

# MEMORANDUM

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**TO:** Members of the Joint Budget Committee

**FROM:** Steve Allen, JBC Analyst, 303-866-4961

**SUBJECT:** Department of Law Comeback

**DATE:** March 15, 2007

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During figure setting for the Department of Law, several discrepancies were identified in Staff's figure setting document. This memo identifies the correct numbers.

1. Page 11 of the numbers pages, in the request column, on the Fraudulent Documents line, staff indicated that the Department had requested 65,874 cash funds and 1.0 FTE. The correct request for this line is \$138,061 and 2.0 FTE, comprised of \$72,187 General Fund, \$65,874 Cash Funds.
2. Page 11 of the numbers pages, in the recommendation column, on the Federal Reimbursement line, staff indicated a recommendation of \$45,822 and 0.5 FTE. The correct amount is \$0 and 0.0 FTE.
3. Page 7 of the numbers pages, on the Victims Assistance line in the Recommendation column, the Correct recommendation is \$69,191.
5. Page 26, the correct blended legal rate is \$72.03. The box uses an incorrect total cost for LSSA. The blended legal rate was presented correctly on page 56.
6. Staff failed to reduce the classified and exempt salary survey by the amount of SAED. The correct salary survey after this adjustment is:

Classified salary survey: \$278,941, comprised of \$114,731 General Fund, \$37,397 cash funds, \$108,862 cash funds exempt, and \$17,951 federal funds.

Exempt salary survey: \$759,834, comprised of \$196,085 General Fund, \$12,305 cash funds, \$541,856 cash funds exempt, and \$9,588 federal funds

# **COLORADO GENERAL ASSEMBLY JOINT BUDGET COMMITTEE**



## **FY 2007-08 STAFF FIGURE SETTING: DEPARTMENT OF LAW**

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

**Prepared By:**

**Stephen P. Allen, JBC Staff**  
**March 15, 2007**

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**FY 2007-08 FIGURE SETTING  
STAFF PRESENTATION TO THE JOINT BUDGET COMMITTEE:**

**DEPARTMENT OF LAW**

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	FY 2004-05 Actual	FY 2005-06 Actual	FY 2006-07 Approp	FY 2006-07 Request	FY 2007-08 Recommend	Rec v Approp
<div> DEPARTMENT OF LAW  John W. Suthers, Attorney General </div>						
<b>(1) ADMINISTRATION</b>						
<i>Primary Functions are comprised of Department administration including budgeting, accounting, and information technology.</i>						
Personal Services	2,219,080	2,404,272	2,474,053	2,638,104	2,630,408	
FTE	<u>37.1</u>	<u>36.7</u>	<u>38.7</u>	<u>39.7</u>	<u>39.7</u>	
General Fund	5,000	5,000		0	0	
Cash Funds	2,214,080	2,399,272	5,000	5,000	5,000	
Cash Funds Exempt			2,469,053	2,633,104	2,625,408	
Health, Life and Dental	<u>806,245</u>	<u>918,370</u>	<u>1,166,472</u>	<u>1,349,104</u>	<u>1,423,679</u>	
General Fund	238,465	263,367	363,616	439,084	461,603	
Cash Funds	51,207	73,885	63,732	80,104	90,556	
Cash Funds Exempt	503,362	566,360	720,233	805,870	847,378	
Federal Funds	13,211	14,758	18,891	24,046	24,142	
Short-term Disability	<u>31,765</u>	<u>31,786</u>	<u>25,199</u>	<u>31,594</u>	<u>31,935</u>	
General Fund	8,554	8,310	7,560	9,591	9,571	
Cash Funds	1,788	2,743	1,515	1,830	1,832	
Cash Funds Exempt	20,516	19,370	15,625	19,363	19,631	
Federal Funds	907	1,363	499	810	901	
S.B. 04-257 Amortization Equalization Disburse.	n/a	<u>52,568</u>	<u>172,286</u>	<u>295,256</u>	<u>303,805</u>	
General Fund		7,448	51,310	92,544	92,272	
Cash Funds		5,124	10,027	7,670	17,229	
Cash Funds Exempt		38,512	107,570	187,194	185,792	
Federal Funds		1,484	3,379	7,848	8,512	

	FY 2004-05 Actual	FY 2005-06 Actual	FY 2006-07 Approp	FY 2006-07 Request	FY 2007-08 Recommend	Rec v Approp
S.B. 06-235 Supplemental Amortization Equalization						
Disbursement	n/a	n/a	n/a	<u>62,558</u>	<u>62,558</u>	
General Fund				17,229	17,229	
Cash Funds				3,692	3,692	
Cash Funds Exempt				39,813	39,813	
Federal Funds				1,824	1,824	
Salary Survey for Classified Employees	<u>152,486</u>	<u>233,165</u>	<u>246,897</u>	<u>326,222</u>	<u>299,245</u>	
General Fund	58,514	95,590	104,828	132,256	122,554	
Cash Funds	21,563	33,861	31,760	44,322	40,404	
Cash Funds Exempt	61,113	87,853	95,857	130,430	117,193	
Federal Funds	11,296	15,861	14,452	19,214	19,094	
Salary Survey for Exempt Employees	<u>346,453</u>	<u>806,921</u>	<u>987,957</u>	<u>979,531</u>	<u>802,087</u>	
General Fund	92,068	189,218	241,127	239,382	205,490	
Cash Funds	5,004	12,937	12,940	18,195	12,990	
Cash Funds Exempt	246,786	598,087	723,918	711,192	573,338	
Federal Funds	2,595	6,679	9,972	10,762	10,269	
Classified Performance-based Pay	<u>74,611</u>	<u>84,436</u>	<u>0</u>	<u>76,442</u>	<u>122,210</u>	
General Fund	32,542	32,647	0	30,804	25,543	
Cash Funds	922	11,757	0	10,933	17,488	
Cash Funds Exempt	35,109	34,114	0	30,049	71,444	
Federal Funds	6,038	5,918	0	4,656	7,735	

	FY 2004-05 Actual	FY 2005-06 Actual	FY 2006-07 Approp	FY 2006-07 Request	FY 2007-08 Recommend	Rec v Approp
Exempt Performance-based Pay	<u>246,767</u>	<u>201,260</u>	<u>0</u>	<u>157,218</u>	<u>256,353</u>	
General Fund	58,588	44,132	0	39,396	66,582	
Cash Funds	1,075	3,153	0	2,530	4,133	
Cash Funds Exempt	184,991	152,212	0	113,965	182,369	
Federal Funds	2,113	1,763	0	1,327	3,269	
Workers' Compensation	<u>39,810</u>	<u>45,668</u>	<u>55,453</u> S	<u>51,963</u>	<u>pending</u>	
General Fund	12,559	13,728	17,031	16,268		
Cash Funds	2,602	3,161	3,930	3,630		
Cash Funds Exempt	23,670	27,667	33,141	30,867		
Federal Funds	979	1,112	1,351	1,198		
Operating Expenses	<u>187,833</u>	<u>302,659</u>	<u>190,143</u>	<u>190,643</u>	<u>190,643</u>	
General Fund	187,833	250,687	176,529	177,029	0	
Cash Funds Exempt	0	51,972	13,614	13,614	190,643	
Administrative Law Judges	<u>6,408</u>	<u>0</u>	<u>1,268</u> S	<u>1,327</u>	<u>pending</u>	
Cash Funds	6,408	0	1,268	1,327		
Cash Funds Exempt	0	0	0	0		
Purchase of Services from Computer Center - GF	33,443	29,862	54,978 S	27,138	<u>pending</u>	
Payment to Risk Management and Property Funds - GF	75,065	26,082	89,130 S	88,196	<u>pending</u>	
Vehicle Lease Payments	<u>28,225</u>	<u>25,353</u>	<u>39,904</u> S	<u>46,359</u> B	<u>57,483</u>	
General Fund	16,542	7,448	15,637	10,952	12,066	
Cash Funds	1,912	3,543	4,724	10,506	13,753	
Cash Funds Exempt	4,047	6,452	10,270	16,260	23,023	
Federal Funds	5,724	7,910	9,273	8,641	8,641	

	FY 2004-05 Actual	FY 2005-06 Actual	FY 2006-07 Approp		FY 2006-07 Request		FY 2007-08 Recommend	Rec v Approp
ADP Capital Outlay	<u>66,777</u>	<u>49,543</u>	<u>29,550</u>	S	<u>101,100</u>	B	<u>91,325</u>	
General Fund	0	0	2,725		45,619		35,844	
Cash Funds	6,489	2,165	0		0		0	
Cash Funds Exempt	60,288	1,083	26,825		40,350		40,350	
Federal Funds	0	46,295	0		15,131		15,131	
IT Asset Maintenance	<u>396,410</u>	<u>322,625</u>	<u>358,296</u>		<u>358,296</u>		<u>358,296</u>	
Cash Funds	38,049	1	37,982		37,699		37,699	
Cash Funds Exempt	358,361	316,311	320,314		320,597		320,597	
Federal Funds	0	6,313	0		0		0	
Leased Space	<u>26,292</u>	<u>26,292</u>	<u>26,292</u>		<u>29,686</u>		<u>29,686</u>	
General Fund	4,372	4,372	4,372		4,961		4,961	
Cash Funds	3,583	3,583	3,583		3,657		3,657	
Cash Funds Exempt	18,337	0	18,337		20,901		20,901	
Federal Funds	0	18,337			167		167	
Capitol Complex Leased Space	<u>906,405</u>	<u>976,506</u>	<u>1,009,085</u>		<u>1,058,946</u>		<u>pending</u>	
General Fund	279,447	294,071	309,995		331,531			
Cash Funds	59,313	67,717	71,503		73,969			
Cash Funds Exempt	545,366	590,939	603,008		629,036			
Federal Funds	22,279	23,779	24,579		24,410			
Communications Services Payments	<u>3,448</u>	<u>4,624</u>	<u>6,043</u>	S	<u>5,028</u>		<u>pending</u>	
General Fund	1,795	1,986	2,399		2,061			
Cash Funds	318	318	431		314			
Cash Funds Exempt	181	1,166	1,271		1,239			
Federal Funds	1,154	1,154	1,942		1,414			
Attorney General Discretionary Fund - GF	5,000	5,000	5,000		5,000		5,000	

	FY 2004-05 Actual	FY 2005-06 Actual	FY 2006-07 Approp	FY 2006-07 Request	FY 2007-08 Recommend	Rec v Approp
<b>SUBTOTAL - Administration</b>	<b>5,652,523</b>	<b>6,546,992</b>	6,938,006	7,817,153	6,664,714	-3.9%
FTE	<u>37.1</u>	<u>36.7</u>	<u>38.7</u>	<u>39.7</u>	<u>39.7</u>	<u>1.0</u>
General Fund	1,104,787	1,273,948	1,446,237	1,691,812	1,058,715	-26.8%
Cash Funds	205,233	228,948	248,395	301,686	248,433	0.0%
Cash Funds Exempt	4,276,207	4,891,370	5,159,036	5,704,031	5,257,880	1.9%
Federal Funds	66,296	152,726	84,338	119,624	99,685	18.2%

## (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 state government.*

*Cash Funds Exempt are earned from state agencies through the blended hourly rate for the provision of legal services.*

*Cash Funds are earned from non-state agencies and state enterprises such as PERA and the State Lottery Commission.*

Personal Services	13,277,571	14,055,579	15,364,193 S	16,156,393 B	16,095,662	
FTE	<u>189.5</u>	<u>186.2</u>	<u>199.7</u>	<u>200.8</u>	<u>200.6</u>	
Cash Funds	513,972	1,000,000	945,000	945,000	1,000,000	
Cash Funds Exempt	12,763,599	13,055,579	14,419,193	15,211,393	15,095,662	
Operating and Litigation - CFE	631,565	690,050	969,576 S	905,926 B	903,656	
Indirect Cost Assessment - CFE	1,990,161	2,088,238	2,109,083	2,158,796 B	2,458,442	
<b>SUBTOTAL - Legal Services to State Agencies</b>	<b>15,899,297</b>	<b>16,833,867</b>	18,442,852	19,221,115	19,457,760	5.5%
FTE	<u>189.5</u>	<u>186.2</u>	<u>199.7</u>	<u>200.8</u>	<u>200.6</u>	<u>0.9</u>
Cash Funds	513,972	1,000,000	945,000	945,000	1,000,000	5.8%
Cash Funds Exempt	15,385,325	15,833,867	17,497,852	18,276,115	18,457,760	5.5%



	FY 2004-05 Actual	FY 2005-06 Actual	FY 2006-07 Approp	FY 2006-07 Request	FY 2007-08 Recommend	Rec v Approp
<b>(3) CRIMINAL JUSTICE AND APPELLATE</b>						
<i>Primary Functions include investigation and provision of legal services related to criminal appeals and crimes against the state such as tax evasion and workers' compensation fraud. Cash funds are from the Manufactured Home Fund and cash exempt are from custodial funds.</i>						
<b>Special Prosecution Unit -Total</b>	1,459,038	1,006,677	1,065,815	1,197,129	1,194,091	
FTE	<u>15.4</u>	<u>11.5</u>	<u>11.8</u>	<u>12.8</u>	<u>12.8</u>	
General Fund	787,021	822,591	870,019	992,484	990,007	
FTE	n/a		9.3	10.3	10.3	
Cash Funds	179,578	184,086	195,796	204,645	204,084	
FTE	n/a		2.5	2.5	2.5	
Cash Funds Exempt	492,439	0	0	0	0	
Insurance Fraud Unit - CFE	n/a	221,422	620,195	596,233	594,563	
FTE		2.6	7.6	7.6	7.6	
Securities Fraud Unit	n/a	411,977	448,472	465,077	463,762	
FTE		<u>5.3</u>	<u>5.6</u>	<u>5.6</u>	<u>5.6</u>	
General Fund		89,264	113,590	117,130	116,799	
FTE			2.0	2.0	2.0	
Cash Funds Exempt		322,713	334,882	347,947	346,963	
FTE			3.6	3.6	3.6	
Appellate Unit - GF	1,734,246	1,857,271	2,062,584	2,187,500	2,177,260	
FTE	24.8	25.1	28.0	28.0	28.0	
Medicaid Fraud Grant	950,559	928,786	1,065,816	1,284,704	1,281,613	
FTE	<u>10.8</u>	<u>11.0</u>	<u>11.0</u>	<u>14.0</u>	<u>14.0</u>	
General Fund	235,757	236,137	266,408	321,130	320,372	
Federal Funds	714,802	692,649	799,408	963,574	961,241	

	FY 2004-05 Actual	FY 2005-06 Actual	FY 2006-07 Approp	FY 2006-07 Request	FY 2007-08 Recommend	Rec v Approp
Capital Crimes Prosecution Unit - GF	332,230	330,535	350,255	362,710	361,781	
FTE	3.9	3.9	4.0	4.0	4.0	
Peace Officers Standards and Training Board Support	<u>6.0</u>	<u>6.0</u>	1,155,202	1,209,151	1,208,125	
FTE	0	0	<u>6.0</u>	<u>6.0</u>	<u>6.0</u>	
General Fund	1,056,218	1,144,444	0	44,638	44,638	
Cash Funds	127,830	11,493	1,155,202	1,164,513	1,163,487	
Cash Funds Exempt			0	0	0	
Victims Assistance	62,660	65,718	67,697	69,521	69,521	
FTE	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>	
General Fund	46,449	65,718		0	0	
Cash Funds Exempt	16,211	0	67,697	69,521	69,521	
Federal Funds			0	0	0	
Indirect Cost Assessment	<u>144,104</u>	<u>141,503</u>	<u>158,262</u>	<u>158,262</u>	<u>Pending</u>	
Cash Funds	81,185	76,396	91,512	91,512		
Cash Funds Exempt	62,919	65,107	66,750	66,750		
<b>SUBTOTAL - Criminal Justice and Appellate</b>	<b>5,866,885</b>	<b>6,119,826</b>	6,994,298	7,530,287	7,350,716	5.1%
FTE	<u>61.9</u>	<u>66.4</u>	<u>75.0</u>	<u>79.0</u>	<u>79.0</u>	<u>4.0</u>
General Fund	3,089,254	3,335,798	3,662,856	4,025,592	4,010,857	9.5%
Cash Funds	1,316,981	1,404,926	1,442,510	1,460,670	1,367,571	-5.2%
Cash Funds Exempt	729,637	686,453	1,089,524	1,080,451	1,011,047	-7.2%
Federal Funds	731,013	692,649	799,408	963,574	961,241	20.2%

	FY 2004-05 Actual	FY 2005-06 Actual	FY 2006-07 Approp	FY 2006-07 Request	FY 2007-08 Recommend	Rec v Approp
<b>(4) WATER AND NATURAL RESOURCES</b>						
<i>Primary Functions are comprised of investigative duties and legal services associated with environmental lawsuits.</i>						
Federal and Interstate Water Unit - GF	382,140	404,926		483,640	482,426	
FTE	4.8	4.6		5.5	5.5	
Defense of Arkansas River Compact	<u>135,967</u>	<u>140,000</u>	<u>140,000</u>	<u>0</u>	<u>0</u>	
General Fund	95,000	68,667	68,667	0	0	
Cash Funds Exempt	40,967	71,333	71,333	0	0	
Defense of the Colorado River Basin Compact - CFE	n/a	10,307	758,880	758,880	758,880	
FTE		0.5	4.0	4.0	4.0	
Consultant Expenses - CFE	20,426	0	0	50,000	50,000	
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)	410,262	412,100	439,286	453,280	452,001	
FTE	<u>4.8</u>	<u>4.8</u>	<u>4.8</u>	<u>4.8</u>	<u>4.8</u>	
General Fund	102,374	30,129	413,286	427,329	426,123	
Cash Funds Exempt	307,888	381,971	26,000	25,951	25,878	
CERCLA Contracts	<u>597,204</u>	<u>736,850</u>	<u>600,000</u>	<u>600,000</u>	<u>600,000</u>	
General Fund	35,934	0	175,000	175,000	175,000	
Cash Funds Exempt	561,270	736,850	425,000	425,000	425,000	
Natural Resource Damage Claims at Rocky Mountain Arsenal	n/a	n/a	742,312	2,665,007	2,661,667	
FTE			2.0	2.0	2.0	
General Fund				2,665,007	738,972	
Cash Funds				0	1,922,695	

	FY 2004-05 Actual	FY 2005-06 Actual	FY 2006-07 Approp	FY 2006-07 Request	FY 2007-08 Recommend	Rec v Approp
Indirect Cost Assessment - CFE	48,712	46,205	0	0	<u>Pending</u>	
<b>SUBTOTAL - Water and Natural Resources</b>	<b>1,594,711</b>	<b>1,750,388</b>	3,102,923	5,010,807	5,004,974	61.3%
FTE	<u>9.6</u>	<u>9.9</u>	<u>15.8</u>	<u>16.3</u>	<u>16.3</u>	<u>0.5</u>
General Fund	635,874	503,722	1,821,710	3,800,976	3,795,216	108.3%
Cash Funds Exempt	958,837	1,246,666	1,281,213	1,209,831	1,209,758	-5.6%

#### (5) CONSUMER PROTECTION

*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.*

Consumer Protection and Anti-Trust	1,189,949	1,273,739	1,358,593	1,485,156	1,481,229	
FTE	<u>14.8</u>	<u>15.8</u>	<u>16.0</u>	<u>17.0</u>	<u>17.0</u>	
General Fund	677,664	680,423	729,353	844,005	841,874	
Cash Funds	62,746	63,605	64,737	65,984	65,799	
Cash Funds Exempt	449,539	529,711	564,503	575,167	573,556	
Collection Agency Board	170,412	186,236	232,612	286,287	285,667	
FTE	<u>3.4</u>	<u>3.5</u>	<u>4.5</u>	<u>5.2</u>	<u>5.2</u>	
Cash Funds	170,412	142,118	232,612	238,718	238,098	
Cash Funds Exempt	0	44,118	0	47,569	47,569	

	FY 2004-05 Actual	FY 2005-06 Actual	FY 2006-07 Approp	FY 2006-07 Request	FY 2007-08 Recommend	Rec v Approp
Uniform Consumer Credit Code (UCCC)	709,352	718,844	807,699	875,717	873,437	
FTE	<u>8.7</u>	<u>8.9</u>	<u>10.5</u>	<u>11.3</u>	<u>11.3</u>	
Cash Funds	292,802	718,844	752,560	823,772	766,606	
Cash Funds Exempt	416,550	0	55,139	51,945	106,831	
Indirect Cost Assessment	<u>182,667</u>	<u>182,894</u>	<u>215,322</u>	<u>215,322</u>	<u>Pending</u>	
Cash Funds	142,075	140,890	172,258	172,258		
Cash Funds Exempt	40,592	42,004	43,064	43,064		
<b>SUBTOTAL - Consumer Protection</b>	<b>2,252,380</b>	<b>2,361,713</b>	2,614,226	2,862,482	2,640,333	1.0%
FTE	<u>26.9</u>	<u>28.2</u>	<u>31.0</u>	<u>33.5</u>	<u>33.5</u>	<u>2.5</u>
General Fund	677,664	680,423	729,353	844,005	841,874	15.4%
Cash Funds	668,035	1,065,457	1,222,167	1,300,732	1,070,503	-12.4%
Cash Funds Exempt	906,681	615,833	662,706	717,745	727,956	9.8%

#### (6) SPECIAL PURPOSE

*Primary Functions are comprised of the investigation and legal services associated with various special purpose programs especially large, one-time lawsuits. Funding also includes the State subsidy for district attorney salaries.*

District Attorneys' Salaries - GF	1,298,887	1,301,835	1,310,681	1,313,037	1,313,037	
Litigation Management and Technology Fund - CFE	273,657	325,000	325,000	325,000	325,000	
Statewide HIPAA Legal Services - GF	25,076	27,596	20,331	20,331	21,609	
Trinidad Correction Facility Construction Litigation - CFE	387,893	0	0	0	0	
HMO Lawsuit Expenses - CFE	0	0	0	0	0	

	FY 2004-05 Actual	FY 2005-06 Actual	FY 2006-07 Approp	FY 2006-07 Request	FY 2007-08 Recommend	Rec v Approp
Arkansas River Litigation Damage Award - CFE	34,615,146	0	0	0	0	
Tobacco Litigation	n/a	221,411	125,000	S 225,000	225,000	
General Fund		221,411	0	100,000	100,000	
Cash Funds Exempt		0	125,000	125,000	125,000	
Federal Reimbursement for Illegal Immigration Costs (S.B. 06S-1014) - GF	n/a	n/a	45,822	45,822	45,822	
FTE			0.5	0.5	0.5	
Fraudulent Documents (S.B. 06-110)	n/a	n/a	68,879	65,874	65,874	
FTE			1.0	1.0	1.0	
General Fund			0	0	0	
FTE			0.0	0.0	0.0	
Cash Funds			68,879	65,874	65,874	
FTE			1.0	1.0	1.0	
Referendum K - GF			43,446	S 43,466	B 43,466	
FTE			0.5	0.5	0.5	
<b>SUBTOTAL - Special Purpose</b>	36,600,659	1,875,842	<u>1,939,159</u>	<u>2,038,530</u>	<u>2,039,808</u>	<u>5.2%</u>
<b>FTE</b>	<u>0.0</u>	<u>0.0</u>	<u>2.0</u>	<u>2.0</u>	<u>2.0</u>	<u>0.0</u>
General Fund	1,323,963	1,550,842	1,420,280	1,522,656	1,523,934	7.3%
FTE	0.0	0.0	1.0	1.0	1.0	0.0
Cash Funds	0	0	68,879	65,874	65,874	-4.4%
FTE	0.0	0.0	1.0	1.0	1.0	0.0
Cash Funds Exempt	35,276,696	325,000	450,000	450,000	450,000	0.0%
FTE	0.0	0.0		0.0	0.0	0.0
<b>DEPARTMENT OF LAW</b>						

	FY 2004-05 Actual	FY 2005-06 Actual	FY 2006-07 Approp	FY 2006-07 Request	FY 2007-08 Recommend	Rec v Approp
<b>TOTAL FUNDS</b>	<b>67,866,455</b>	<b>35,488,628</b>	40,031,464	44,480,374	43,158,305	7.8%
FTE	<u>325.0</u>	<u>327.4</u>	<u>362.2</u>	<u>371.3</u>	<u>371.1</u>	<u>8.9</u>
General Fund	6,831,542	7,344,733	9,080,436	11,885,041	11,230,596	23.7%
Cash Funds	2,704,221	3,699,331	3,926,951	4,073,962	3,752,381	-4.4%
Cash Funds Exempt	57,533,383	23,599,189	26,140,331	27,438,173	27,114,401	3.7%
Federal Funds	797,309	845,375	883,746	1,083,198	1,060,926	20.0%

**FY 2007-08 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, Administrative Counsel, and their associated administrative staff;
- *Human Resources*, which includes the hiring of new employees, providing training to Department staff, and managing employee benefits, as well as consulting 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, training, and operation of the Attorney General's website;
- *Text Management*, which produces about 75 percent of the Department's documents including legal briefs and other court-related manuscripts; and
- *Administrative Services*, which provides front-desk support, handles the switchboard, distributes mail, oversees the Department's vehicle fleet, 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 cash funds exempt 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, cash funds exempt, and federal funds, reflecting the funding sources of the divisions to which the central appropriations will be distributed.

#### **Decision Item #5: 1.0 Additional Information Technology FTE**

With this Decision Item, the Department requests an appropriation of \$85,345, comprised of \$7,225 General Fund and \$78,120 cash funds exempt, so it can add 1.0 FTE to its Information Technology (IT) staff. The second and subsequent year cost of the Decision Item is \$78,620, comprised of \$500 General Fund and \$78,120 cash funds exempt. This FTE will deal with networking and security. Of the \$85,345 cost, \$78,120 cash funds exempt is from indirect cost assessments and will pay for the 1.0 FTE, \$500 General Fund is for added operating expenses, and \$6,725 General Fund for ADP Capital Outlay.

The Department cites several reasons why it needs the extra FTE. First, statewide computer security requirements have increase substantially as a consequence of the passage of H.B. 06-1157, IT Security in Public Agencies, which mandated a number of security measures such as regular risk assessment and vulnerability testing, as well as thorough documentation of testing procedures and the preparation of regular reports. While these measures will, without question, enhance IT security, they come at a cost. The Department indicates that compliance with H.B. 06-1157 has thus far required 0.3 Information Technology professional FTE and the Department states that 0.3 FTE will be required for the indefinite future. The Legislative Council Staff Fiscal Note for H.B. 06-1157 contained no specific estimates of implementation costs for the various agencies of state government, but it recognized that there would be such costs, stating, "Since new guidelines and protocols are yet to be determined, future fiscal impact on each department cannot be assessed at this time. It is assumed that the budget request process will provide the General Fund appropriations necessary for each department to cover the cost to ensure compliance with the bill's requirements."

Second, there has been substantial growth of Department of Law FTE over the last decade; during that period, the Department's FTE count increased by 16.6 percent. Each of these FTE require computer and network support. The Department notes that its IT group has grown from 12 to 14 over this period, but the two extra FTE were added to deal with a specific problem: the ever growing demand for electronic litigation. These two FTE directly support the department's litigation efforts, helping to prepare for electronic courtroom presentations, for example. There has been no growth in the number of general IT support FTE.

Third, there has been a steady growth in the amount of supported software. In addition to Microsoft Office, the Department now uses such legal software as Web View, Case Map, Concordance, Opticon, and Sanction. There has also been substantial grow in the use of Personal Digital Assistants (PDA's), which also require support.

**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 exempt employees. The Department's attorneys are all exempt, other employees are classified. Classified employees are governed by State's Personnel Rules and Procedures. Exempt positions are not governed by these rules.

**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 2005-06 Actual	FY 2006-07 Appropriation	FY 2007-08 Request	FY 2007-08 Recommend.
Office of the Attorney General	7.2	8.0	8.0	8.0
Human Resources	1.9	2.5	2.5	2.5
Fiscal and Accounting	5.9	6.5	6.5	6.5
Information Technology Services	13.7	13.7	14.7	14.7
Legal Support Services	8.0	8.0	8.0	8.0
<b>Total</b>	<b>36.7</b>	<b>38.7</b>	<b>39.7</b>	<b>39.7</b>

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

Item	Total	GF	CF	CFE	FF	FTE
FY 2006-07 Long Bill	2,474,053	0	5,000	2,469,053	0	38.7
Classified Salary Survey	64,793	64,793	0	0	0	0.0
Exempt Salary Survey	26,268	26,268	0	0	0	0.0
Base Adjustment (0.5%)	(12,826)	(455)	(25)	(12,346)	0	0.0
Decision Item #5, Additional IT FTE	78,120	0	0	78,120	0	1.0
Fund Mix Adjustment	0	(90,606)	25	90,581	0	0.0
<b>Staff Recommendation</b>	<b>2,630,408</b>	<b>0</b>	<b>5,000</b>	<b>2,625,408</b>	<b>0</b>	<b>39.7</b>
Department Request	2,638,104	0	5,000	2,633,104	0	39.7
Difference	(7,696)	0	0	(7,696)	0	0.0

The cash funds exempt source is indirect cost recoveries; the cash funds are 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 0.5 percent base reduction approved by the Committee. Also note that the staff recommendation includes a fund mix adjustments that reduces the use of General Fund, replacing it with increased cash funds exempt 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 **\$1,423,679**, comprised of \$461,603 General Fund, \$90,556 cash funds, \$847,378 cash funds exempt, and \$24,142 federal funds pursuant to common policy as approved by the Committee for this line item.

**Short-term Disability.** Staff recommends total funding of **\$31,935**, comprised of \$9,571 General Fund, \$1,832 cash funds, \$19,631 cash funds exempt, and \$901 federal funds.

**Amortization Equalization Disbursement.** Pursuant to Committee common policy, Staff recommends total funding of **\$303,805**, comprised of **\$92,272** General Fund, **\$17,229** cash funds, **\$185,792** cash funds exempt, and **\$8,512** federal funds

**Supplemental Amortization Equalization Disbursement.** Pursuant to Committee common policy, Staff recommends total funding of **\$62,558**, comprised of **\$17,229** General Fund, **\$3,692** cash funds, **\$39,813** cash funds exempt, and **\$1,824** federal funds.

**Salary Survey for Classified Employees.** Pursuant to Committee common policy, Staff recommends total funding of **\$299,245**, comprised of **\$122,554** General Fund, **\$40,404** cash funds, **\$117,193** cash funds exempt, and **\$19,094** federal funds.

**Salary Survey for Exempt Employees.** The Department requests a salary survey appropriation of **\$979,531** for its exempt employees, a request that deviates from committee common policy.

During each of the past two years, the Department has requested and the Committee has approved salary survey increases for the Department's exempt employees that exceeded the salary survey increases that classified employees have received. In each of those years, the Department presented evidence, in the form of a study prepared by a consulting firm, showing that its attorneys are paid significantly less than comparable attorneys elsewhere. This request is essentially a continuation request by the Department to remain competitive with the salaries of similar positions in the public sector.

An October 2006 report conducted by Fox Lawson & Associates indicates that the Department has made significant progress toward reducing the large 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 approximately 4.5 percent below comparable pay ranges at eighteen city and county attorney offices along the Front Range. However, as the following table shows, a significant *average salary* disparity persists for all attorney grades.

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

Position Title	AG's Office Average	Primary Market Average	Difference
Deputy Attorney General	\$110,999	\$131,625	18.6%
1st Assistant Attorney General	98,374	107,149	8.9%
Assistant Attorney General II	82,636	91,847	11.1%
Assistant Attorney General I	68,825	70,607	2.6%
Attorney I	54,912	58,892	7.2%

Other data in the report support the view that while salary increases in FY 2005-06 exceeded the primary market, the Department of Law is still lagging compensation levels within similar pay ranges.

The Fox Lawson & Associates report also points out that the Department of Law lags many of its competitors in other areas as well. For example, the Department of Law does not offer tuition assistance for continuing education or reimburse employees for bar examination fees. This further exaggerates the Department's lower compensation levels for attorneys. All of these factors have contributed to double attorney digit turnover in recent years – 16.8 percent in FY 2002-03; 11.2 percent in FY 2003-04; and 22.0 percent in FY 2004-05 and 12.0% in FY 2005-06. The Department believes that competitive compensation levels are the primary means of retaining a qualified workforce.

The Department's request has the following two components: 1) a 4.5 percent salary increase for all exempt positions; and 2) a secondary increase for certain employees depending on their salary range placement and the number of years from their bar passage date. The following table summarizes the mechanics of the secondary increase.

Years from Bar	Location in Salary Range			
	0-25%	26-50%	51-75%	76-100%
20+	4.0%	3.0%	0.0%	0.0%
15-19.9	3.0%	2.0%	0.0%	0.0%
10-14.9	2.0%	1.0%	0.0%	0.0%
5-9.9	1.0%	0.5%	0.0%	0.0%
0-4.9	0.5%	0.0%	0.0%	0.0%

For example, an attorney who is eleven years from her bar date and is paid in the second quartile of the classification pay range would receive a salary increase of one percent under the Department's request. The Attorney General's Office believes this will address both the broad disparity between Department salaries and the primary market, as well as specific disparities within job classifications.

The Attorney General's Office could never hope to compete with either the salaries of private sector

attorneys or the budgets of federal agencies. On the one hand, lower salaries make it difficult to compete for recent law school graduates who often have substantial loans to repay and have plenty of opportunities for significantly higher pay. On the other hand, attorneys at the Department of Law are not required to seek out clients or maintain the demanding schedule of the partner track at private sector law firms.

Item	Amount
a. Cost if the Department's exempt employees received the same 3.7% salary survey appropriation that classified employees in the "Professional" job category will receive.	\$659,362
b. Cost of the 4.5% salary survey component of the Attorney General's request.	802,087
b - a	142,725
c. Cost of the Attorney General's "secondary" increase.	177,444
b + c = Total cost of the Attorney General's request.	979,531

**Staff recommends an exempt salary survey appropriation of \$802,087, comprised of \$205,490 General Fund, \$12,990 cash funds, \$573,338 cash funds exempt, and \$10,269 federal funds, which corresponds to a salary survey appropriation that equals 4.5% of base salaries.**

**Performance-based Pay for Classified Employees.** Pursuant to Committee common policy, Staff recommends total funding of **\$122,210**, comprised of \$25,543 General Fund, \$17,488 cash funds, \$71,444 cash funds exempt, and \$7,735 federal funds

**Performance-based Pay for Exempt Employees.** Pursuant to Committee common policy, Staff recommends total funding of **\$256,353**, comprised of \$66,582 General Fund, \$4,133 cash funds, \$182,369 cash funds exempt, and \$3,269 federal funds

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

**Operating Expenses.** Staff recommends **\$190,643, comprised of \$177,029 General Fund and \$13,614 cash funds exempt.** This appropriation, which corresponds to the Department's request, is the combination of last year's appropriation of \$190,143, comprised of \$176,529 General Fund and \$13,614 cash funds exempt, and \$500 for Decision Item #5, 1.0 Additional Information Technology FTE, which was discussed above.

**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.

**Vehicle Lease Payments.** This line item funds leases for 21 Department vehicles that are part of the statewide fleet. Five of these vehicles are high mileage cars that are projected to have odometer readings between 138,000 and 150,000 miles by June 2008. The Department has requested and staff recommends that each of these five vehicles be replaced during FY 2007-08. The appropriation for this line will also reflect a \$3,192 increase that resulted from the General Assembly's approval, during supplementals, of a new vehicle for the Attorney General. The appropriation will also reflect \$975 for a new vehicle related to Decision Item #6, Medicaid Fraud Unit. **Staff recommends an appropriation of \$57,483, comprised of \$12,066 General Fund, \$13,753 cash funds, \$23,023 cash funds exempt, and \$8,641 federal funds.**

The Department requests an appropriation of \$46,359, comprised of \$10,952 General Fund, \$10,506 cash funds, \$16,260 cash funds exempt, and \$8,641 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 has been used to reflect one-time expenditures such as personal computers and office equipment for new FTE that are added by Long Bill decision items and by special bills. The appropriations on this line are one-year expenditures that not expected to 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 elsewhere in this document.

Item	Total	GF	CF	CFE	FF	FTE
DI #2, 1.0 Extra Attorney FTE for Consumer Protection	6,725	6,725	0	0	0	0.0
DI #4, 1.0 FTE Additional Criminal Investigator for the Special Prosecutions Unit.	10,625	10,625	0	0	0	0.0
DI #5, 1.0 Additional Information Technology FTE	6,725	6,725	0	0	0	0.0
DI #6, 3.0 Additional FTE for Medicaid Fraud Unit.	20,175	5,044	0	0	15,131	0.0
DI #7, 1.5 Extra Attorney and Legal Assistant for the Uniform Consumer Credit Code and the Collection Agency Board Units.	13,450	0	0	13,450	0	0.0
DI #8, Bring Arkansas River Work in House.	6,725	6,725	0	0	0	0.0
DI #9 and BA #9a, Legal Services for other Departments	26,900	0	0	26,900	0	0.0
Fund Mix Adjustment						

Item	Total	GF	CF	CFE	FF	FTE
ADP Recommendation	91,325	35,844	0	40,350	15,131	0.0
Department Request	91,325	35,844	0	40,350	15,131	0.0
Difference	0	0	0	0	0	0.0

**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 that have already been acquired. The appropriation also funds maintenance agreements and software licensing agreements. New compute 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. **Staff recommends total funding of \$358,296 for this line item,** which is comprised of \$37,699 cash funds and \$320,597 cash funds exempt, which corresponds to the Department's request. The overall appropriation equals last year's appropriation, the only change is a \$283 decrease of the cash funds appropriation and an offsetting \$283 increase of the cash funds exempt appropriation. Note that there is no General Fund appropriation on this line. The Department pays its General Fund IT asset maintenance costs out of the Litigation Management and Technology Fund appropriation, which will be discussed later.

**Leased Space.** This appropriation pays for offsite space for document storage. **Staff recommends the Department's request for total funding of \$29,686,** comprised of \$4,961 General Fund, \$3,657 cash funds, \$20,901 cash funds exempt, and \$167 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. A cash funded program in a state agency would receive a cash funds appropriation to pay its legal bill while a General Fund program would receive a General Fund appropriation. The Department of Law collects these payments when it provides legal services, but it cannot spend the money unless it too has an appropriation. Without

such an appropriation it cannot pay the salaries of the attorneys who provided the legal services or pay associated expenses. 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 a cash funds exempt transfer; it appears in the cash funds exempt column of the Long Bill with a (T) notation. If the purchasing agency is an enterprise or another entity outside the state TABOR district, the appropriation to the Department of Law is a cash funds transfer. For Fiscal Year 2006-07, appropriations for the Legal Services to State Agencies division represent 46 percent of the Department's total budget and 55 percent of its total FTE. About 95 percent of the Division's funding is cash funds exempt with the remainder cash 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, no matter how much experience they have. 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 310,241 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 the first reason why the Department of Law is always among the last presented during figure setting – the Department of Law's appropriation depends on the legal services appropriations to other Departments.
2. Determine the total number of legal-service hours that Legal Services to State Agencies could deliver if its FTE were at the level in last year's Long Bill. The FTE appropriation to Legal Services to State Agencies equaled 195.9 FTE in the FY 2006-07 Long Bill, and 168.4 of these FTE are attorneys and paralegals who provide legal services directly to departments and bill those departments on an hourly rate. The remaining FTE are administrative and support staff who do not provide legal services directly. Since each FTE who bills is capable of providing 1800 hours of legal services per year, these 168.4 FTE can provide  $168.4 * 1800 = 303,120$  hours of legal services, a shortfall of 7,121 hours, which equates to 3.96 extra 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	310,241
b. Appropriation of FTE in the FY 2006-07 Long Bill to LSSA	195.9
c. Of this FTE appropriation, the number who provide legal services (remainder are administration and support staff)	168.4
d. Number of legal service hours these FTE can provide @ 1800 hours per FTE	303,120
e. Extra hours needed to supply hours approved by the JBC	7,121
f. Convert to extra FTE @ 1800 hours per FTE	4.0
g. Prospective cost of operating LSSA assuming that the 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 potted appropriations so it does not equal the direct appropriation to LSSA)	22,380,552
Cost per legal-service hour	
= g/a	
= "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.	\$72.14

Because this calculation is somewhat simplified, the actual blended legal rate is \$72.15, a penny higher while the number of extra FTE is 3.9, a tenth lower. Staff will not examine the formulas that are used to calculate the attorney rate and the paralegal rate.

Note that several factors influence the blended legal rate year 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 3.9 FTE. These extra attorneys need administrative support staff, which JBC staff recommends be added at the rate of 1.0 support FTE for each 5.0 FTE increase of attorneys. Since attorney FTEs are recommended to increase by 3.9, this corresponds to an extra 0.8 support staff FTE. In total, **JBC staff recommends that the FTE appropriation for the Legal Services to State Agencies Unit be increased by 4.7 FTE** as indicated in the following table.

<b>Staffing Summary</b>	<b>FY 05-06 Actual</b>	<b>FY 06-07 Appropriation</b>	<b>FY 07-08 Request</b>	<b>FY 07-08 Recommend.</b>
Attorneys	136.3	139.5	139.9	143.8
Administrative Staff, including Paralegals	49.9	56.4	56.0	56.8
Total	186.2	195.9	195.9	200.6

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

<b>Item</b>	<b>Total</b>	<b>GF</b>	<b>CF</b>	<b>CFE</b>	<b>FF</b>	<b>FTE</b>
FY 2006-07 Long Bill	15,049,194	0	945,000	14,104,194	0	195.9
Classified Salary Survey	88,925	0	0	88,925	0	0.0
Exempt Salary Survey	699,213	0	0	699,213	0	0.0
FY 2006-07 Special Bills	110,691	0	0	110,691	0	1.3
2 <sup>nd</sup> Year Impact of FY2006-07 Special Bills	29,689	0	0	29,689	0	0.5
Base Adjustment (0.5%)	(79,889)	0	(4,725)	(75,164)	0	0.0
Legal-Services Decision Items Approved by JBC for Other Departments	<u>251,407</u>	<u>0</u>	<u>0</u>	<u>251,407</u>	<u>0</u>	<u>3.8</u>
Subtotal	16,149,230	0	940,275	15,208,955	0	201.5
Adjustment to correspond with 4.7 FTE increase computed above	(53,568)	0	0	(53,568)	0	(0.9)
Fund mix adjustment to reflect anticipated receipts from outside the state TABOR district	0	0	59,725	(59,725)	0	0.0
Staff Recommendation	16,095,662	0	1,000,000	15,095,662	0	200.6

**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.

<b>Item</b>	<b>Total</b>	<b>GF</b>	<b>CF</b>	<b>CFE</b>	<b>FF</b>	<b>FTE</b>
FY 2006-07 Long Bill	812,182	0	0	812,182	0	0.0
FY 2006-07 Special Bills	55,240	0	0	55,240	0	0.0
2 <sup>nd</sup> Year Impact of FY2006-07 Special Bills	15,004	0	0	15,004	0	0.0
Legal-Services Decision Items Approved by JBC for Other Departments	26,730	0	0	26,730	0	0.0
Adjustment to correspond with 4.7 FTE increase computed above	(5,500)	0	0	(5,500)	0	0.0

Item	Total	GF	CF	CFE	FF	FTE
Staff Recommendation	903,656	0	0	903,656	0	0.0

**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. **Staff recommends an appropriation of \$2,458,442 cash funds exempt.**

## CRIMINAL JUSTICE AND APPELLATE

This division is comprised of eight subdivisions:

- Special Prosecution Unit
- Insurance Fraud Unit
- Securities Fraud Unit
- Appellate Unit
- Medicaid Fraud Grant
- 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 a wide variety of cases involving gang crimes and other organized criminal activity, white collar crimes, political corruption, election fraud, mortgage fraud, misappropriation of state funds, tax evasion, and environmental crimes. The unit also coordinates the activities of the Colorado statewide grand jury and pursues Mexican nationals wanted for murders committed in Colorado. It focuses on multi-jurisdictional cases that would be difficult or impossible for local law enforcement personnel to pursue because they lack the authority to investigate and prosecute crimes outside of their jurisdictions. For example, only the State has the authority and the resources to pursue Mexican nationals who are wanted for murders committed in Colorado. The Department has one attorney who is responsible for compiling and translating documents for this purpose. Once this information is provided to Mexican authorities, the expense of locating, prosecuting, and if necessary incarcerating these individuals is paid for by the Mexican government. If the Attorney General's Office no longer prosecuted such cases, these murders would go unsolved and unpunished.

During figure setting for the 2005 legislative session, the Securities and Insurance Fraud Units were

split off from the Special Prosecutions Unit and given their own separate Long Bill lines. The cash funds exempt portion of the Special Prosecution Unit's appropriation was transferred to the new lines at that time.

The Special Prosecutions unit is now 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.

**Decision Item #4. 1.0 FTE Additional Criminal Investigator for the Special Prosecutions Unit.**

With this Decision Item, the Department requests \$99,156 General Fund and 1.0 additional FTE for an additional criminal investigator. The \$99,156 request consists of \$88,531 for personal services and \$10,625 for ADP Capital Outlay. In the second and subsequent years, the decision item will require an \$88,531 General Fund appropriation.

The Special Prosecutions Unit currently has two criminal investigators. One spends about 80 percent of his time investigating environmental crimes, while the other is currently investigating gang crime. These investigators often focus on multi-jurisdictional crimes that are difficult or impossible for local law enforcement officers to investigate because they cannot investigate outside their own jurisdictions. An example is the "211 Crew", a gang that ran criminal enterprises out of prisons located in a variety of jurisdictions around the state.

These two investigators simply do not have enough time to investigate all of the cases that are worthy of investigation. For example, the Special Prosecutions Unit currently is investigating four major mortgage fraud cases, which each involve multiple properties. The Department suspects that there are five or six other large mortgage fraud cases out there that it could pursue, but it currently does not know the scope of these cases because it lacks the resources to investigate them. Note that mortgage fraud cases are challenging work for investigators; a single case can involve 2,000 pages of documents that must be unearthed and then reviewed. An investigator can at most work on one major case at a time and perhaps three or four smaller cases. Local jurisdictions seldom investigate such crimes. In most cases, the statute of limitations runs out three years after the commission of these crime; if the Special Prosecutions unit does not investigate these crimes, it is likely that they will never be investigated and no one will ever be brought to justice.

**Staff recommends that the Committee approve the Department's request for this decision item.**

The following table summarizes staffing levels within the division.

Staffing Summary	FY 05-06 Actual	FY 06-07 Appropriation	FY 07-08 Request	FY 07-08 Recommend.
Attorneys	5.2	5.8	5.8	5.8
Investigators	4.0	4.0	5.0	5.0

Staffing Summary	FY 05-06 Actual	FY 06-07 Appropriation	FY 07-08 Request	FY 07-08 Recommend.
Administrative Staff	1.9	2.0	2.0	2.0
Total	11.1	11.8	12.8	12.8

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

Item	Total	GF	CF	CFE	FF	FTE
FY 2006-07 Long Bill	1,065,815	870,019	195,796	0	0	11.8
Classified Salary Survey	14,618	10,695	3,923	0	0	0.0
Exempt Salary Survey	30,190	24,890	5,300	0	0	0.0
Base Adjustment (0.5%)	(5,063)	(4,128)	(935)	0	0	0.0
Decision Item #4, 1.0 FTE Additional Criminal Investigator	88,531	88,531	0	0	0	1.0
Staff Recommendation	1,194,091	990,007	204,084	0	0	12.8
Department Request	1,197,129	992,484	204,645	0	0	12.8
Difference	(3,038)	(2,477)	(561)	0	0	0.0

Note that the base adjustment equals 0.5 percent of the amount that the Department has allocated to personal services, not 0.5 percent of the entire appropriation.

**Insurance Fraud Unit.** This line, which funds insurance fraud investigations and prosecutions, was split off from the Special Prosecutions line in FY 2005-06. The source of funds is a cash funds exempt transfer from the Division of Insurance Cash Fund, which is appropriated in the Department of Regulatory Agencies. Pursuant to Section 10-3-209 (4), C.R.S., the Division of Insurance Cash Fund derives a substantial portion of its revenue from insurance premium tax revenues with the remainder of the premium tax revenue flowing to the General Fund. This means that the transfer from the Division of Insurance Cash fund is essentially a transfer of General Fund. If this transfer rises by \$1, the amount of premium tax revenue flowing to the General Fund will decline by \$1.

The following table presents staffing for the Insurance Fraud Unit.

Staffing Summary	FY 05-06 Actual	FY 06-07 Appropriation	FY 07-08 Request	FY 07-08 Recommend.
Attorneys	1.1	2.1	2.1	2.1
Investigators	1.0	4.0	4.0	4.0
Administrative Staff	0.5	1.5	1.5	1.5
Total	2.6	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:

Item	Total	GF	CF	CFE	FF	FTE
FY 2006-07 Long Bill	240,245	0	0	240,245	0	2.6
S.B.06-110,InsuranceFraud	350,925	0	0	350,925	0	5.0
Classified Salary Survey	2,480	0	0	2,480	0	0.0
Exempt Salary Survey	3,697	0	0	3,697	0	0.0
Base Adjustment (0.5%)	(2,784)	0	0	(2,784)	0	0.0
Staff Recommendation	594,563	0	0	594,563	0	7.6
Department Request	596,233	0	0	596,233	0	7.6
Difference	(1,670)	0	0	(1,670)	0	0.0

**Securities Fraud Unit.** This line, which funds securities fraud investigations and prosecutions, was split off from the Special Prosecutions line in FY 2005-06. The line is funded by the General Fund plus a cash fund exempt transfer from the Division of Securities Cash Fund, which is appropriated in the Department of Regulatory Agencies. The following table presents staffing for the Unit.

Staffing Summary	FY 05-06 Actual	FY 06-07 Appropriation	FY 07-08 Request	FY 07-08 Recommend.
Attorneys	2.1	2.1	2.1	2.1
Investigators	1.4	2.0	2.0	2.0
Administrative Staff	1.8	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:

Item	Total	GF	CF	CFE	FF	FTE
FY 2006-07 Long Bill	448,472	113,590	0	334,882	0	5.6
Classified Salary Survey	5,706	3,761	0	1,945	0	0.0
Exempt Salary Survey	11,777	0	0	11,777	0	0.0
Base Adjustment (0.5%)	(2,193)	(552)	0	(1,641)	0	0.0
Staff Recommendation	463,762	116,799	0	346,963	0	5.6
Department Request	465,077	117,130	0	347,947	0	5.6

Item	Total	GF	CF	CFE	FF	FTE
Difference	(1,315)	(331)	0	(984)	0	0.0

**Appellate Unit.** This unit represents the State of Colorado in criminal cases that are appealed to state and federal appellate courts. The cases include a variety of serious crimes such as homicide, assault, sexual assault, kidnaping, theft/burglary, drug related crimes, and crimes against children. The unit is funded exclusively by the General Fund. The following table presents staffing for the program.

Staffing Summary	FY 05-06 Actual	FY 06-07 Appropriation	FY 07-08 Request	FY 07-08 Recommend.
Attorneys	22.2	25.0	25.0	25.0
Administrative Staff	2.9	3.0	3.0	3.0
Total	25.1	28.0	28.0	28.0

**Request for a deviation from the common policy for base reductions:** The Department's budget submission did not apply OSPB's 0.2 percent base reduction to this line item. The Department states that it did not apply the reduction because it believes that the appropriation for the Appellate Unit is barely adequate for the unit to perform its statutory duties. The Department now requests that the common policy, 0.5 percent base reduction not be applied to this line, though it did not designate this deviation from common policy as a Decision Item.

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

Item	Total	GF	CF	CFE	FF	FTE
FY 2006-07 Long Bill	1,987,284	1,987,284	0	0	0	27.0
H.B.06-1028, Increase Number of Judges	68,910	68,910	0	0	0	1.0
Classified Salary Survey	4,146	4,146	0	0	0	0.0
Exempt Salary Survey	127,160	127,160	0	0	0	0.0
Base Adjustment (0.5%)	(10,240)	(10,240)	0	0	0	0.0
Staff Recommendation	2,177,260	2,177,260	0	0	0	28.0
Department Request	2,187,500	2,187,500	0	0	0	28.0
Difference	(10,240)	(10,240)	0	0	0	0.0

**Medicaid Fraud Grant.** This unit, which is required by federal law, investigates and prosecutes criminal fraud against the Medicaid program as well as misconduct against patients at Medicaid funded facilities throughout the State including physical abuse, sexual abuse, threatened abuse, and criminal neglect. Administrative remedies to recover improperly received Medicaid funds may consist of withholding future payments, license revocation/suspension, or program suspension. The program qualifies for an enhanced Medicaid matching rate, meaning that the federal government pays 75 percent of the unit's total costs, while the State provides the remaining 25 percent.

**Decision Item #6, 3.0 Additional FTE for Medicaid Fraud Unit.**

With this decision item, the Department requests an additional appropriation of \$216,117 and 3.0 FTE, comprised of \$54,030 General Fund and \$162,087 federal funds. The FTE will consist of two criminal investigators and one paralegal. The following table details the request:

Item	FY 2007-08	FY 2008-09
Medicaid Fraud Program	194,967	197,535
General Fund	48,742	49,384
Federal Funds	146,225	148,151
Administration - ADP capital outlay	20,175	0
General Fund	5,044	0
Federal Funds	15,131	0
Administration - Fixed vehicle	975	2,921
General Fund	244	730
Federal Funds	731	2,191
Total	216,117	200,456
General Fund	54,030	50,114
Federal Funds	162,087	150,342

Colorado's Medicaid program has grown exponentially in last 15 years. In 1989, the Medicaid Fraud Unit had 10.0 FTE and the state's Medicaid program spent approximately \$500 million on 200,000 recipients. In 1994, the Fraud Unit added one investigator to bring the unit to its present size of 11.0 FTE as Colorado's Medicaid program reached 265,000 recipients and approximately \$1 billion. By 2006, the Medicaid program had grown to approximately \$3 billion and 440,000 recipients. Thus in the last 16 years, dollars expended by the Medicaid program have grown by 600 percent, recipients have increased by 110 percent, and the size of the Medicaid Fraud unit has risen by 10%. During this same period the cases that the fraud unit investigates have become more complex. There are now more multi-state cases and more cases that involving electronic claims processing. The Department asserts that it no longer has adequate staff to investigate Medicaid provider fraud, given the amount of growth in the program in the last decade and a half. The Department also notes that other branches of law enforcement such as local DAs have a very hard time pursuing cases of this sort. For one thing, much of the information that a Medicaid fraud investigator needs is protected by HIPAA, making it difficult or impossible to obtain the data. An investigator also needs a working



knowledge of the Medicaid laws, something seldom encountered elsewhere in law enforcement. The three additional FTE requested in this decision item will allow the Fraud Unit to process cases more quickly and allow it to pursue more cases. Also note that this program qualifies for an enhanced medicaid match, meaning that the Federal Government picks up 75 percent of the cost. The state gets to keep recoveries; they are deposited in the General Fund.

**Staff recommends that the Committee approve this decision item.**

Staffing Summary	FY 05-06 Actual	FY 06-07 Appropriation	FY 07-08 Request	FY 07-08 Recommend.
Attorneys	2.0	2.0	2.0	2.0
Investigators	7.0	7.0	9.0	9.0
Administrative Staff	2.0	2.0	3.0	3.0
Total	11.0	11.0	14.0	14.0

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

Item	Total	GF	CF	CFE	FF	FTE
FY 2006-07 Long Bill	1,065,816	266,408	0	0	799,408	11.0
Classified Salary Survey	16,009	1,557	0	0	14,452	0.0
Exempt Salary Survey	9,972	0	0	0	9,972	0.0
Base Adjustment (0.5%)	(5,151)	(1,263)	0	0	(3,888)	0.0
Decision Item #6, Medicaid Fraud	194,967	48,742	0	0	146,225	3.0
Fund Mix Adjustment to bring the Federal Contribution to 75%.	0	4,928	0	0	(4,928)	0.0
Staff Recommendation	1,281,613	320,372	0	0	961,241	14.0
Department Request	1,284,704	321,130	0	0	963,574	14.0
Difference	(3,091)	(758)	0	0	(2,333)	0.0

**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 has been 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 is supported by the General Fund.

Staffing Summary	FY 05-06 Actual	FY 06-07 Appropriation	FY 07-08 Request	FY 07-08 Recommend.
Attorneys	1.8	2.0	2.0	2.0
Investigators	1.1	1.0	1.0	1.0
Administrative Staff	1.0	1.0	1.0	1.0
Total	3.9	4.0	4.0	4.0

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

Item	Total	GF	CF	CFE	FF	FTE
FY 2006-07 Long Bill	350,255	350,255	0	0	0	4.0
Classified Salary Survey	4,564	4,564	0	0	0	0.0
Exempt Salary Survey	8,510	8,510	0	0	0	0.0
Base Adjustment (0.5%)	(1,548)	(1,548)	0	0	0	0.0
Staff Recommendation	361,781	361,781	0	0	0	4.0
Department Request	362,710	362,710	0	0	0	4.0
Difference	(929)	(929)	0	0	0	0.0

**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 29,000 certification records.

### **Decision Item #3, Digitize P.O.S.T. Board Records.**

With this Decision Item, the Department Requests an appropriation of \$44,638 General Fund so it can scan and index more than 400,000 paper documents that are now stored in file cabinets maintained by the POST Board. The second year cost of the Decision Item is \$1,098 General Fund. The Department plans to engage the Integrated Document Solutions group, a division within the Department of Personnel, to do the scanning and indexing.

A peace officer is a public sector worker who is charged with upholding the peace. In Colorado, certain categories of peace officers must be certified by the Police Officer Standards and Training (POST) Board. Those certified include police officers, sheriffs and deputy sheriffs, State Patrol Officers, Colorado Parks and Recreation Officers, and Community Parole Officers. Without such

certification an individual cannot work as a peace officer in the designated areas. In addition to establishing training and certification standards for individuals, the POST Board also regulates peace officer training academies and peace officer skill building programs.

The POST Board maintains records for all certified peace officers. Records gathered since 2004 are largely digital but the older records, which stretch back into the 1970's when the POST board was established, are still on paper. These paper records hold information on 29,100 present and former peace officers and contain 400,000 to 450,000 individual documents. The documents reside in 20 five drawer file cabinets in the Department. About 55 percent of the individuals covered by these records are active peace officers or reserve peace officers. This decision item will permit the Department to scan and index these paper files and then dispose of them. The result will be a database of digital images that are searchable and viewable from a personal computer and are no longer vulnerable to fire and other threats. This Decision Item originally also included a request for another \$36,274 that would have allowed the Department to develop and begin issuing a secure and verifiable peace officer ID card, however, the Department a obtained a Federal Grant that will cover these costs and, through a budget amendment, is no longer requesting this funding.

The paper documents are vulnerable to fire, water damage and natural deterioration. There are no backups; if a catastrophic loss occurred, it would be impossible replace most of these records. Such a disaster would also create considerable hardship for peace officers who want to move to new peace officer jobs, either within Colorado or outside of the state. New employers must verify a peace officer's certification status with the POST Board before hiring, but, lacking records, the Board would have no means of complying with such requests. The Department estimates that about 200 peace officers per year access the records as they obtain new jobs.

The Department states that it accesses these records approximately 5 times per day, often more, retrieving personal information, academy attendance records, prior employment information, and certification information. The POST records are very useful for peace officers because all the information is in one location and it is reliable data that is trusted by new and prospective employers. If the records were digitized and indexed, they could be accessed more rapidly and could also be transmitted in digital form to current and prospective employers.

The Department has requested General Fund support for this Decision Item because the P.O.S.T. Board Cash Fund, which normally supports the program is barely generating enough revenue to reliably support the P.O.S.T. program now. If this appropriation is funded from the P.O.S.T. Board Cash Fund, the fund will probably be unable to meet its other obligations.

<b>Staffing Summary</b>	<b>FY 05-06 Actual</b>	<b>FY 06-07 Appropriation</b>	<b>FY 07-08 Request</b>	<b>FY 07-08 Recommend.</b>
Program director	1.0	1.0	1.0	1.0
Investigator	2.0	2.0	2.0	2.0

Staffing Summary	FY 05-06 Actual	FY 06-07 Appropriation	FY 07-08 Request	FY 07-08 Recommend.
Administrative Staff	2.9	3.0	3.0	3.0
Total	5.9	6.0	6.0	6.0

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

Item	Total	GF	CF	CFE	FF	FTE
FY 2006-07 Long Bill	1,155,202	0	1,155,202	0	0	6.0
Classified Salary Survey	9,995	0	9,995	0	0	0.0
Base Adjustment (0.5%)	(1,710)	0	(1,710)	0	0	0.0
Decision Item #3	80,912	80,912	0	0	0	0.0
Staff Recommendation	1,244,399	80,912	1,163,487	0	0	6.0
Department Request	1,209,151	44,638	1,164,513	0	0	6.0
Difference	35,248	36,274	(1,026)	0	0	0.0

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.** 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. A portion of the moneys in this fund are transferred to the Department of Law as cash funds exempt to pay for a state victims' services coordinator.

Staffing Summary	FY 05-06 Actual	FY 06-07 Appropriation	FY 07-08 Request	FY 07-08 Recommend.
General Professional	1.0	1.0	1.0	1.0
Total	1.0	1.0	1.0	1.0

The Option 8 calculation follows:

Item	Total	GF	CF	CFE	FF	FTE
FY 2006-07 Long Bill	67,697	0	0	67,697	0	1.0
Classified Salary Survey	1,824	1,824	0	0	0	0.0
Base Adjustment (0.5%)	(330)	(9)	0	(321)	0	0.0

Item	Total	GF	CF	CFE	FF	FTE
Fund Mix Adjustment	0	(1,815)	0	1,815	0	0.0
Staff Recommendation	69,191	0	0	69,191	0	1.0
Department Request	69,521	0	0	69,521	0	1.0
Difference	(330)	0	0	(330)	0	0.0

Note that it is up to the VALE Advisory Board and the Division of Criminal Justice to provide funding for the victims services coordinator, so the anticipated funding may not be forthcoming.

**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 matters concerning the use of surface and groundwater, oil and gas development, mining and minerals, wildlife, state parks, state trust lands, the clean-up of contaminated lands and water, the proper storage or disposal of solid and hazardous wastes, and protection of the state's air and water against pollution. The line items in this Division represent the various Department resources devoted to water rights litigation, both general and specific, as well as legal issues related to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

**Federal and Interstate Water Unit.** This unit provides legal counsel and representation for the State related to: federal water rights claims, such as the U.S. Forest Service reserved rights cases; compliance with federal regulatory programs, such as the federal endangered species act; and defending Colorado's interstate water allocations.

### **Decision Item #8: Bring Arkansas River Work in House.**

The Department has been utilizing outside counsel to litigate the Kansas v. Colorado, the Arkansas river case relating to the Arkansas River Compact, since the mid 1980's. The final decree, which is currently being written by the Special Master, will include a complex and detailed injunction dictating the procedures and calculations for assuring Colorado's compliance with the Compact. Colorado will have to comply with the provisions of this decree for the indefinite future. With this Decision Item, the Department requests an appropriation that will allow it to gradually stop using outside counsel and start doing the required legal work itself. A rapid transition from away from the outside counsel is impossible because of the complexity of the case. Department of Law personnel will have to gradually learn the rules of compliance as the outside counsel winds down its involvement. The Department proposes to:

1. Add 0.5 FTE for in-house compact-compliance work. This will require an extra appropriation of \$40,654 General Fund and 0.5 FTE for the Federal and Interstate Water Unit and a one time

expenditure of \$6,725 for ADP Capital Outlay in the Administration Division for a total FY 2007-07 expenditure of \$40,654 + \$6,725 = \$47,379. The \$40,654 General Fund and 0.5 FTE appropriation to the Federal and Interstate Water Unit will continue in future years.

2. Reduce payments to the outside counsel by \$90,000 in FY 2007-08 and by another \$25,000 in FY 2008-09 so that payments to outside counsel will have fallen from \$140,000 in FY 2006-07 to \$25,000 by FY 2008-09. This will be accomplished by (a) eliminating the \$140,000 appropriation for Defense of the Arkansas River Compact, which is comprised of \$68,667 General Fund and \$71,333 cash funds exempt from the Attorney Fees and Costs Account and (b) substituting a new \$50,000 appropriation for outside consultant expense in FY 2007-08. This consultant expense would decline to \$25,000 in FY 2008-09 and would continue for a period of 2 to 5 years. The Department proposes that the new Consultant Expense appropriation be paid from the General Fund.

In making its case for the extra 0.5 FTE at an annual cost of \$40,654, the Department points to the complexity of the Compact compliance accounting procedures contained in Appendices A through K to the Special Master's Decree. The Department's attorney will need to develop detailed knowledge of the accounting procedures for the storage and delivery of water from the John Martin Reservoir. The attorney will also need to develop a thorough knowledge of in-state water rights within the Arkansas basin. He or she will have to learn the complex rules for calculating depletions and accretions to the usable flow at the state line. Currently, only the outside counsel and the Colorado State Engineer know how this model works. The attorney will also have to learn the rules relating to for acceptable water sources for Replacement and will have to develop a working knowledge of the Decree's dispute-resolution procedure. The Department envisions that the agreement will require periodic modification in the future by mutual agreement of Kansas and Colorado.

**Staff recommends that the Committee approve the Department's request with one funding modification.** The cost of an in-house compliance arrangement will be less than half the cost of letting the outside counsel perform this work in the future. **The proposed modification is that the new \$50,000 appropriation for outside Consultant Expense in FY 2007-08 be finance from the Attorney Fees and Costs Account,** a cash funds exempt source. The Account should have sufficient balance to pay the appropriation in FY 2007-08.

Staffing Summary	FY 05-06 Actual	FY 06-07 Appropriation	FY 07-08 Request	FY 07-08 Recommend.
Attorneys	3.6	4.0	4.5	4.5
Legal Assistants	1.0	1.0	1.0	1.0
Total	4.6	5.0	5.5	5.5

The Option 8 calculation, the Department Request and the staff recommendation is as follows:

Item	Total	GF	CF	CFE	FF	FTE
FY 2006-07 Long Bill	422,445	422,445	0	0	0	5.0
Classified Salary Survey	1,751	1,751	0	0	0	0.0
Exempt Salary Survey	19,600	19,600	0	0	0	0.0
Base Adjustment (0.5%)	(2,024)	(2,024)	0	0	0	0.0
Decision Item #8:Bring Arkansas River Work in House.	40,654	40,654	0	0	0	0.5
Staff Recommendation	482,426	482,426	0	0	0	5.5
Department Request	483,640	483,640	0	0	0	5.5
Difference	(1,214)	(1,214)	0	0	0	0.0

**Defense of Arkansas River Compact.** As discussed in the above presentation of Decision Item #8, Staff recommends eliminating this \$140,000 appropriation, which is comprised of \$68,667 General Fund and \$71,333 cash funds exempt from the Attorneys Fees and Costs account.

**Defense of the Colorado River Basin Compact.** This unit defends 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. In anticipation of impending litigation, this line was added to the Long Bill by a supplemental FY 2005-06 appropriation and a closely related decision item approved during the 2006 session that provided \$758,880 of funding for FY 2006-07 and FY 2007-08. These appropriations allowed the Department to begin preparation for litigation related to the Colorado River Basin Compact. The Department has estimated that preparation for potential litigation will require review of more than a million pages of legal and historical documents. The legal issues will encompass both of the Colorado Basin compacts, an international treaty, a U.S. Supreme Court decision, and a host of federal laws, as well as an historical record stretching back nearly a hundred years. The Department warned that extra appropriations might be required in FY 2007-08, but no further increase has thus far proved necessary. These costs represent discovery and trial preparation costs. If actual litigation begins, there will be additional expenses for the Committee and the General Assembly to consider. The source of funding is the Colorado Water Conservation Board Litigation Fund, created in Section 37-60-121 (2.5) (a), C.R.S., a fund located in the Division of Natural Resources. The moneys in the Colorado Water Conservation Board Litigation Fund are continuously appropriated so appropriations from the Fund are informational in nature. This funding source may not be available in FY 2008-08.

The following table summarizes program staffing:

Staffing Summary	FY 05-06 Actual	FY 06-07 Appropriation	FY 07-08 Request	FY 07-08 Recommend.
Attorneys	0.4	3.0	3.0	3.0

Staffing Summary	FY 05-06 Actual	FY 06-07 Appropriation	FY 07-08 Request	FY 07-08 Recommend.
Legal Assistants	0.1	1.0	1.0	1.0
Total	0.5	4.0	4.0	4.0

The Option 8 calculation, the Department request, and the staff recommendation follow. Note that staff is not proposing a base adjustment because of the unusual nature of the appropriation from the Colorado Water Conservation Board Litigation Fund. Nor is staff recommending that indirect costs be recovered from this fund.

Item	Total	GF	CF	CFE	FF	FTE
FY 2006-07 Long Bill	758,880	0	0	758,880	0	4.0
Classified Salary Survey	0	0	0	0	0	0.0
Exempt Salary Survey	0	0	0	0	0	0.0
No Base Adjustment	0	0	0	0	0	0.0
Staff Recommendation	758,880	0	0	758,880	0	4.0
Department Request	758,880	0	0	758,880	0	4.0
Difference	0	0	0	0	0	0.0

**Consultant Expenses.** As discussed above during the presentation of Decision Item #8, the Department Requests and staff recommends a \$50,000 appropriation for this line. Note that in prior years this line has been used to pay technical and expert witness expenses incurred during water rights litigation. The appropriation is out of the Attorney Fees and Cost Account.

**Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).** This line item provides funding for legal action under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that forces polluters to clean up sites contaminated with hazardous substances. This program has specific authority over ten sites around the State and implements clean up activities at minimal cost to the general population of Colorado taxpayers. Since its inception in FY 1984-85, the CERCLA Litigation Unit has deposited \$22.2 million into the General Fund, \$6.3 million into the Hazardous Substance Response Fund, and \$10.5 million into the Natural Resource Damage Recovery Fund.

Staffing Summary	FY 05-06 Actual	FY 06-07 Appropriation	FY 07-08 Request	FY 07-08 Recommend.
Attorneys	3.6	3.5	3.5	3.5
Legal Assistants	1.0	1.3	1.3	1.3



Staffing Summary	FY 05-06 Actual	FY 06-07 Appropriation	FY 07-08 Request	FY 07-08 Recommend.
Total	4.6	4.8	4.8	4.8

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

Item	Total	GF	CF	CFE	FF	FTE
FY 2006-07 Long Bill	439,286	413,286	0	26,000	0	4.8
Classified Salary Survey	4,852	4,852	0	0	0	0.0
Exempt Salary Survey	9,995	9,995	0	0	0	0.0
Base Adjustment (0.5%)	(2,132)	(2,010)	0	(122)	0	0.0
Staff Recommendation	452,001	426,123	0	25,878	0	4.8
Department Request	453,280	427,329	0	25,951	0	4.8
Difference	(1,279)	(1,206)	0	(73)	0	0.0

The cash funds exempt portion of this appropriation are paid out of the Hazardous Substance Response Fund, which is administered by the Department of Public Health and Environment. It represents the repayment of miscellaneous litigation expenses from settled CERCLA sites.

**CERCLA Contracts.** This line item provides funding for site remediation and technical services at Rocky Mountain Arsenal and at the California Gulch superfund site. Staff recommends total funding of \$600,000 for this line item, comprised of \$175,000 General Fund and \$425,000 cash funds exempt, which corresponds to the Department's request.

#### **Decision Item # 1. Natural Resource Damages Claims at Rocky Mountain Arsenal.**

Since 1982, the Army, Shell, the Environmental Protection Agency (EPA) and the State of Colorado have been involved in enforcement and legal actions designed to clean up the Rocky Mountain Arsenal under the provisions of the Federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Though it has been known for years that environmental damage would remain at the Arsenal after remediation efforts concluded, the extent of the residual damage, termed "natural resource damages" by CERCLA, could not be evaluated until a substantial part of the cleanup was completed and cleanup effectiveness could be assessed.

The Department's CERCLA unit, which handles this and other CERCLA cases, believes that the state has a strong claim for Natural Resource Damages based on injuries to groundwater and wildlife at the Arsenal. The state may also have viable claims for injuries to surface water and air. Taken together, these claims have a value that the CERCLA Unit believes to be in the range of several tens of millions of dollars to well over \$100 million. Note, however, that under CERCLA's rules, any natural resource damage recovery must be spent on the restoration, replacement or acquisition of

equivalent natural resources; the state could not, for example, use the damages to support the General Fund.

The state's natural resource damages claim will be resolved in a two stage process that is delineated in detail in CERCLA and in supporting Federal Regulations:

- 1. Assessment.** An assessment of damages must be compiled. The Department believes this work is best left to an experienced contractor who will undertake a study that will set a monetary value on damages.
- 2. Litigation.** 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 be avoided or could terminate abruptly if the State, Shell, and the Army agree to an out-of-court settlement

This is the third successive year in which the Department has presented the Committee with an Arsenal-related decision item. During the 2005 legislative session, the Committee approved a \$137,500 cash-funds-exempt CERCLA decision item that allowed the Department to hire technical experts to collect and assemble preliminary data needed for the pursuit of natural resource damages at the Arsenal. During the 2006 session, the Committee approved an extra appropriation of \$746,642 General Fund and 2.0 FTE for FY 2006-07 and subsequent years to support continued negotiations and litigation. To facilitate tracking, the Committee also created a new Long Bill line titled "Natural Resource Damage Claims at Rocky Mountain Arsenal". The Department is using this appropriation to begin serious preparation for litigation and natural resource damage assessment.

**With this decision item, the Department requests a additional\$1,922,695 General Fund appropriation the Natural Resource Damage Claims at Rocky Mountain Arsenal line item for FY 2007-08.** The requested increase in FY 2008-09 equals \$461,530.

1. The \$1,922,695 of additional funding for FY 2007-08 will allow the Department to engage an environmental consulting firm to conduct the Natural Resource Damage Assessment. The firm will conduct a one-year study that will place a dollar value on the damages at the Arsenal and will propose compensation. Because of the technical, expert-driven nature of the state's claims, the large sums involved, and the lack of case law (especially for groundwater claims), Stratus will develop multiple lines of evidence to support the state's claim. The Department believes that a high-quality assessment is critical for successful litigation and that a high quality study will enhance the prospects for a negotiated settlement.
2. The continuing funding of \$461,530 in subsequent years, when combined with the preexisting \$742,312 base appropriation level will allow the state to litigate its claim in federal district court. Assuming that a negotiated settlement remains out of reach, the Department anticipates that litigation will begin in FY 2008-09 and will continue through FY 2009-10. Once the trial is

concluded, the required appropriation will drop to a substantially lower level, probably in the range of several hundred thousand dollars annually if the case is appealed.

The Department does not foresee the need for further decision items related to Rocky Mountain Arsenal natural resource damages.

Staff recommends that the Committee approve this Decision Item with one modification: the decision item should be financed from the Hazardous Substance Response Fund, a fund that was seriously depleted by transfers to the General Fund during the recent economic downturn, but has recently been repaid and now has a balance in excess of \$35 million.

Note that S.B. 07-110, a JBC Bill that deals with the recovery of natural resource damage assessment costs, has worked its way through the legislature. The bill now is being readied for the Governor's signature. This bill directs recovered natural resource damage assessment costs back to the fund from which they originated. Should the state prevail in its action for recovery of Natural Resource Damages, as seems likely, the state will recover this \$1,922,695 expenditure and it will be returned to the Hazardous Substance Response Fund.

The staff recommendation on Decision Item #1 leads to following staffing table:

<b>Staffing Summary</b>	<b>FY 05-06 Actual</b>	<b>FY 06-07 Appropriation</b>	<b>FY 07-08 Request</b>	<b>FY 07-08 Recommend.</b>
Attorneys	2.0	2.0	2.0	2.0
Total	2.0	2.0	2.0	2.0

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

<b>Item</b>	<b>Total</b>	<b>GF</b>	<b>CF</b>	<b>CFE</b>	<b>FF</b>	<b>FTE</b>
FY 2006-07 Long Bill	742,312	742,312	0	0	0	2.0
Base Adjustment (0.5%)	(3,340)	(3,340)	0	0	0	0.0
Decision Item #1	1,922,695	1,922,695	0	0	0	0.0
Refinance Decision Item #1	0	(1,922,695)	1,922,695	0	0	0.0
<b>Staff Recommendation</b>	<b>2,661,667</b>	<b>738,972</b>	<b>1,922,695</b>	<b>0</b>	<b>0</b>	<b>2.0</b>
Department Request	2,665,007	2,665,007	0	0	0	2.0
Difference	(3,340)	(1,926,035)	1,922,695	0	0	0.0

The fund source for the cash fund portion of this recommendation is the Hazardous Substance Response Fund.

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

## **CONSUMER PROTECTION**

**Consumer Protection and Anti-Trust.** Consumer protection functions include: investigating and prosecuting fraudulent trade and advertising practices; responding to consumer complaints about questionable business activity; administering registration or bonding programs for telephone solicitors, health clubs, automobile repossessioners, and manufactured homes; and enforcing Colorado's laws governing tobacco manufacturers who did not participate in the tobacco Master Settlement Agreement. Anti trust responsibilities include: the investigation and prosecution of violations related to price fixing and bid rigging, as well as the intent to establish industry monopolies. Occasionally, moneys are returned to citizens and other affected parties.

### **Decision Item #2: 1.0 Extra Attorney FTE for Consumer Protection**

With this Decision Item, the Department requests \$91,208 General Fund and 1.0 FTE in order to better enforce the Colorado Consumer Protection Act (which is contained in Article 1 of Title 6, C.R.S.) and related consumer protection laws. Of this cost, \$84,483 will be for the Consumer Protection and Anti-Trust program and \$6,725 will be for ADP Capital Outlay in the Administration Division. The cost for FY 2008-09 and subsequently will be \$84,483 General Fund and 1.0 FTE.

This Decision Item will allow the Department to pursue enforcement actions against individuals and entities that it is currently unable to investigate for lack of resources. Since 1990, 43 new deceptive trade practices have been added to the Colorado Consumer Protection Act so that it now contains a total of 78 separate deceptive trade practices. Additions since 1990 have dealt with telemarketing, wheelchairs, hearing aids, manufactured homes, motor vehicle repairs, escrow accounts, time shares, health clubs, dance studios, buyers clubs, motor vehicle leases, air bags, credit cards, health plans, drug pricing, sweepstakes, mortgage loan brokers, foreclosures, identity theft, and the Colorado No-call List. Over that same period, the population of Colorado has grown by 30 percent while the staff of the Consumer Unit, which enforces the Colorado Consumer Protection Act, has grown from 12 to 14 FTE, and one of those two added FTE works full time with the Department of Revenue enforcing the state's laws governing tobacco manufacturers who do not participate in the tobacco Master Settlement Agreement (MSA). Since the MSA attorney does not handle consumer protection matters, the true growth of the Consumer Unit has been only 1.0 FTE or 8.3 percent since 1990. As was discussed during the Department's hearing in January, this problem arose because the fiscal notes prepared for the many bills that added to the Colorado Consumer Protection Act almost never identified a specific cost for the legislation. When the Department submitted fiscal note information that reflected a cost, fiscal notes analysts rejected those costs as too speculative because it was too difficult to predict with any accuracy the number of consumer complaints that would be generated by an isolated change in the Act and it was even more difficult to estimate how many violations of

the new provisions would arise. As a result, when asked to provide fiscal note information, the Department began to report that the costs of these bills were "indeterminate". These indeterminate fiscal notes seldom led to appropriations.

The resulting lack of resources has forced the Department to prioritize. It does not enforce all the consumer protection laws. For example, it seldom enforces motor vehicle repair statutes or sweepstakes statutes. The unit also pursues only the worst violators. Each month, it compile a list of the top 10 companies for which complaints are received, but it never has the resources to get past number 3 on that list.

**Staff recommends that the Committee approve the Department's request for \$91,208 General Fund and 1.0 FTE for this Decision Item.**

Staffing Summary	FY 05-06 Actual	FY 06-07 Appropriation	FY 07-08 Request	FY 07-08 Recommend.
Attorneys	7.9	8.0	9.0	9.0
Legal Assistants	2.0	2.0	2.0	2.0
Investigators	2.0	2.0	2.0	2.0
Administrative Staff	3.9	4.0	4.0	4.0
Total	15.8	16.0	17.0	17.0

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

Item	Total	GF	CF	CFE	FF	FTE
FY 2006-07 Long Bill	1,358,593	729,353	64,737	564,503	0	16.0
Classified Salary Survey	10,762	6,885	1,370	2,507	0	0.0
Exempt Salary Survey	33,935	24,704	0	9,231	0	0.0
Base Adjustment (0.5%)	(6,544)	(3,551)	(308)	(2,685)	0	0.0
Decision Item #2	84,483	84,483	0	0	0	1.0
Staff Recommendation	1,481,229	841,874	65,799	573,556	0	17.0
Department Request	1,485,156	844,005	65,984	575,167	0	17.0
Difference	(3,927)	(2,131)	(185)	(1,611)	0	0.0

Approximately two thirds of the cash fund portion of this appropriation is from the Public Utilities Commission for Colorado No-call List work, with the remainder from the Building Regulation Fund for work related to manufactured homes. Court-awarded settlements provide about two thirds of the cash funds exempt funding while the Defense Account of the Tobacco Litigation Settlement Cash Fund provides the remainder. The tobacco money funds an attorney who helps the Department of Revenue enforce the laws governing manufacturers who did not participate in the Tobacco Master

Settlement Agreement.

**Collection Agency Board.** This Board enforces the Fair Debt Collection Practices Act, which regulates the collection agency industry. Such regulation seeks to protect applicable lending businesses and their borrowers from harassment, abuse, and deceptive practices sometimes used by collection agencies and debt collectors. The Board also ensures that Colorado businesses receive full and timely remittance of recovered funds from these collection agencies.

**Decision Item #7: 1.5 Extra Attorney and Legal Assistant for the Uniform Consumer Credit Code and the Collection Agency Board Units.**

With this Decision Item, the Department requests \$112,745 cash funds exempt and 1.5 FTE to enhance the state's enforcement by its Uniform Consumer Credit Code Unit and the Collection Agency Board Unit. These units currently share a single attorney FTE; the additional FTE will also be attorneys who will handle regulatory and legal work. \$47,569 and 0.7 FTE will be allocated to the Collection Agency Board, and \$51,945 and 0.8 FTE will be allocated to the Uniform Consumer Credit Code Unit. Both of these units have insufficient legal staff to handle the current workload of regulatory and legal actions generated by Colorado Credit laws that it enforces: the Colorado Uniform Consumer Credit Code, the Rental Purchase Agreement Act, the Fair Debt Collection Practices Act, the Child Support Collection Consumer Protection Act, and the Credit Services Organization Act.

The number of entities that these two Units regulate has grown exponentially since the early 1990's. In 1990, there were 88 licensed collection agencies and 157 supervised lenders in Colorado. By 2006, the numbers had grown to 334 licensed collection agencies and 2,336 supervised lenders, 380 percent and almost 1500 percent increases respectively. Over that same time, four investigators were added to the Uniform Consumer Credit Code Unit and the Collection Agency Board Unit, a 32 percent increase, but no attorneys were added. Compounding the growth problem has been the rapid growth in what is known as "sub-prime" lending, including "payday lending." These lenders are typically small and less knowledgeable about lending laws than are their larger lending counterparts. As a consequence, they violate lending laws more frequently. The growth of lending over the internet also presents challenging questions, such as which state's laws to apply when a borrower and lender meet only through the internet and are located in different states. Such "cases of first impression" demand more resources than do cases that deal with established law.

The cost of the Decision Item will be born by the Uniform Consumer Credit Code Fund, which derives revenues from fees paid by regulated lenders. The fund currently has a substantial balance, thus expenditures from the fund are classified as cash funds exempt.

In view of the massive growth of lending activity in this area, which has far outpaced the growth of the two units, **staff recommends that the Committee approve this decision item.**

<b>Staffing Summary</b>	<b>FY 05-06 Actual</b>	<b>FY 06-07 Appropriation</b>	<b>FY 07-08 Request</b>	<b>FY 07-08 Recommend.</b>
Attorneys	0.5	0.5	1.2	1.2
Compliance Investigators	1.0	2.0	2.0	2.0
Administrative Staff	2.0	2.0	2.0	2.0
Total	3.5	4.5	5.2	5.2

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

<b>Item</b>	<b>Total</b>	<b>GF</b>	<b>CF</b>	<b>CFE</b>	<b>FF</b>	<b>FTE</b>
FY 2006-07 Long Bill	232,612	0	232,612	0	0	4.5
Classified Salary Survey	3,620	0	3,620	0	0	0.0
Exempt Salary Survey	2,900	0	2,900	0	0	0.0
Base Adjustment (0.5%)	(1,034)	0	(1,034)	0	0	0.0
Decision Item #7	47,569	0	0	47,569	0	0.7
<b>Staff Recommendation</b>	<b>285,667</b>	<b>0</b>	<b>238,098</b>	<b>47,569</b>	<b>0</b>	<b>5.2</b>
Department Request	286,287	0	238,718	47,569	0	5.2
Difference	(620)	0	(620)	0	0	0.0

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. Uniform Consumer Credit Code This program was created to protect the rights of consumers who borrow money from non banking institutions. These protections include: setting a reasonable limit on lending rates to balance consumer interests and the creditor's ability to earn a fair profit; ensuring creditors adequately disclose the costs associated with the terms of any credit agreement; making consumers aware of fraudulent 'credit repair' businesses and 'rent to own' schemes; and protecting borrowers against unfair credit practices such as abusive repossession and unreasonable default/collection costs. Almost half the lenders licensed under this program are mortgage lenders (although first mortgage, residential lenders and refinance lenders are generally exempt from the Uniform Consumer Credit Code laws), while payday lenders now comprise about one third of the total licensees. For FY 2006-07 and subsequent years, the General Assembly approved a decision item that provided an extra \$55,139 cash funds to the Uniform Consumer Credit Code section, which allowed the section to hire a financial credit examiner to help the section deal with its rapidly growing case load.

Staffing Summary	FY 05-06 Actual	FY 06-07 Appropriation	FY 07-08 Request	FY 07-08 Recommend.
Attorneys	1.5	1.5	2.3	2.3
Credit Examiners	5.6	7.0	7.0	7.0
Administrative Staff	1.8	2.0	2.0	2.0
Total	8.9	10.5	11.3	11.3

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

Item	Total	GF	CF	CFE	FF	FTE
FY 2006-07 Long Bill	807,699	0	752,560	55,139	0	10.5
Classified Salary Survey	12,852	0	12,852	0	0	0.0
Exempt Salary Survey	4,740	0	4,740	0	0	0.0
Base Adjustment (0.5%)	(3,799)	0	(3,546)	(253)	0	0.0
Decision Item #7	51,945	0	0	51,945	0	0.8
Staff Recommendation	873,437	0	766,606	106,831	0	11.3
Department Request	875,717	0	823,772	51,945	0	11.3
Difference	(2,280)	0	(57,166)	54,886	0	0.0

The fund source for both the cash fund and cash funds exempt appropriations is the Uniform Consumer Credit Code Cash Fund, with the cash funds exempt appropriations coming from reserves in the 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., the state pays 80 percent of the salary of every District Attorney (DA) in the state up to a maximum payment of \$53, 600 per DA, which means that the state pays 80 percent of every DA's salary until that salary reaches \$67,000 per year. The state also pays 80 percent of the PERA, medicare, AED and SAED on the first \$67,000 of salary. If the counties in a judicial district decide to pay their DA more than \$67,000, which most do, the counties must pay all costs above \$67,000 themselves. Note that the state only contributes toward the salary of the DA; it does not contribute toward the salary of Assistant or Deputy DAs. **Staff recommends an appropriation of \$1,313,037 General Fund for this line item,** which



corresponds to the Department's request. The increase from last year reflects the increasing cost of AED and SAED.

**Litigation Management and Technology Fund.** This line item was added to the Department's portion of the Long Bill in FY 1994-95 to fund unanticipated legal needs 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 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, or other appropriations from excess earnings of the LSSA program, this excess would revert to the General Fund. The Litigation Management and Technology 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 2006-07, for example, will not be known with certainty until July of FY 2007-08, 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 partially funded appropriations. Note, however, that the amount of excess earnings for FY 2006-07 will be known with certainty during FY 2007-08 supplementals next in 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 exempt source of expenditure. Generally speaking, the court awards that the Department receives that are not designated as custodial moneys are directed to this fund. 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.

As part of its FY 2004-05 budget submission, the Department requested that all excess revenue earned from the Legal Services to State Agencies (LSSA) program be retained in the Litigation Management Fund. The Department also requested that moneys deposited in the Attorneys Fees and

Costs Fund continue to serve as the backup funding source for the Litigation Management Fund. Rather than permit the Department to deposit all excess revenue from the Legal Services to State Agencies (LSSA) program into the Litigation Management Fund, staff recommended and the General Assembly approved increasing the cash funds exempt spending authority for this line item from \$200,000 to \$325,000. The extra \$125,000 is to be spent on small dollar information technology decision items that would otherwise require General Fund dollars.

**Staff recommends the Department's request of \$325,000 cash funds exempt 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 HIPPA 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 HIPPA 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 appropriation equals the blended legal services rate multiplied by 300, which corresponds to an appropriation of  $\$21,609 = 300 * \$72.03$  at the recommended blended legal rate.

**Trinidad Correctional Facility Construction Litigation.** There is no longer a need for this appropriation; the matter has been resolved.

**HMO Lawsuit Expenses.** There is no longer a need for this appropriation; the matter has been resolved.

**Tobacco Litigation.** In FY 2005-06 Colorado received \$80.2 million in payments from the tobacco companies who participate in the Master Settlement Agreement, \$10.9 million less than it would have received had it not been involved in a legal dispute with those manufacturers. The tobacco companies withheld this amount and placed it in escrow; they are expected to continue withholding each year until the dispute is resolved by a panel of arbitrators, who will probably not hear the case until 2008 or 2009. The arbitrators will decide whether Colorado has "diligently enforced" its "qualifying" non-participating manufacturer statutes, the laws governing those tobacco companies that are not party to the Master Settlement Agreement. Colorado was required to enact these statutes when it signed the Master Settlement Agreement. 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 estimated that arbitration will cost a minimum of

\$500,000 to \$750,000. The Attorney General's Office must hire outside counsel for this proceeding because it cannot represent itself; 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.

Senate Bill 07-113, a JBC bill that has passed the Senate and is now working its way through the House, will allow 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. It currently has a balance of \$3.8 million.

The Department's FY 2006-07 supplemental bill contained an appropriation of \$125,000 cash funds exempt from excess earnings of the Legal Services to State Agencies program. **The Department requests an appropriation of \$225,000, comprised of \$100,000 General Fund and \$125,000 cash funds exempt from excess earnings of the Legal Services to State Agencies program.** As noted above, an appropriation from excess LSSA earnings is somewhat risky; it is possible that the excess earnings will not be sufficient to fund this appropriation.

**Staff recommends an appropriation of \$225,000, comprised of \$100,000 General Fund and \$125,000 cash funds exempt from excess earnings, as requested by the Department. Staff also recommends that an appropriation clause be added to S.B. 07-113 that eliminates the General Fund portion of this appropriation and replaces it with a \$100,000 appropriation from the Defense Account of the Tobacco Litigation Settlement Cash Fund.** By keeping this excess earnings appropriation in the Long Bill, this will keep up to \$125,000 of excess earnings from reverting to the General Fund if those excess earnings materialize. During supplementals next year, those excess earnings could be moved from this line and used for General Fund supplementals on other lines of the Department's Long Bill. Any resulting shortfall in the Tobacco Litigation appropriation could be filled in with a supplemental appropriation from the Defense Account of the Tobacco Litigation Settlement Cash Fund.

**Federal Reimbursement for Illegal Immigration Costs (S.B. 06S 1014).** This special-session bill requires the Colorado Attorney General to seek reimbursement from the federal government for all illegal immigration costs incurred by the state. 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 report is to estimate the costs that the state incurs because the Federal Government does not enforce its own laws relating to illegal immigrants. The Department requested an appropriation of \$45,822 for this bill, an amount that was not indicated in the Legislative Council Staff Fiscal Note for the bill. **Staff believes that this cost can be absorbed within existing departmental resources and recommends no appropriation.**

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

### **Decision Item 10A: Implementation of S.B. 06-110.**

Senate Bill 06 110, which became law following the 2006 session, directs the Department to bring civil actions against people and entities who counterfeit identity documents. The final Legislative Council Staff Fiscal Note for S.B. 06-110 indicates that the Department of Law will require \$65,874 cash funds and 1.0 FTE in order to carry out the provisions of the bill during FY 2007-08. **With this Decision Item, the Department requests that the FY 2007-08 appropriation associated with this bill be increased to \$138,061 and 2.0 FTE, comprised of \$72,187 General Fund and \$65,874 cash funds.**

**Legislative History:** Senate Bill 06-110, as it emerged from the Senate Judiciary Committee in March 2006, imposed a fine of not less than \$50,000 on those who knowingly forge, counterfeit, alter, or falsely make or provide any of the documents listed in Title 8, Section 274a.2 (b)(1)(v) of the Code of Federal Regulations. Such documents are generally used for employment-verification purposes. The bill directed fine revenue to the Judicial Stabilization Cash Fund, a fund that had been established three years earlier by S.B. 03-186. Senate Bill 03-186 was a JBC bill that increased court docket fees in order to offset reduced General Fund appropriations to the court system. Revenues from the increased docket fees are deposited in the Judicial Stabilization Cash Fund and are then appropriated to the Judicial Department.

The corresponding Legislative Council Staff Fiscal Note for the Senate-Judiciary-Committee version of S.B. 06-110, dated February 8, 2006, indicated that the bill had no fiscal impact, reflecting the fact that it did not direct any agency of state government to enforce its provisions.

The Senate Appropriations Committee heard S.B. 06-110 on March 17, 2006. It adopted an amendment stating that civil actions to enforce the bill's provisions may be brought by the Attorney General on behalf of the Department of Labor and Employment. It also stated that the Attorney General's costs may be recovered. The amendment further specified that moneys in the Judicial Stabilization Cash fund shall be subject to annual appropriation by the General Assembly to the Office of the Attorney General to pay for this enforcement activity. The amendment added an appropriation clause that provided \$172,197 and 2.5 FTE to the Attorney General for enforcement. This appropriation was consistent with cost information provided to JBC staff by the Attorney General's office. A revised Legislative Council Staff Fiscal Note appeared the next month which also identified a \$172,197, 2.5 FTE cost for implementation. The Fiscal Note added that the revenues generated by the bill were expected to be minimal because those convicted of violating the bill's provisions are likely to have few financial resources.

The bill continued unamended through the legislative process until it reached the House Appropriations Committee in late April. The Appropriations Committee adopted an amendment that reduced the bill's appropriation from \$172,197 and 2.5 FTE to \$68,879 and 1.0 FTE. The amendment did not change any of the bill's other provisions and thus did not alter the amount of work necessary to implement the bill's provisions.

The bill made its way through the remainder of the legislative process without further amendment.

**The Department's Position:** The Department states that it is impossible to implement this legislation with an appropriation of 1.0 FTE; at least one full time mid-level attorney with relevant civil litigation experience and one full time investigator are needed to run the program. The attorney must be a mid-level attorney because he or she will have to work with little supervision due the lack of similar programs elsewhere in the Department. (The investigator will work under the supervision of the attorney.) The Department states that two half time FTEs, one an attorney and the other an investigator, simply could not run the program. The attorney would need specialized legal expertise that does not exist elsewhere in the Department. If this attorney worked half time for this program and half time for another unrelated program, the Attorney would find it very difficult to work in such divergent fields. This means that the Department's only option would be to hire a mid-level attorney who wishes to work half time. The Department indicates that it is difficult to find such a person, especially at a salary level consistent with the current appropriation.

Staff is sympathetic to the Department's assertions and believes that it will be difficult to implement S.B. 06-110 in a satisfactory manner with a single FTE, but Staff is also mindful of the fact that the House Appropriations Committee adopted an amendment that reduced the S.B. 06-110 appropriation to \$68,879 cash funds and 1.0 FTE. The Appropriations Committee adopted this amendment knowing that the Legislative Council Staff Fiscal note indicated more than twice as large a fiscal impact.

There is no evidence that the General Assembly made any sort of mistake when it enacted . Thus **Staff recommends that an appropriation of 1.0 FTE and a \$65,874 cash funds be included in the Long Bill.**

#### **Non prioritized Decision Item: Referendum K**

Referendum K, passed by voters in November 2006, directs the Colorado 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. In January the Department requested and received a \$46,191 General Fund, 0.5 FTE appropriation for FY 2006-07 that allows it to prepare a complaint and related filings. In January, the Department also submitted a budget amendment requesting \$43,466 General Fund and 0.5 FTE to continue this work in FY 2007-08. Should the case proceed to a full trial, the Department has indicated that it will seek additional funds and FTE. Because this budget amendment seeks an increased appropriation relative to the pre supplemental FY 2006-07 appropriation, it is a Decision Item, albeit one that the Department has not prioritized.

The 2006 Blue Book, which was distributed to voters prior to the 2006 election, states that Referendum K will cost the state \$190,000 annually until the lawsuit is resolved. It further states that the Department of Law will require two new attorneys plus support staff for time and work associated with the lawsuit. The Department's request is substantially less that the cost indicated in the Blue Book. Staff believes that the Department's approach is consistent with voter intent yet is suitably cautious since there is a high probability that the case will be dismissed before it goes to trial. **Staff recommends that the Committee approve the Department's request for \$43,466**

## **General Fund and 0.5 FTE.**

### **FOOTNOTES**

Staff recommends **continuation** of the following footnote in the Department's section of the FY 2007-08 Long Bill:

- 93 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, 2006~~. NOVEMBER 1, 2007.

**Comment:** This footnote provides useful information on the fundamental effectiveness of the State's participation in the Medicaid Fraud Control Grant program. Staff recommends continuing this footnote.

Staff recommends **continuation and amendment** of the following footnotes in the Department's section of the FY 2007-08 Long Bill:

- 91 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 ~~\$70.54~~ 74.64 per hour for attorneys and not exceed ~~\$56.18~~ 60.79 per hour for paralegals, which equates to a blended rate of ~~\$67.77~~ 72.03 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. If the Committee revises its common policy decisions before the Long Bill is introduced, these rates will need to be recalculated.

- 94 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, which~~ NEEDS THAT arise during ~~FY 2006-07, FY 2007-08, as well as information technology decision items approved by the General Assembly~~ ASSET MAINTENANCE NEEDS that WOULD OTHERWISE require General Fund or smaller amounts of other funding sources. APPROPRIATIONS DURING FY 2007-08. 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:** The Litigation Management and Technology Fund appropriation was increased from \$200,000 to \$325,000 in the FY 2004-05 Long Bill and this footnote was amended in order to pay for the General Fund portion of the Department's FY 2004-05 Decision Item #4, an information technology asset maintenance request. Since that time, the Department has used this appropriation to pay for all of its General Fund information technology asset maintenance needs. Staff believes that the revised wording is (1) more consistent with Department practice than the old wording, (2) consistent with the original JBC analyst's recommendation, and (3) consistent with original Committee intent. If the JBC analyst had intended this appropriation to only pay for information technology decision items, as the footnote appears to say, then the analyst would have recommended appropriations for the Litigation Management and Technology Fund appropriation in subsequent years that were in line with the General Fund portion of subsequent information technology decision items. Instead, the analyst recommended and the Committee approved a constant \$325,000 appropriation.

Staff recommends **elimination** of the following footnote from the Department's portion of the FY 2007-08 Long Bill:

**92**     **Department of Law, Legal Services to State Agencies --** The Department of Law is requested to make available to the Joint Budget Committee or other agencies of the executive branch, data regarding operating expenses for individual cases that exceed \$500 and are, thus, charged back to the applicable departments.

**Background:** The Department of Law bills its clients separately for (1) legal service hours provided by its attorneys and (2) other "costs" incurred in performing this legal work, to the extent that such costs exceed \$500. These costs might include court filing fees, copying

costs, or the cost of experts. The Department bills for costs in excess of \$500 for the sake of simplicity to eliminate many small invoices; it is not required by statute to do so. The billing rate for legal services is set high enough to cover the \$500 cost.

**Comment:** This footnote was added to the 2005-06 Long Bill during the District Court trial in *Colorado General Assembly v. Owens et al* (the "Headnotes" lawsuit). It became apparent during that trial that agencies of state government were sometimes paying the "costs" associated with their legal expenditures from their operating appropriation, rather than paying the costs from their legal services appropriation as was intended by the General Assembly. It is impossible to examine the reported operating expenditures of an agency and identify legal-services "costs" that have been paid from the listing of operating expenditures. This footnote would *potentially* allow a JBC analyst to identify such operating expenditures, though it does not appear that any analyst has used it in this fashion. The word potential is important, however, because the Department of Law states that it would be unable to provide cost information if that information violated attorney-client privilege, even though the footnote tells the Department to do otherwise.

In view of the fact that (1) the headnote lawsuit has been resolved by the Colorado Supreme Court, (2) No JBC analyst has used this footnote to gather information on legal "costs" charged to the operating expenses line, and (3) the Department of Law's statement that it will provide this information upon request, provided the information does not violate attorney-client privilege, staff recommends that this footnote be discontinued.