management and Technology Fund - CFE	280,175	180,221	325,000	325,000	325,000	325,000	
Statewide HIPAA Legal Services - GF	27,596	20,331	21,609	21,609	22,530	22,530	
Trinidad Correction Facility Construction Litigation - CFE	0	0	0		0	0	
HMO Lawsuit Expenses - CFE	0	0	0		0	0	
Arkansas River Litigation Damage Award - CFE	0	0	0		0	0	
Tobacco Litigation	221,411	125,000	225,000	225,000	300,000	300,000	
General Fund	221,411	125,000	0	0	0	0	
Cash Funds	0	0	0	0	0	300,000	
Cash Funds Exempt/RF	0	0	225,000	225,000	300,000	0	
Federal Reimbursement for Illegal Immigration Costs (S.B. 06S-1014) - GF	n/a	6,360	0	0 b	0	0	
FTE		0.0	0.0	0.0	0.0	0.0	
Fraudulent Documents (S.B. 06-110)	n/a	n/a	0 S	65,874	0	0	DI #7A
FTE			<u>0.0</u>	<u>1.0</u>	0.0	0.0	
General Fund			0	0	0	0	
FTE			0.0	0.0	0.0	0.0	
Cash Funds			0	65,874	0	0	
FTE			0.0	1.0	0.0	0.0	
Referendum K - GF	n/a	13,019	23,466	43,446 b	0	0	DI #8A
FTE		0.5	0.0	0.5	0.0	0.0	

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09		DI	
	Actual	Actual	Appropriation	Request	Staff Rec. Old Format		Staff Rec. New Format
Security for State Services Building	n/a	n/a	n/a	<u>259,032</u> b	<u>259,211</u>	<u>259,032</u>	DI #1A
General Fund				80,215	80,215	80,036	
Cash Funds				20,001	18,925	21,677	
Cash Funds Exempt/RF				151,447	152,845	150,093	
Federal Funds				7,369	7,226	7,226	
SUBTOTAL - Special Purpose	1,831,017	1,652,662	1,908,112	2,594,667	2,561,447	2,561,268	
FTE	<u>0.0</u>	<u>0.5</u>	<u>0.0</u>	<u>1.5</u>	<u>0.0</u>	<u>0.0</u>	
General Fund	1,550,842	1,472,441	1,358,112	1,799,976	1,757,451	1,757,272	
FTE	0.0	0.5	0.0	0.5	0.0	0.0	
Cash Funds	0	0	0	85,875	18,925	321,677	
FTE	0.0	0.0	0.0	1.0	0.0	0.0	
Cash Funds Exempt/RF	280,175	180,221	550,000	701,447	777,845	475,093	
FTE	0.0	0.0	0.0	0.0	0.0	0.0	
Federal Funds	0	0	0	7,369	7,226	7,226	
FTE	0.0	0.0	0.0	0.0	0.0	0.0	
DEPARTMENT OF LAW							
TOTAL FUNDS	35,326,009	37,648,215	45,984,789	47,386,869	42,955,501	42,954,371	
FTE	<u>327.4</u>	<u>343.7</u>	<u>377.9</u>	<u>384.9</u>	<u>389.6</u>	<u>370.1</u>	
General Fund	7,115,210	8,719,973	8,675,523	9,692,841	9,274,405	9,819,226	
Cash Funds	3,699,331	3,798,466	6,817,942	5,604,826	5,189,469	6,378,358	
Cash Funds Exempt/RF	23,666,093	24,298,191	29,395,969	30,946,804	27,380,041	25,645,201	
Federal Funds	845,375	831,585	1,095,355	1,142,398	1,111,586	1,111,586	

**FY 2008-09 FIGURE SETTING
DEPARTMENT OF LAW**

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

ADMINISTRATION DIVISION

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.

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 are assessments within 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 #2: Accountant III for Administration Division

With this Decision item, the Department requests \$70,825 and 1.0 FTE, comprised of \$8,044 General Fund and \$62,781 reappropriated fund, so it can hire one additional Accountant for the Department's Administration Section to deal with the increased number of financial transactions that the Department must process and the increased complexity of these transactions.

The Financial Services unit, where this accountant will be located, provides all accounting and budgetary functions for the Department. This unit exists to provide support, which includes preparing, processing and recording all accounting transactions for accounts payable, accounts receivable, payroll account reconciliation, financial statements, contract development and administration and management reporting.

The Department has experienced significant workload increases within the last fifteen years, a period that saw the Department's budget increase from \$23.4 million to \$46.9 million as FTE rose from 290 to 384. During this period, the Department has maintained high standards for financial reporting compliance. The Financial Services unit must continue to ensure the overall financial integrity of the Department's records and accounts by providing the appropriate segregation of duties through the proper staffing levels.

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's 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, the remaining 40% of the Department's workers are classified. 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 employees' salaries and wages, as well as the associated state contribution to the Public Employees Retirement Association (PERA) and the state share of federal Medicare taxes. The following table summarizes staffing levels within the division.

Staffing Summary	FY 06-07 Actual	FY 07-08 Approp.	FY 08-09 Request	FY 08-09 Recommend.
Office of the Attorney General	8.0	8.0	8.0	8.0
Human Resources	2.4	2.5	2.5	2.5
Fiscal and Accounting	6.2	6.5	7.5	7.5
Information Technology Services	13.7	14.7	14.7	14.7
Legal Support Services	7.4	8.0	8.0	8.0
Total	37.7	39.7	40.7	40.7

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

Personal Services	Total	GF	CF	CFE/RF	FF	FTE
FY 2007-08 Appropriation	2,630,408	0	5,000	2,625,408	0	39.7
Change from CFE to RF	0	0	0	0	0	0.0
FY 2007-08 Appropriation Restated	2,630,408	0	5,000	2,625,408	0	39.7
Classified Salary Survey	62,983	62,983	0	0	0	0.0
Exempt Salary Survey	17,838	17,838	0	0	0	0.0
80% of Classified Performance-based Pay	19,319	0	0	19,319	0	0.0
80% of Exempt Performance-based Pay	1,091	1,091	0	0	0	0.0
Base Reduction (1% for \geq 20 FTE)	(27,316)	(819)	(50)	(26,447)	0	0.0
Decision Item #2, Accountant III	61,831	0	0	61,831	0	1.0
2 nd year impact of S.B. 07-57, Debt Settlement	29,155	0	0	29,155	0	0.5
Fund mix adjustment	0	(81,093)	50	81,043	0	0.0
FY 2008-09 Recommendation	2,795,309	0	5,000	2,790,309	0	41.2
FY 2008-09 Request	2,788,007	0	0	2,788,007	0	40.7

The reappropriated funds source is indirect cost recoveries plus \$5,000 from registration fees paid by users of the Colorado No-call List. Note that the Department's request reflects a 0.2 percent base reduction as opposed to the 1.0 percent base reduction approved by the Committee. This will be a continuing source of small differences between the Department's request and the Staff recommendation in subsequent analysis. Also 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. The recommendation also makes maximum use of Colorado No-call List revenues.

Health, Life and Dental. Staff recommends total funding of \$1,783,219, comprised of \$531,993 General Fund, \$1,205,097 cash funds and \$46,129 federal funds pursuant to common policy as approved by the Committee for this line item.

Short-term Disability. Staff recommends total funding of \$36,340, comprised of \$10,672 General Fund, \$2,417 cash funds, \$22,117 cash funds exempt, and \$1,134 federal funds.

Amortization Equalization Disbursement. Pursuant to Committee common policy, Staff recommends total funding of \$444,510, comprised of \$128,608 General Fund, \$29,742 cash funds, \$272,209 cash funds exempt, and \$13,951 federal funds.

Supplemental Amortization Equalization Disbursement. Pursuant to Committee common policy, Staff recommends total funding of \$206,226, comprised of \$58,147 General Fund, \$13,942 cash funds, \$127,598 cash funds exempt, and \$6,539 federal funds.

Salary Survey for Classified Employees. Pursuant to Committee common policy, Staff recommends total funding of \$341,175, comprised of \$138,299 General Fund, \$50,100 cash funds, \$133,612 cash funds exempt, and \$19,164 federal funds.

Salary Survey for Exempt Employees.

During each of the past three years, the Department has requested and the Committee has approved salary survey increases for the Department's exempt employees that exceed the salary survey increases that the State's classified employees have received. In each of those years, the Department presented a study prepared by the consulting firm Fox Lawson & Associates, showing that its attorneys are paid less than attorneys in comparable public sector legal jobs elsewhere in the Front Range area.

Fox Lawson's September 2007 report indicates that the Department has made significant progress in reducing the gap that formerly existed between *salary ranges* in the Attorney General's Office and salary ranges in comparable public sector law firms. The Attorney General's pay ranges are now about 3 percent below comparable pay ranges at seventeen city and county attorney offices along the Front Range. The report also shows that the *average salary* disparity has declined substantially. This is important because the Department believes that competitive compensation levels are the primary means of retaining a qualified workforce.

Comparison of Average Salaries in the Attorney General's Office and the Primary Market

Position Title	AG's Office Average	Primary Market Average	Difference	Last Year's Difference
Deputy Attorney General	\$117,948	\$133,779	-13.4%	-18.6%
1st Assistant Attorney General	103,286	106,129	-2.8%	-8.9%
Assistant Attorney General II	87,680	93,816	-7.0%	-11.1%

Position Title	AG's Office Average	Primary Market Average	Difference	Last Year's Difference
Assistant Attorney General I	69,620	74,509	-7.0%	-2.6%

The Fox Lawson report also points out that the Department of Law lags many of its competitors in another area: approximately 2/3 of competing public sector law firms pay some or all of their attorneys' annual bar registration fee (i.e. annual licensing fee) and an equal proportion pay some or all of the cost of continuing legal education (CLE). Note that the report ignores some other aspects of an attorney's total compensation package, such as health, life and dental insurance.

Based on the findings and recommendations in the Fox Lawson Report, the Department requests a 3.4 percent salary survey increase for all its attorneys. When this increase is adjusted downward to take into account the 0.5 percent Supplement Amortization Equalization Disbursement adjustment, the result is a 2.9 percent salary survey increase for all attorneys.

By comparison, the Committee has approved a 4.09 percent salary survey increase for classified state employees in the Professional Services category, which is the most comparable job category in the classified state system. After removing the 0.5 percent Supplement Amortization Equalization Disbursement adjustment, the classified increase is 3.59 percent for professional services.

Staff recommends an exempt salary survey appropriation of \$658,445, comprised of \$164,387 General Fund, \$18,387 cash funds, \$470,890 cash funds exempt, and \$4,781 federal funds, which corresponds to a salary survey appropriation that equals 2.9% of base salaries.

Performance-based Pay for Classified Employees. Pursuant to Committee common policy, Staff recommends total funding of \$133,803, comprised of \$54,578 General Fund, \$18,613 cash funds, \$51,252 cash funds exempt, and \$9,360 federal funds.

Performance-based Pay for Exempt Employees. Pursuant to Committee common policy, Staff recommends total funding of \$282,048, comprised of \$67,997 General Fund, \$8,245 cash funds, \$203,428 cash funds exempt, and \$2,378 federal funds.

Decision Item # 1: Attorney Registration Fees and Continuing Legal Education Costs

With this Decision Item the Department proposes to establish a program that will pay (1) the \$225 annual registration fee that the Department's attorneys must pay to practice law in Colorado and (2) \$150 for continuing legal education (CLE) expenses of the Department's attorneys.

The Department estimates the cost of providing these benefits to its 247 attorneys at \$92,626, but it proposes to pay some of this cost by reducing the appropriation for Personal Services in the Legal Services to State Agencies Division by, \$25,650, thus making the net cost \$66,976, as shown in the following table.

Personal Services	Total	GF	CF	CFE/RF	FF
Appropriation for registration fees and CLE expenses	92,626	22,238	2,250	67,575	563
Reduced appropriation for Personal Services in Legal Services to State Agencies Division	(25,650)	0	0	(25,650)	0
Attorney Registrations Total	66,976	22,238	2,250	41,925	563

This Decision Item is part of the Attorney General's effort to provide competitive salary and benefit packages for attorneys at the Department. The Department states that the provision of competitive compensation package has been the top priority of Attorney General Salazar and of Attorney General Suthers. The Department initially emphasized catching up in the pay area. Given its recent progress in reducing this gap, the Department believes it is now time to address another compensation disparity.

The Fox Lawson compensation survey discussed above reports that approximately 2/3 of competing public sector law firms pay the cost of their attorneys' annual bar registration fees and an equal proportion pay some of the cost of continuing legal education (CLE). Staff has learned that the Office of Legislative Legal Services offers a registration benefit that is similar to the Attorney General's proposal. The Public Defender's Office does not offer such a benefit. The Department states that many private sector law firms offer a comparable benefit.

The Department believes that this decision item will boost morale among attorneys and provide a benefit out of proportion to its cost. Staff notes that the request appears reasonable when one remembers the Department's salary survey request. If the cost of this decision item is added to the Department's 2.9 percent salary survey request, it amounts to a 3.23 percent salary increase, which is less than the 3.59 percent salary increase that the Committee has approved for classified state employees in the Professional Services category, which is the most comparable job category in the classified state system.

Staff Recommends that the Committee Approve this request and that a new line item titled "Attorney Registrations" be added within the Administration division with an appropriation equal to that shown in the "Attorney Registrations Total" row of the above table. The recommended appropriation for this line item is \$92,626, comprised of \$22,238 General Fund, \$2,250 cash funds, \$67,575 reappropriated funds, and \$563 federal funds. There will also be a partially offsetting adjustment in Legal Services to State Agencies of (\$25,650) reappropriated funds.

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

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

	Total	GF	CF	CFE/RF	FF	FTE
FY 2007-08 Appropriation	190,643	0	0	190,643	0	0.0

	Total	GF	CF	CFE/RF	FF	FTE
Change from CFE to RF	0	0	0	0	0	0.0
FY 2007-08 Appropriation Restated	190,643	0	0	190,643	0	0.0
2nd year impact of S.B. 07-57, Debt Settlement	950	0	0	950	0	0.0
DI #2 Accountant III for Administration	950	0	950	0	0	0.0
FY 2008-09 Recommendation	192,543	0	950	191,593	0	0.0
FY 2008-09 Request	192,543	0	950	191,593	0	0.0

Administrative Law Judge Services. Staff recommendation is **pending the approval of a common policy by the Committee** related to 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.

Non-prioritized Decision Item: Vehicle Replacement

The Department requests replacement of four vehicles that have more than 100,000 miles on their odometers and are eligible for replacement due to this high mileage and other factors, such as repair record. Three of the vehicles are used by the Special Prosecutions Unit and the other is used by the Legal Services to State Agencies Division. The Department emphasizes the importance of reliable vehicles for the investigators in the Special Prosecutions Unit who drive three of these cars because of the police-like nature of their work. The replacement vehicles will be acquired on leases.

Based on requested rates established by OSPB, the first year cost of these vehicles will be \$3,560, comprised of \$380 General Fund, (\$2,000) cash funds, \$4,075 cash funds exempt, and \$1,105 federal funds. This low cost reflects the fact that the vehicles will go into service late in FY 2008-09. Costs in FY 2009-10 will total \$13,084. Since the Committee has not yet established a common policy for vehicle lease payments, the cost under Committee Common policy cannot yet be determined.

Staff recommends that the Committee approve this decision item.

Vehicle Lease Payments. This line item funds leases for 30 Department vehicles that are part of the statewide fleet. Four of these vehicles are high milage cars that are projected to have odometer readings between 108,000 and 169,000 miles by June 2009. These vehicles are the subject of the non-prioritized decision Item for Vehicle Replacement. **Staff recommendation is pending a Committee common policy decision on this item.**

The Department requests an appropriation of \$61,043, comprised of \$12,446 General Fund, \$11,753 cash funds, \$27,098 cash funds exempt, and \$9,746 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 new FTE who are added by Long Bill decision items and by special bills. The appropriations on this line are one-year expenditures that will not continue the next year, hence the appropriation for this line is not built from the prior year Long Bill. 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	CFE	FF	FTE
DI #2, 1.0 Extra Attorney FTE for Consumer Protection	6,881	6,881	0	0	0	0.0
DI #9 and BA #9a, Legal Services for other Departments	8,257	0	0	8,257	0	0.0
Fund Mix Adjustment						
Recommendation	15,138	6,881	0	8,257	0	0.0
Request	15,138	6,881	0	8,257	0	0.0

Decision Item #3: Information Technology Asset Management Base Increase

With this decision item, the Department requests that the formula used to compute its IT Asset Maintenance appropriation be altered to allow replacement every third year of the computer equipment and software that is acquires when a new FTE is added to the Department's payroll by a Decision Item or by a Special Bill. The replacement cycle will be longer than three years for some IT items, such as printers. The guideline lives that the Department will utilize correspond to those established by the Governor's Office of Information Technology on its website.

The impetus for this Decision Item is the net increase of 47.4 FTE that the Department has experienced in the last five years through decision items and legislation. Each new FTE requires computer hardware and software, both of which must be replaced three to five years after acquisition. However, the budgeting in fiscal notes and decision items, and the State's generally historical budgeting procedures, do not provide for periodic replacement; they only consider initial costs.

Note however, that this is a forward-looking Decision Item. The Department will continue to replace personal computers and software acquired more than three years ago with the existing IT Asset Maintenance appropriation. This decision item will only apply to recently acquired personal computers and software.

When regular replacement of IT assets is not funded, the Department must stretch the lives of its IT assets. When this happens, computer hardware performance begins to degrade and the Department's IT staff finds itself devoting increasing amounts of time to diagnosis and repair activities, which undermines its ability to perform other more important IT duties. Computer failure is also costly for the user. Perhaps a court-filing deadline will be missed as a consequence. If data loss occurs, the cost can be even higher. In today's world, a high proportion of legal work is performed on a computer. If a single computer breaks down, it may make it impossible for the affected user to do his job for a day or two. If network breaks down, the work stoppage may be widespread. In addition, emergency replacement of hardware and software is often more expensive than scheduled replacement.

Staff has reviewed the OIT guidelines for hardware and software replacement and concludes that they are reasonable and, in the long run, likely to produce savings. **The FY 2008-09 cost of this Decision Item equals \$28,452, comprised of \$8,812 General Fund, \$2,008 cash funds, \$16,836 cash funds exempt, and \$796 federal funds.** The second year cost declines to \$20,920, reflecting the fact that fewer FTE joined the staff in the relevant preceding year. **Staff recommends that the Committee approve this Decision Item.**

Decision Item #4: IT Disaster Recovery

The Attorney General seeks \$45,600 of funding, distributed across all fund sources as shown in the table below, so it can hire a consultant who will put together a disaster recovery plan for the Department. A plan of this sort is one of the cyber security requirements put in place by the Governor's Office of Cyber Security pursuant to H.B. 06-1157. It is an integral part of business continuity planning.

The Department is hiring an outside expert to write the plan because it has no one on staff with a disaster recovery background. JBC Staff consulted with OIT and found that the number of hours projected in the contract was reasonable, as was the hourly rate. Staff also discovered that OIT cannot write a disaster recovery plan for a Department, but it can offer advice and support as a plan is being developed. OIT recommended going to an outside contractor.

This plan will almost surely lead the Department to request additional hardware and software for implementation in future years, which will bring the Department to the JBC as it seeks funding for the new equipment. The Department plans to house any new disaster recovery hardware in the Department of State's E-FOR³T center.

Staff recommends that the Committee Approve this Decision Item. Staff bases this recommendation on Staff's belief in the value of disaster recovery planning and on the fact that OIT has mandated disaster recovery planning.

IT Asset Maintenance. During FY 2000-01, this line was created as a standard Long Bill appropriation for all Departments to fund the maintenance and replacement of computer systems.

The appropriation also funds maintenance agreements and software licensing agreements. New computer purchases are included on the ADP Capital Outlay line. The requested amount provides for the replacement of the Department's computers according to a regular schedule. 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	CFE	FF	FTE
FY 2007-08 Appropriation	358,296	0	37,699	320,597	0	0.0
DI #3: Information Technology Asset Management Base Increase	28,452	8,812	2,008	16,836	796	0.0
DI #4: IT Disaster Recovery	45,600	14,123	3,218	26,984	1,275	0.0
Fund Mix Adjustment	0	0	4,311	(4,311)	0	0.0
Recommendation	432,348	22,935	47,236	360,106	2,071	0.0
Department Request	432,348	22,935	47,236	360,106	2,071	0.0

Leased Space. This appropriation pays for offsite space for document storage. **Staff recommends the Department's request for total funding of \$30,001, comprised of \$4,945 General Fund, \$3,295 cash funds, \$21,576 cash funds exempt, and \$185 federal funds.**

Capitol Complex Leased Space. Staff recommends a continuation level of leased space for this line item. The corresponding appropriation awaits Committee approval of a common policy rate for capitol complex leased space.

Communications Services Payments. Staff recommendation is pending the approval of a common policy by the Committee related to this line item.

Attorney General Discretionary Fund. Staff recommends \$5,000 General Fund for this line item. Subject to appropriation by the General Assembly, the Attorney General is permitted discretionary funds per Section 24-9-105 (1) (c), C.R.S., for official business purposes.

LEGAL SERVICES TO STATE AGENCIES (LSSA)

This 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 2007-08, appropriations for the Legal Services to State Agencies division represent 43 percent of the Department's total budget and 54 percent of its total FTE. About 95 percent of the Division's funding is reappropriated funds.

CALCULATION OF THE BLENDED LEGAL SERVICES RATE

The Legal Services to State Agencies (LSSA) Unit has two classes of employees who bill client agencies: attorneys and paralegals, who are also called legal assistants. All attorneys bill at a uniform attorney rate, no matter how experienced or inexperienced they may be and all paralegals bill at a uniform paralegal rate that is independent of experience. The blended legal rate 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 basics of the computation of the blended legal services rate are straightforward, though there are refinements that this analysis will skip.

1. Sum the legal-services hours that the Committee has approved during figure setting, which equal 329,956 hours this year. Note that the Committee has to date approved appropriations of hours for legal services with no dollar amounts attached. For example, the Committee approved 1,790 hours of legal services for the Department of Local of Affairs. This is one of the reasons why the Department of Law is always among the last departments presented during figure setting – the Department of Law's appropriation depends on the legal services appropriations to other Departments.
2. Convert these legal service hours to FTE and compare this FTE count with the legal services FTE count in last year's Long Bill. Since each legal FTE and each paralegal FTE can bill 1800 hours annually, this year's legal service hours appropriation equates to $329,956/1800 = 183.3$ FTE. The FTE appropriation to Legal Services to State Agencies in last year's Long Bill totaled 200.6 FTE of which 172.3 FTE were attorneys and paralegals who provide legal services. The remainder are administration and support staff – the Department currently has .14 support staff for every billing attorney. Thus an extra $183.3 - 172.3 = 11.0$ legal services FTE are required for this year's Long Bill. These 11.0 FTE need $11.0 * 0.14 = 1.5$ support FTE.
3. Compute the prospective cost of operating the Legal Services to State Agencies Unit assuming that the required extra FTE are hired and assuming that all other costs are as they will be in next year's Long Bill. This is the most difficult part of the calculation because one must allocate all

the potted appropriations in the administration division and one must compute the indirect cost assessment for the Legal Services to State Agencies Unit. This is the second reason why the Department of Law comes near the end of figure setting – many of these costs are common policy items that are appropriated at the end of figure setting.

Simplified Calculation of the Blended Legal Rate	Amount
a. Hours approved by JBC	329,956
b. Divide to 1800 to compute the implied number of billing FTE	183.3
c. Number of LSSA FTE in last year's Long Bill who billed. The number who provide legal services (remainder are administration and support staff)	172.3
d. Shortfall of billing FTE (=b - c)	11.0
e. Extra support FTE needed for these extra billing FTE at current staffing ratios	1.5
e. Prospective cost of operating LSSA assuming that these extra FTE are hired and assuming that all other costs are as they will be in next year's Long Bill. (This includes indirect costs and central appropriations that are allocated to LSSA, so it does not equal the direct appropriation to LSSA)	24,779,903
Cost per legal-service hour = e/d = "blended" legal services rate, which is used in the Long Bill to convert appropriations of hours into dollars. = a weighted average of the attorney rate and the paralegal rate, which are the rates the Department will actually use when it bills.	\$75.10

Though this calculation is simplified, a more complex calculation shows that the blended legal rate is indeed \$75.10. Staff will not examine the formulas that are used to calculate the attorney rate and the paralegal rate, but these formulas produce an Attorney rate of \$77.15 and a paralegal rate of \$65.56.

Note that several factors influence the blended legal rate including the cost of LSSA personal services, rates for various centrally appropriated line items ("Pots"), and indirect cost recoveries for overhead costs in the Administration section. Therefore, a decrease in the demand for legal services does not necessarily equate to a corresponding decrease in the blended legal rate.

Personal Services. Based on the above calculation of the blended legal rate, JBC Staff recommends that the LSSA appropriation for attorneys be increased by 11.0 FTE and appropriation for support staff be increased by 1.5 FTE, for a **recommended total increase for the Legal Services to State Agencies Unit of 11.0 + 1.5 = 12.5 FTE** as indicated in the following table.

Staffing Summary	FY 06-07 Actual	FY 07-08 Approp.	FY 08-09 Request	FY 08-09 Recommend.
Attorneys	134.5	143.7	154.7	154.7
Administrative Staff	54.2	56.9	58.4	58.4

Staffing Summary	FY 06-07 Actual	FY 07-08 Approp.	FY 08-09 Request	FY 08-09 Recommend.
Total	188.7	200.6	213.1	213.1

The corresponding Option 8 calculation and the Staff recommendation is as follows.

Personal Services	Total	GF	CF	CFE/RF	FF	FTE
FY 2007-08 Appropriation	16,446,532	0	1,000,000	15,446,532	0	204.2
Change from CFE to RF	0	0	0	0	0	0.0
FY 2007-08 Appropriation Restated	16,446,532	0	1,000,000	15,446,532	0	204.2
Classified Salary Survey	89,499	0	0	89,499	0	0.0
Exempt Salary Survey	515,288	0	0	515,288	0	0.0
80% of Classified Performance-based Pay	34,258	0	0	34,258	0	0.0
80% of Exempt Performance-based Pay	139,725	0	0	139,725	0	0.0
2 nd Year Impact of FY 2007-08 Special Bills	235,151	0	0	235,151	0	2.4
Base Reduction (1% for ≥ 20 FTE)	(174,605)	0	(10,000)	(164,605)	0	0.0
Legal-Services Decision Items Approved by JBC for this and other Departments	<u>291,164</u>	<u>0</u>	<u>0</u>	<u>291,164</u>	<u>0</u>	<u>4.5</u>
Subtotal	17,577,012	0	990,000	16,587,012	0	211.1
Adjustment to reconcile with FTE increase computed for legal rate	(200,000)	0	0	(200,000)	0	2.1
Fund mix adjustment to reflect anticipated receipts from outside the state TABOR district	0	0	10,000	(10,000)	0	0.0
FY 2008-09 Recommendation	17,377,012	0	1,000,000	16,377,012	0	213.2
FY 2008-09 Request	17,377,012	0	1,000,000	16,377,012	0	213.2

Operating and Litigation. The General Assembly approved the creation of a new line item in the Department of Law's FY 2003-04 Long Bill that consolidated the appropriations for operating and litigation expenses. The following table presents the Staff calculation of the corresponding appropriation.

	Total	GF	CF	CFE/RF	FF
FY 2007-08 Appropriation	1,124,851	0	0	1,124,851	0
Change from CFE to RF	0	0	0	0	0
FY 2007-08 Appropriation Restated	1,124,851	0	0	1,124,851	0
2 nd Year Impact of FY 2007-08 Special Bills	137,245	0	0	137,245	0

	Total	GF	CF	CFE/RF	FF
Legal-Services Decision Items Approved by JBC for this and other Departments	131,473	0	0	131,473	0
Adjustment to reconcile with FTE increase computed for legal rate	(100,000)	0	0	(100,000)	0
FY 2008-09 Recommendation	1,293,569	0	0	1,293,569	0
FY 2008-09 Request	1,293,569	0	0	1,293,569	0

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 funded FTE who work in each division. The source of these funds is revenue collected from other State agencies for legal services provided by the Department of Law.

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

CRIMINAL JUSTICE AND APPELLATE

This division is comprised of eight subdivisions:

- Special Prosecution 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.

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 individuals who committed murder in Colorado and subsequently fled 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, which is created in Section 8-45-101(1), C.R.S. The money from the State Compensation Insurance Authority funds workers' compensation fraud investigations and prosecutions.

The following table summarizes staffing levels within the division.

Staffing Summary	FY 06-07 Actual	FY 07-08 Approp.	FY 08-09 Request	FY 08-09 Recommend.
Attorneys	5.6	5.8	5.8	5.8
Investigators	4.0	5.0	5.0	5.0
Administrative Staff	1.6	2.0	2.0	2.0
Total	11.2	12.8	12.8	12.8

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

Personal Services	Total	GF	CF	CFE/RF	FF	FTE
FY 2007-08 Appropriation	1,194,091	990,007	204,084	0	0	12.8
Change from CFE to RF	0	0	0	0	0	0.0
FY 2007-08 Appropriation Restated	1,194,091	990,007	204,084	0	0	12.8
Classified Salary Survey	15,012	11,718	3,294	0	0	0.0
Exempt Salary Survey	21,146	17,396	3,750	0	0	0.0
80% of Classified Performance-	6,976	5,862	1,114	0	0	0.0

Personal Services	Total	GF	CF	CFE/RF	FF	FTE
based Pay						
80% of Exempt Performance-based Pay	6,191	4,700	1,491	0	0	0.0
Base Reduction (1% for ≥ 20 FTE)	0	0	0	0	0	0.0
FY 2008-09 Recommendation	1,243,416	1,029,683	213,733	0	0	12.8
FY 2008-09 Request	1,241,118	1,027,780	213,338	0	0	12.8

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 \$685,127 during FY 2006-07. 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 06-07 Actual	FY 07-08 Approp.	FY 08-09 Request	FY 08-09 Recommend.
Attorneys	1.6	2.1	2.1	2.1
Investigators	3.1	4.0	4.0	4.0
Administrative Staff	1.2	1.5	1.5	1.5
Total	5.9	7.6	7.6	7.6

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

Personal Services	Total	GF	CF	CFE/RF	FF	FTE
FY 2007-08 Appropriation	594,563	0	0	594,563	0	7.6
Change from CFE to RF	0	0	0	0	0	0.0
FY 2007-08 Appropriation Restated	594,563	0	0	594,563	0	7.6
Classified Salary Survey	11,910	0	0	11,910	0	0.0
Exempt Salary Survey	8,322	0	0	8,322	0	0.0
80% of Classified Performance-based Pay	2,945	0	0	2,945	0	0.0
80% of Exempt Performance-based Pay	2,235	0	0	2,235	0	0.0
Base Reduction (1% for \geq 20 FTE)	0	0	0	0	0	0.0
FY 2008-09 Recommendation	619,975	0	0	619,975	0	7.6
FY 2008-09 Request	618,916	0	0	618,916	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 $\frac{1}{3}$ 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 Insurance 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 06-07 Actual	FY 07-08 Approp.	FY 08-09 Request	FY 08-09 Recommend.
Attorneys	2.1	2.1	2.1	2.1
Investigators	1.8	2.0	2.0	2.0
Administrative Staff	1.4	1.5	1.5	1.5
Total	5.3	5.6	5.6	5.6

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

Personal Services	Total	GF	CF	CFE/RF	FF	FTE
FY 2007-08 Appropriation	463,762	116,799	0	346,963	0	5.6
Change from CFE to RF	0	0	0	0	0	0.0
FY 2007-08 Appropriation Restated	463,762	116,799	0	346,963	0	5.6
Classified Salary Survey	7,507	4,982	0	2,525	0	0.0
Exempt Salary Survey	8,791	0	0	8,791	0	0.0
80% of Classified Performance-based Pay	1,868	1,234	0	634	0	0.0
80% of Exempt Performance-based Pay	2,365	0	0	2,365	0	0.0
Base Reduction (1% for ≥ 20 FTE)	0	0	0	0	0	0.0
FY 2008-09 Recommendation	484,293	123,015	0	361,278	0	5.6
FY 2008-09 Request	483,389	122,785	0	360,604	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.

Staffing Summary	FY 06-07 Actual	FY 07-08 Approp.	FY 08-09 Request	FY 08-09 Recommend.
Attorneys	23.4	25.0	27.0	27.0
Administrative Staff	2.8	3.0	3.0	3.0
Total	26.2	28.0	30.0	30.0

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

Personal Services	Total	GF	CF	CFE/RF	FF	FTE
FY 2007-08 Appropriation	2,177,260	2,177,260	0	0	0	28.0
Change from CFE to RF	0	0	0	0	0	0.0
FY 2007-08 Appropriation Restated	2,177,260	2,177,260	0	0	0	28.0
Classified Salary Survey	3,827	3,827	0	0	0	0.0
Exempt Salary Survey	86,017	86,017	0	0	0	0.0
80% of Classified Performance-based Pay	1,893	1,893	0	0	0	0.0
80% of Exempt Performance-based Pay	29,389	29,389	0	0	0	0.0
2 nd year impact of H.B. 07-1054, Increase Number of Judges	160,334	160,334	0	0	0	2.0
Base Reduction (1% for ≥ 20 FTE)	(21,661)	(21,661)	0	0	0	0.0
FY 2008-09 Recommendation	2,437,059	2,437,059	0	0	0	30.0
FY 2008-09 Request	2,454,388	2,454,388	0	0	0	30.0

Medicaid Fraud Grant. The State's Medicaid Fraud Unit, which is mandated by federal law, 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 06-07 Actual	FY 07-08 Approp.	FY 08-09 Request	FY 08-09 Recommend.
Attorneys	2.0	2.0	2.0	2.0

Staffing Summary	FY 06-07 Actual	FY 07-08 Approp.	FY 08-09 Request	FY 08-09 Recommend.
Investigators	7.0	9.0	9.0	9.0
Administrative Staff	2.2	3.0	3.0	3.0
Total	11.2	14.0	14.0	14.0

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

Personal Services	Total	GF	CF	CFE/RF	FF	FTE
FY 2007-08 Appropriation	1,281,613	320,372	0	0	961,241	14.0
Change from CFE to RF	0	0	0	0	0	0.0
FY 2007-08 Appropriation Restated	1,281,613	320,372	0	0	961,241	14.0
Classified Salary Survey	23,570	5,893	0	0	17,677	0.0
Exempt Salary Survey	9,013	2,253	0	0	6,760	0.0
80% of Classified Performance-based Pay	8,250	2,062	0	0	6,188	0.0
80% of Exempt Performance-based Pay	3,846	1,231	0	0	2,615	0.0
End of one-time ADP outlay for FY 2007-08 DI #6, Additional FTE for Medicaid Fraud Unit	4,515	1,129	0	0	3,386	0.0
Fund mix adjustment to achieve a 75% FF and 25% GF funding split	0	(238)	0	0	238	0.0
Base Reduction (1% for ≥ 20 FTE)	0	0	0	0	0	0.0
FY 2008-09 Recommendation	1,330,807	332,702	0	0	998,105	14.0
FY 2008-09 Request	1,328,336	332,322	0	0	996,014	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. 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.

Staffing Summary	FY 06-07 Actual	FY 07-08 Approp.	FY 08-09 Request	FY 08-09 Recommend.
Attorneys	1.8	2.0	2.0	2.0
Investigators	1.0	1.0	1.0	1.0

Staffing Summary	FY 06-07 Actual	FY 07-08 Approp.	FY 08-09 Request	FY 08-09 Recommend.
Administrative Staff	1.0	1.0	1.0	1.0
Total	3.8	4.0	4.0	4.0

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

Personal Services	Total	GF	CF	CFE/RF	FF	FTE
FY 2007-08 Appropriation	361,781	361,781	0	0	0	4.0
Change from CFE to RF	0	0	0	0	0	0.0
FY 2007-08 Appropriation Restated	361,781	361,781	0	0	0	4.0
Classified Salary Survey	3,348	3,348	0	0	0	0.0
Exempt Salary Survey	9,803	9,803	0	0	0	0.0
80% of Classified Performance-based Pay	331	331	0	0	0	0.0
80% of Exempt Performance-based Pay	1,380	1,380	0	0	0	0.0
Base Reduction (1% for ≥ 20 FTE)	0	0	0	0	0	0.0
FY 2008-09 Recommendation	376,643	376,643	0	0	0	4.0
FY 2008-09 Request	375,974	375,974	0	0	0	4.0

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 computerized 29,000 certification records.

Staffing Summary	FY 06-07 Actual	FY 07-08 Approp.	FY 08-09 Request	FY 08-09 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
Total	6.0	6.0	6.0	6.0

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

Personal Services	Total	GF	CF	CFE/RF	FF	FTE
FY 2007-08 Appropriation	1,208,125	44,638	1,163,487	0	0	6.0
Change from CFE to RF	0	0	0	0	0	0.0
FY 2007-08 Appropriation Restated	1,208,125	44,638	1,163,487	0	0	6.0
Classified Salary Survey	12,321	0	12,321	0	0	0.0
80% of Classified Performance-based Pay	924	0	924	0	0	0.0
2 nd year impact of FY 2007-08 DI #3, Digitize P.O.S.T. Board Records	(44,638)	(44,638)	0	0	0	0.0
Base Reduction (1% for ≥ 20 FTE)	0	0	0	0	0	0.0
FY 2008-09 Recommendation	1,176,732	0	1,176,732	0	0	6.0
FY 2008-09 Request	1,176,008	0	1,176,008	0	0	6.0

The funding source is the P.O.S.T. Board Cash Fund created in Section 24-31-303 (2) (b), C.R.S.

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 Department's Victims' Services Coordinator carries out these duties when the Department handles criminal appeals and when it prosecutes individuals in a trial court. The Coordinator 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 also 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 Victim's Assistance Coordinator. The VALE Fund receives revenues from offender surcharges ordered by Colorado Courts. a percentage of each local fund at the District Court level in the state is remitted to the State VALE fund.

Staffing Summary	FY 06-07 Actual	FY 07-08 Approp.	FY 08-09 Request	FY 08-09 Recommend.
General Professional	1.0	1.0	1.0	1.0
Total	1.0	1.0	1.0	1.0

The Option 8 calculation is as follows:

Personal Services	Total	GF	CF	CFE/RF	FF	FTE
FY 2007-08 Appropriation	69,191	0	0	69,191	0	1.0
Change from CFE to RF	0	0	69,191	(69,191)	0	0.0
FY 2007-08 Appropriation Restated	69,191	0	69,191	0	0	1.0
Classified Salary Survey	2,384	2,384	0	0	0	0.0
80% of Classified Performance-based Pay	574	574	0	0	0	0.0
Fund Mix Adjustment	0	(2,958)	2,958			
Base Reduction (1% for ≥ 20 FTE)	0	0	0	0	0	0.0
FY 2008-09 Recommendation	72,149	0	72,149	0	0	1.0
FY 2008-09 Request	72,149	0	72,149	0	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.

WATER AND NATURAL RESOURCES

The Natural Resources and Environment Division works to protect and defend Colorado and its citizens in all matters of natural resource law 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 hazardous wastes, and protection of the state's air and water.

Federal and Interstate Water Unit. This unit provides legal counsel and representation for the Colorado Water Conservation Board, the State Engineer, the Department of Natural Resources, and the State of Colorado in matters involving federal water rights claims (such as U.S. Forest Service reserved water rights cases), compliance with federal regulatory programs (such as the federal endangered species act), and interstate water allocations.

Staffing Summary	FY 06-07 Actual	FY 07-08 Approp.	FY 08-09 Request	FY 08-09 Recommend.
Attorneys	3.9	4.5	4.5	4.5
Legal Assistants	1.0	1.0	1.0	1.0
Total	4.9	5.5	5.5	5.5

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

Personal Services	Total	GF	CF	CFE/RF	FF	FTE
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FY 2007-08 Appropriation	482,426	482,426	0	0	0	5.5
Change from CFE to RF	0	0	0	0	0	0.0
FY 2007-08 Appropriation Restated	482,426	482,426	0	0	0	5.5
Classified Salary Survey	2,290	2,290	0	0	0	0.0
Exempt Salary Survey	15,709	15,709	0	0	0	0.0
80% of Classified Performance-based Pay	1,665	1,665	0	0	0	0.0
80% of Exempt Performance-based Pay	3,465	3,465	0	0	0	0.0
Base Reduction (1% for \geq 20 FTE)	0	0	0	0	0	0.0
FY 2008-09 Recommendation	505,555	505,555	0	0	0	5.5
FY 2008-09 Request	504,608	504,608	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 Republican River Compact and Defense of the Colorado River Basin Compact, are funded from the Colorado Water Conservation Board's Litigation Fund. Staff has included the following information in this document 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 \$3.6 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. 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 it needs 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 have to 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. The General Assembly approved a \$130,000 appropriation of these moneys in FY 2007-08 and Staff will shortly recommend that the remaining \$110,000 be appropriated in FY 2008-09.

Defense of the Republican River Compact

This line item was added to the FY 2007-08 Long Bill by the Department's FY 2007-08 supplemental appropriation bill. It had previously appeared in the Long Bill, but had been eliminated following the apparently successful conclusion of the Republican River lawsuit in 2003.

The 1942 Republican River Compact between Colorado, Kansas, and Nebraska governs the use of water in the Republican River Basin in northeastern Colorado, southwestern Nebraska and northwestern Kansas. The Compact provides for the division of Republican River water among the three states. In 1998, Kansas sued Nebraska and Colorado, alleging overuse of Republican River water. In 2003, Kansas, Nebraska and Colorado entered into a settlement decree to resolve the dispute. In response to that decree, Colorado is developing new water enforcement rules, has stopped irrigating thousands of acres of land, and has taken additional actions such as the partial draining of Bonny Reservoir, which is located near the Kansas border. The first compliance check under the settlement decree, which measured water use from 2003 to 2007, showed that Colorado and Nebraska both overused their Compact allocations, with Nebraska significantly further from compliance.

Thus far, Kansas has focused on Nebraska's over consumption of river water, demanding that Nebraska immediately curtail its water use and pay damages. Under the terms of the decree, Kansas must first try to resolve the dispute with non-binding mediation, but it has indicated that it will take Nebraska to court in early 2009 if mediation fails. If the case goes to court, active litigation will be underway by the summer of 2009. If Colorado is able to resolve the concerns of Nebraska and Kansas regarding Colorado's compliance, Colorado may be able to avoid active participation in the litigation. If Colorado is unable to resolve these concerns, the Department of Law anticipates cross-claims from Nebraska alleging that Colorado's over consumption of water injured Nebraska or contributed to Nebraska's over use.

In November 2007 the Colorado Water Conservation Board approved \$240,000 for the defense of Colorado's interests in the Republican River Compact. The fund source is the Litigation Fund established in Section 27-60-121 (2.5) (a), C.R.S. The General Assembly approved a \$130,000 appropriation of the \$240,000 total for FY 2007-08 and the Department requests that the General Assembly appropriate the remaining \$110,000 for FY 2008-09. The Department used its FY 2007-08 appropriation for this line item to engage a hydrology firm that is compiling evidence in support of Colorado's position. The Department anticipates engaging other outside consultants to assist the State's defense before the end of FY 2007-08. The \$110,000 cash funds request for FY 2008-09 will be used in a similar fashion.

The following table shows the computation of the Staff recommendation.

Republican River Compact	Total	GF	CF	CFE/RF	FF
FY 2007-08 Appropriation	130,000	0	0	130,000	0
Change from CFE to RF	0	0	130,000	(130,000)	0
FY 2007-08 Appropriation Restated	130,000	0	130,000	0	0
Change needed to expend the remaining funds allocated by the Colorado Water Conservation Board	(20,000)	0	(20,000)	0	0
FY 2008-09 Recommendation	110,000	0	110,000	0	0
FY 2008-09 Request	110,000	0	110,000	0	0

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.

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. Appropriations for the line and actual expenditures have been as follows:

Fiscal Year	Appropriation	Actual Expenditure
2005-06	\$152,262	\$50,437
2006-07	758,880	359,106
2007-08	758,880	420,000 (estimate)

The fund source for these expenditures was the Colorado Water Conservation Board's Litigation Fund.

The threat of legal action subsequently receded, but the prospect of litigation served as a wake-up call for the Department, highlighting the fact that Colorado is ill prepared to defend itself against an attack on its rights under either of the two Colorado River Compacts. Preparation for the much smaller 1998-2003 lawsuit over the Republican River took more than a year and included the imaging, review and indexing of 250,000 pages of documents at a cost of \$215,000. Preparation for a lawsuit involving the Colorado River basin, which supplies 75 percent of Colorado's water, would dwarf the Republican River preparation effort. The potential economic loss is far greater and the relevant legal issues are much more complex, encompassing both Colorado Basin Compacts, a treaty with Mexico, U.S. Supreme Court decisions, and an historical record stretching back nearly a hundred years. The Department estimated that preparation for Colorado River litigation would,

among other things, require review, indexing and imaging of more than a million pages of legal and historical documents.

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 more-or-less continuous monitoring and legal work, with the ever-present prospect that a large legal battle could develop, especially if a drought is thrown into the mix. 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. The Department states that these challenges arise on a monthly basis, with most requiring a written response and a few involving petitions to the Department of Interior, which oversees the Compacts.
2. Average Colorado River flow is probably too low to satisfy Compact requirements. Though the 1922 Compact was based on the best science available at the time, subsequent tree ring studies have shown that it was negotiated during a period when rainfall was some 20 percent higher than the long-term average. These 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 may be close, for the first time in Colorado's history, to fully utilizing its share of Colorado River water. Simultaneously, growing populations in the lower basin states are pushing against the limits of their own water 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 and increasing conflict possibilities.

During the 2 years since this line item was added to the Long Bill, the Department has used the appropriation to:

- Develop a searchable, Colorado-river litigation-support database, which is now approximately half complete and will probably be finished by the end of FY 2008-09. Ultimately this database will include images of the entire historical record of the Colorado and Upper River Compacts, more than a million pages. The costs of core database development are being shared by the Upper Basin states, which each contributed \$50,000. Colorado, the largest water user among the Upper Basin states, paid more because it extended the database for its own purposes. When the database is completed at the end of FY 2008-09, it will be much easier to identify and retrieve documents that shed light on the meaning of the Compacts. The database is already being used to answer legal questions. Databases of this sort are commonly used by legal professionals in cases involving large bodies of substantive information.
- 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 a sharp reduction of available river water.
- 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.

As this analysis indicates, some of the expenditures from this appropriation have not corresponded to the intent of the original Decision Item that established this appropriation, thanks in substantial part to lack of a major Colorado River lawsuit. Expenditures from the line have also been consistently less than appropriations. For these reasons, Staff recommends that the Committee reduce the appropriation for this line. Staff is convinced that the litigation database is a wise investment and that its construction should continue. It's also wise for the Department to conduct legal into issues that have a significant probability of arising in the future, either in litigation or in other contexts, though Staff notes that this activity could be taken too far. A solid database and this proactive legal spadework can reduce the probability of litigation by helping the Department convince other states of the strength of Colorado's arguments before the litigation arises.

Staff recommends an appropriation of \$545,000, cash funds for this line.

The following table summarizes program staffing:

Staffing Summary	FY 06-07 Actual	FY 07-08 Approp.	FY 08-09 Request	FY 08-09 Recommend.
Attorneys	2.9	3.0	3.0	3.0
Legal Assistants	1.0	1.0	1.0	1.0
Total	3.9	4.0	4.0	4.0

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

Personal Services	Total	GF	CF	CFE/RF	FF	FTE
FY 2007-08 Appropriation	758,880	0	0	758,880	0	4.0
Change from CFE to RF	0	0	758,880	(758,880)	0	0.0
FY 2007-08 Appropriation Restated	758,880	0	758,880	0	0	4.0
Classified Salary Survey	2,317	2,317	0	0	0	0.0
Exempt Salary Survey	8,661	8,661	0	0	0	0.0
80% of Classified Performance-based Pay	556	556	0	0	0	0.0
80% of Exempt Performance-based Pay	1,739	1,739	0	0	0	0.0

Personal Services	Total	GF	CF	CFE/RF	FF	FTE
Fund mix adjustment	0	(13,273)	13,273	0	0	0.0
Recommended Reduction	(227,153)		(227,153)			
FY 2008-09 Recommendation	545,000	0	545,000	0	0	4.0
FY 2008-09 Request	772,153	0	772,153	0	0	4.0

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

Consultant Expenses. This line item is being used to make payments to the private counsel that represented Colorado in its 20-year legal fight with Kansas over the Arkansas River Compact. The Special Master who oversees this case issued his fifth and final report last month. This decree includes complex rules that Colorado must follow indefinitely. Last year, in its Decision Item #8, the Department requested and received an appropriation that allowed it to gradually stop using outside counsel and start doing the legal work itself. The decision item:

- Added 0.5 FTE for in-house compact-compliance work at the Department.
- Reduced payments to outside counsel from \$140,000 in FY 2006-07 to \$50,000 in FY 2007-08 and anticipated a further reduction to \$25,000 in FY 2008-09. The decision item also anticipated that private counsel expense would remain at \$25,000 for another 2 to 5 years. The funding source for the FY 2008-09 appropriation was the Attorney Fees and Costs Fund, which obtains revenues from court awards to the Department of attorneys fees and costs.

Unfortunately, due to the complexity of the case, the transition from outside to in-house counsel has not proceeded as rapidly as expected. The transition was made more difficult by the unexpected retirement of one of the Department's water-law specialists. The Department believes that it would be unwise to reduce the appropriation from \$50,000 to \$25,000 at this time. The Department continues to anticipate a reduction to \$25,000 in FY 2009-10.

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 clean up 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 \$27.8 million for the General Fund and \$10.5 million for the Hazardous Substance Response Fund. The Unit is involved with 10 CERCLA sites in the state, including Rocky Mountain Arsenal, Summitville Mine, and California Gulch.

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. While these natural resource damage recoveries can be large, 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 the recovery to support the General Fund.

Staffing for the CERCLA Litigation Unit is as follows:

Staffing Summary	FY 06-07 Actual	FY 07-08 Approp.	FY 08-09 Request	FY 08-09 Recommend.
Attorneys	2.5	3.5	3.5	3.5
Legal Assistants	2.3	1.3	1.3	1.3
Total	4.8	4.8	4.8	4.8

It is interesting to note that the size of the CERCLA Litigation Unit has declined over 75 percent in the last decade; in 1994, the Unit had 19.0 FTE. To some extent, this decline reflects CERCLA's success. Congress designed CERCLA to, in part, deter future contamination. Potential polluters, knowing of their liability under CERCLA, are now more careful about the release of hazardous substances than were firms a half century ago.

The next table presents the corresponding Option 8 calculation and the resulting Staff recommendation.

Personal Services	Total	GF	CF	CFE/RF	FF	FTE
FY 2007-08 Appropriation	452,001	426,123	0	25,878	0	4.8
Change from CFE to RF	0	0	0	0	0	0.0
FY 2007-08 Appropriation Restated	452,001	426,123	0	25,878	0	4.8
Classified Salary Survey	5,964	5,964	0	0	0	0.0
Exempt Salary Survey	9,200	9,200	0	0	0	0.0
80% of Classified Performance-based Pay	3,131	3,131	0	0	0	0.0

Personal Services	Total	GF	CF	CFE/RF	FF	FTE
80% of Exempt Performance-based Pay	1,725	1,725	0	0	0	0.0
Base Reduction (1% for ≥ 20 FTE)	0	0	0	0	0	0.0
FY 2008-09 Recommendation	472,021	446,143	0	25,878	0	4.8
FY 2008-09 Request	471,129	445,299	0	25,830	0	4.8

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, economists knowledgeable about natural resource damages, etc. **Staff recommends total funding of \$600,000 for this line item, comprised of \$175,000 General Fund and \$425,000 reappropriated funds,** which is essentially a continuation level of funding that corresponds to the Department's request, differing only in that the reappropriated funds were classified as cash funds exempt in FY 2007-08 and in the Department's request.

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

Recommended modification to a figure setting decision that the Committee made for the Department of Public Health and Environment. During figure setting for the Colorado Department of Public Health and Environment's (CDPHE), the CDPHE Environmental Divisions Analyst, acting on incorrect information obtained from CDPHE, told the Committee that the appropriation in CDPHE's Hazardous Materials Division that serves as the source of the reappropriated funds in the two previous tables represents a payment to the Department of Law for legal services. As the above explanations for these line items indicate, this is not the case; most of these moneys are actually used to make payments to contractors. Based on this incorrect information, the Environmental Divisions Analyst recommended that the corresponding CDPHE line item, which is currently titled *Transfer to the Department of Law for CERCLA Contract Oversight-Related Costs*, be retitled *Legal Services for CERCLA Contract Oversight-Related Costs* and recommended an appropriation of 6,271 hours of legal services with the dollar amount of the appropriation pending Committee approval of the Department of Law's blended legal rate. The Environmental Analyst estimated that the appropriation would be approximately \$425,000.

Staff recommends that the Committee retain the title *Transfer to the Department of Law for CERCLA Contract Oversight-Related Costs* for this line item. Staff further recommends that

the Committee approve a \$425,000 appropriation for this line item. The appropriation is from the Hazardous Substance Response Fund and from fees collected pursuant to the Colorado Open Records Act. This represents a continuation appropriation and it also corresponds the CDPHE request.

Natural Resource Damage Claims at Rocky Mountain Arsenal.

The State is now in the second phase of its CERCLA case against Shell Oil Company and the U.S. Army over pollution at the Rocky Mountain Arsenal. After 20 years of involvement in the first, remediation phase of the case, the Department is now attempting to win compensatory Natural Resource Damages at the Arsenal – i.e. damages for the environmental degradation that remains after years of cleanup. The Department believes that the State can make a strong case for damages.

The first step in the state's natural resource damages claim is the assessment of the damages. This assessment work is being performed by an experienced contractor who is producing a study that will set a monetary value on the damages. The assessment will serve as the central evidence in a subsequent trial in which a judge will determine damages. Either step of this process could terminate abruptly if the State, Shell, and the Army agree to an out-of-court settlement

This is the fourth year in which the Department has received funding for a Natural Resource Damages action at the Arsenal. For FY 2005-06, the Committee approved a \$137,500 cash-funds-exempt decision item. The next year, the Committee approved an extra \$746,642 of General Fund and 2.0 FTE; last year, the Committee approved an additional \$1,922,695, this time financing the entire appropriation from the Hazardous Substance Response fund in order to reduce the impact on the General Fund. Last year's decision item came with the understanding that the appropriation for this legal effort would decline to \$1,457,825 in FY 2008-09.

Decision Item #2A: 0.4 FTE for Rocky Mountain Arsenal.

The Department of Public Health and Environment employee who served as CDPHE's project manager for Rocky Mountain Arsenal clean-up for the past decade retired in January 2008. He has unique institution knowledge and is a critical part of the team that is preparing to litigate the natural resource damages case. The Department of Law needs this employee's expertise as it prepares for trial. With this decision item, the Department requests an increase of 0.4 FTE for the *Natural Resource Damage Claims at Rocky Mountain Arsenal* line item. The added FTE hiring authority will allow the Department to hire this individual as a permanent part-time employee following his retirement. No extra funds are needed with this FTE appropriation because the Department can absorb his salary and benefits within existing resources.

Staff recommends that the Committee approve the Department's request for 0.4 extra FTE with the understanding that the extra FTE appropriation will be eliminated when the Rocky Mountain Arsenal natural resource damage case is resolved.

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

Staffing Summary	FY 06-07 Actual	FY 07-08 Approp.	FY 08-09 Request	FY 08-09 Recommend.
Attorneys	1.9	2.0	2.4	2.4
Total	1.9	2.0	2.4	2.4

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

Personal Services	Total	GF	CF	CFE/RF	FF	FTE
FY 2007-08 Appropriation	2,661,667	0	2,661,667	0	0	2.0
Change from CFE to RF	0	0	0	0	0	0.0
FY 2007-08 Appropriation Restated	2,661,667	0	2,661,667	0	0	2.0
Exempt Salary Survey	7,674	7,674	0	0	0	0.0
80% of Exempt Performance-based Pay	1,408	1,408	0	0	0	0.0
Decision Item #2A. Additional FTE for Natural Resource Damages Claims at Rocky Mountain Arsenal	0	0	0	0	0	0.4
2 nd year impact of 2007 DI #1, Natural Resource Damages Claims at Rocky Mountain Arsenal	(1,457,825)	0	(1,457,825)	0	0	0.0
Fund Mix Adjustment	0	(9,082)	9,082			
Base Reduction (1% for ≥ 20 FTE)	0	0	0	0	0	0.0
FY 2008-09 Recommendation	1,212,924	0	1,212,924	0	0	2.4
FY 2008-09 Request	1,212,924	0	1,212,924	0	0	2.4

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.

CONSUMER PROTECTION

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.

Staffing Summary	FY 06-07 Actual	FY 07-08 Approp.	FY 08-09 Request	FY 08-09 Recommend.
Attorneys	6.3	12.0	12.0	12.0
Legal Assistants	1.9	2.0	2.0	2.0
Investigators	2.0	2.0	2.0	2.0
Administrative Staff	4.9	4.0	4.0	4.0
Total	15.1	20.0	20.0	20.0

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

Personal Services	Total	GF	CF	CFE/RF	FF	FTE
FY 2007-08 Appropriation	1,746,314	841,874	65,799	838,641	0	20.0

Personal Services	Total	GF	CF	CFE/RF	FF	FTE
Change from CFE to RF	0	0	593,731	(593,731)	0	0.0
FY 2007-08 Appropriation Restated	1,746,314	841,874	659,530	244,910	0	20.0
Classified Salary Survey	15,708	9,026	6,682	0	0	0.0
Exempt Salary Survey	30,989	21,534	9,455	0	0	0.0
80% of Classified Performance-based Pay	3,704	3,126	578	0	0	0.0
80% of Exempt Performance-based Pay	8,708	7,138	1,570	0	0	0.0
Remove one-time costs in S.B. 07-216	(20,175)	0	(20,175)	0	0	0.0
[Non add] Operating Expenses (remove when computing base reduction)	133,985	60,226	49,321	24,438	0	0.0
Base Reduction (1% for ≥ 20 FTE)	(16,513)	(8,225)	(6,083)	(2,205)	0	0.0
FY 2008-09 Recommendation	1,768,735	874,473	651,557	242,705	0	20.0
FY 2008-09 Request	1,781,945	881,053	656,423	244,469	0	20.0

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. As indicated above, the Anti-trust and Consumer Fraud Unit's mortgage-broker duties were added to statute last year and thus did not appear in the FY 2007-08 Long Bill. During figure setting for the Department of Regulatory Agencies' Division of Real Estate, the the Department of Regulatory Agencies Analyst recommended a \$265,085 cash funds appropriation from the Mortgage Brokers Cash Fund for a new line item titled *Mortgage Broker Consumer Protection*. This appropriation will be transferred to the Department of Law to pay for the Department's mortgage-broker duties. Due to a misunderstanding, this \$265,085 appropriation did not take into account the Department of Law's indirect costs, central appropriations in the Department of Law's Administration Division in support of mortgage-broker enforcement, or the one percent base reduction. 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 \$265,085 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 pursuant to Section 12-14-119 (5), C.R.S., to set them at a level that covers the Unit's costs. 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.

Pursuant to Section 24-34-104 (39) (b) (XVIII), C.R.S., regulation of debt collection expires on July 1, 2008 and would be extended until July 1, 2017 by H.B. 08-1240, which is now in the Senate.

The Collection Agency Board Unit's staffing summary follows:

Staffing Summary	FY 06-07 Actual	FY 07-08 Approp.	FY 08-09 Request	FY 08-09 Recommend.
Attorneys	0.5	1.2	1.2	1.2
Compliance Investigators	2.0	2.0	2.0	2.0
Administrative Staff	2.0	2.0	2.0	2.0
Total	4.5	5.2	5.2	5.2

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

Personal Services	Total	GF	CF	CFE/RF	FF	FTE
FY 2007-08 Appropriation	285,667	0	238,098	47,569	0	5.2
Change from CFE to RF	0	0	47,569	(47,569)	0	0.0

Personal Services	Total	GF	CF	CFE/RF	FF	FTE
FY 2007-08 Appropriation Restated	285,667	0	285,667	0	0	5.2
Classified Salary Survey	6,040	0	6,040	0	0	0.0
Exempt Salary Survey	1,861	0	1,861	0	0	0.0
80% of Classified Performance-based Pay	2,377	0	2,377	0	0	0.0
80% of Exempt Performance-based Pay	960	0	960	0	0	0.0
Base Reduction (1% for ≥ 20 FTE)	0	0	0	0	0	0.0
FY 2008-09 Recommendation	296,905	0	296,905	0	0	5.2
FY 2008-09 Request	296,905	0	296,905	0	0	5.2

The fund source for both the cash fund and cash funds exempt appropriations is the Collection Agency Cash Fund, with the cash funds exempt appropriations coming from reserves in the fund. Thus the cash funds exempt appropriation must be moved to the cash funds column to change from cash funds exempt to reappropriated funds.

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, which is based in substantial part on the Uniform Consumer Credit Code ("UCCC"). Among the more important components of the Consumer Credit Code are:

1. The Consumer Equity Protection Act in Article 3.5, which governs high rate or high fee 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." Almost half these supervised lenders are high rate or high fee mortgage lenders and about a third are payday lenders. The Consumer Credit Unit protects borrowers from abusive practices by these lenders, such as interest rates that exceed legal limits, excessive prepayment penalties, inadequate disclosure of the cost of credit, fraudulent rent-to-own schemes, abusive repossessions, and unreasonable collection costs. License fees, which 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 and are set at levels that cover the cost of running the Unit.

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. On January 1, 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.

Staffing Summary	FY 06-07 Actual	FY 07-08 Approp.	FY 08-09 Request	FY 08-09 Recommend.
Attorneys	1.5	1.5	1.5	1.5
Finance Credit Examiner	6.8	7.5	8.0	8.0
Administrative Staff	2.0	3.3	3.3	3.3
Total	10.3	12.3	12.8	12.8

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

Personal Services	Total	GF	CF	CFE/RF	FF	FTE
FY 2007-08 Appropriation	943,154	0	836,323	106,831	0	12.3
Change from CFE to RF	0	0	106,831	(106,831)	0	0.0
FY 2007-08 Appropriation Restated	943,154	0	943,154	0	0	12.3
Classified Salary Survey	13,988	0	13,988	0	0	0.0
Exempt Salary Survey	6,694	0	6,694	0	0	0.0
80% of Classified Performance-based Pay	8,998	0	8,998	0	0	0.0
80% of Exempt Performance-based Pay	855	0	855	0	0	0.0
2 nd year impact of S.B. 07-57	(1,162)	0	(1,162)	0	0	0.0
Base Reduction (1% for ≥ 20 FTE)	0	0	0	0	0	0.0
FY 2008-09 Recommendation	972,527	0	972,527	0	0	12.3
FY 2008-09 Request	971,854	0	971,854	0	0	12.8

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.

SPECIAL PURPOSE

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.

Section 11 of Article 12 of the Colorado Constitution states that the salary of an elected public official cannot be changed 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 \$1,654,706 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 materialized 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 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 2007-08, for example, will not be known with certainty until July of FY 2008-09, the first month of the 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 2007-08 will be known with certainty during FY 2008-09 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.

The Department requests and Staff recommends an appropriation for 300 hour of legal services for this line. The corresponding General Fund appropriation equals \$22,530 = 300 * \$75.10, the blended legal services rate times 300 hours.

Tobacco Litigation. For two 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 until the dispute is resolved; these companies are expected to continue withholding from each year's settlement payments until a panel of arbitrators decides the case. The Department now believes that the arbitrators will hear Colorado's case sometime in FY 2008-09. 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 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 counsel 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.

The Department has requested an appropriation of \$225,000 cash funds for this line item, a continuation level of funding. The attorney who oversees tobacco litigation for the Department has briefed Staff on recent developments in this case. Based on this attorney's assessment, Staff believes that arbitration is likely to occur sometime during FY 2008-09. Since the cost of outside counsel is likely to average \$25,000 per month during the year when the case goes to arbitration, Staff concludes that a \$300,000 appropriation is more realistic than a \$225,000 appropriation. Thus **Staff recommends a \$300,000 appropriation for this line item.**

Senate Bill 07-113, a JBC bill, allowed these arbitration costs to 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.

Federal Reimbursement for Illegal Immigration Costs (S.B. 06S-1014). This 2006 special-session bill required that "the Attorney General... pursue all available remedies to recover any moneys owing from the federal government to the state for the reimbursement of costs incurred by the state in dealing with illegal immigration." It also requires the Attorney General to file a written report with the Governor, President of the Senate, and Speaker of the House by December 31, 2006, and by December 31, 2007, outlining the progress and status of reimbursement efforts. The December 2007 report concludes that, "The legal remedies available to the State...are very limited. Unless Congress has specifically appropriated funds for reimbursement, courts have held that states may not extract payment from the federal government." Based on this conclusion, the Attorney General has decided not to initiate legal action against the federal government. The report goes on to state that, "The Office of the Attorney General will continue to monitor this situation to ensure that the state receives all it is legally entitled to. In the meantime, we would suggest that the only available remedy for increasing federal reimbursement of the costs associated with illegal immigration is action by the United States Congress."

Last year Staff recommended that the cost of implementing S.B. 06S-1014 be absorbed within existing departmental resources. **Staff recommends no appropriation for this line item for FY 2008-09.**

Fraudulent Documents (S.B. 06-110):

This appropriation was eliminated by the Department's FY 2007-08 supplemental bill.

Referendum K:

Referendum K, which was approved by voters in November 2006, directed the Attorney General to initiate, or join other states in a lawsuit against the U.S. Attorney General to demand that the federal government enforce existing federal immigration laws. The case was dismissed by a federal judge and the appropriation was subsequently eliminated in the Department's FY 2007-08 supplemental bill.

Decision Item # 1a: Security for the Attorney General's Office

The "a" in this item's number indicates that it arrived as a budget amendment. It is prioritized below Decision Item #1, Attorney Registration Fees.

With this Decision Item, the Department requests an appropriation of \$259,032 for enhanced security at the State Services Building, which is the Capital Complex building that houses the Department. This item results from the Department of Public Safety's review of Capital-Complex security.

In the past few years there have been a number of situations that have raised concerns about building security. A survey revealed that 40 percent of the Department's employees have either been threatened or felt threatened by an irate citizen or by another employee. The Department prosecutes crimes and provides legal advice to professional licensing boards. This "cliental" represents a potential threat to safety of the office and its employees. Individuals being prosecuted for criminal activity may face long jail sentences and may threaten prosecutors in an attempt to intimidate or dissuade prosecution. Profession boards (usually housed at the Department of Regulatory Agencies) will suspend or revoke professional licenses based on advice from Department of Law staff attorneys. Suspension of a profession license can mean the end of a professional career and out of desperation an individual may threaten or attempt to intimidate attorney staff as retaliation for a board's action.

There is minimal security in place in the State Services Building where the Department is housed. There is no permanent security guard or patrolman assigned to the building during business hours. If an incident were to occur at the Department, State Patrol is across Colfax in the Capital, thus delaying response time. While there are some security hardening measures in place, it is very easy to gain access throughout the building.

The Colorado Department of Public Safety Rubicon Team performed a building security assessment for the Department. Many of the recommendations from the assessment are very costly and are best implemented on Capital Complex wide basis. However, the items the Department is seeking for this request comes from this assessment.

The following table summarizes the Department's request. The Department is particularly concerned about the slow current response time when they request assistance from Capital Complex security. A on-sight state trooper will reduce a five minute response time to perhaps a minute.

Item	FY 08-09	FY 09-10	FY 10-11
1.5 FTE of uniformed State Patrol troopers to provide in-building security from 8 a.m. to 5 p.m. daily. During a portion of this time the troopers would staff a security check point in the building's lobby. At other times they would patrol the building.	\$147,807	\$128,693	\$128,693
Install card/keypad access control system for two stairwells that currently lack any access control (the south stairwell and the stairwell to the basement)	85,476	0	0
Enhance existing keypad access control system in north stairwell to allow card access	5,537	0	0
Install card/keypad access control system for elevators, which currently lack any access control	20,212	0	0
Wirelessly connect the existing card/keypad access control system	0	68,000	0
Total	\$259,032	\$196,693	\$128,693

Note that the cost of the state patrol troopers is higher in the first year because the Department must pay the cost of training and equipping the troopers.

Staff Recommends that a new line item titled "Security for State Services Building" be added to the Special Purpose Division. Staff recommends a FY 2008-09 appropriation of \$259,032, comprised of \$80,036 General Fund, \$18,925 cash funds, \$152,845 cash funds exempt, and \$7,226 federal funds. The cash funds portion of this appropriation will be paid by each of the cash funds that supports a program in the Department and will be allocated proportionate to FTE.

Long Bill Footnotes and Requests for Information

Staff recommends that the following footnote be eliminated and replaced with a written request for information. Staff also recommends that the written information request be modified 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, 2007~~: NOVEMBER 1, 2008.

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.

Staff recommends that the following footnotes be **continued as footnotes 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 ~~\$74.64~~ \$77.15 per hour for attorneys and not exceed ~~\$60.79~~ \$65.56 per hour for paralegals, which equates to a blended rate of ~~\$72.03~~ \$75.10 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 2007-08~~, FY 2008-09, as well as information technology asset maintenance needs that would otherwise require General Fund appropriations during ~~FY 2007-08~~: FY 2008-09. 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.