

This document contains two sets of FY 2009-10 supplemental requests:

1. Supplemental Requests presented on January 13, 2010.
2. Supplemental Requests presented on February 3, 2010.

**COLORADO GENERAL ASSEMBLY  
JOINT BUDGET COMMITTEE**



**SUPPLEMENTAL REQUESTS FOR FY 2009-10**

**DEPARTMENT OF LAW**

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

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January 13, 2010**

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**Prioritized Supplementals**

**Supplemental Request, Department Priority #1  
 Fiscal Note and Legislative Review Pilot**

	Request	Recommendation
Total	\$0	\$0
FTE	<u>0.0</u>	<u>0.0</u>

<b>Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria?</b> [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]	<b>YES</b>
The Department and JBC staff agree that this supplemental is the result of <i>an unforeseen contingency</i> . While the billing practices that this pilot study seeks to change have existed for a number of years, these practices have only recently begun to cause conflict with client agencies.	

**Department Request:** The Department requests that Long Bill footnote 36, which has appeared in various forms in the Long Bill since the 1990's, be amended as follows:

**36 Department of Law, Special Purpose, Litigation Management and Technology Fund --**  
 It is the intent of the General Assembly to grant the Department of Law additional flexibility by allowing the Department to use funds appropriated in this line item to address unanticipated state legal needs that arise during FY 2009-10, as well as information technology asset maintenance needs that would otherwise require General Fund appropriations during FY 2009-10. THE DEPARTMENT MAY ALSO UTILIZE THE FUND TO PAY FOR LEGISLATIVE AND FISCAL REVIEWS OF PROPOSED LEGISLATION. 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 except for DEFICITS RESULTING FROM LEGISLATIVE AND FISCAL REVIEWS OF PROPOSED LEGISLATION. 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.

This is a one-time amendment to the footnote; the proposed changes would be eliminated in FY 2010-11.

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The Department states that this footnote change will allow it to safely conduct a study (or "pilot") during the 2010 legislative session during which it will measure the number of legal service hours that its attorneys devote to review of legislation being considered by the General Assembly. During the study period the Department will suspend its current practice of billing client agencies for these reviews. The Department will use the information gathered during the study period to eliminate its practice of billing clients for reviews in FY 2010-11 and subsequent years. The Department believes that it will be able to absorb the temporary reduction in revenue resulting from the study, but it requests the footnote change as an insurance policy; if total revenues from other billings are insufficient to cover the revenue reduction, this footnote change will allow it to draw upon the Litigation Management and Technology Fund to cover the shortfall.

**Staff Recommendation:** Staff recommends that the Committee not approve this request for the reasons discussed below.

**Background:** During the course of a session of the General Assembly, attorneys at the Department of Law review most of the bills that are introduced. Some of the reviews are "fiscal" reviews, which are performed in response to requests from the Legislative Council to determine the cost to the Department of Law of implementing the proposed legislation. Others are "legislative" reviews which are conducted in accord with the general duties assigned the Attorney General by Section 24-31-101 (1) (a), C.R.S.

When the Department of Law conducts these reviews for legislation that affects one of its client agencies, the Department bills the client for the attorney time spent performing the review – just as it bills for legal other service provided to clients. Recently, these review charges have caused tension with clients, some of whom feel that they should not pay for the reviews. For example, during the 2009 session, the Department of Revenue was reluctant to allow the Department of Law to meet with Fiscal Notes staff to discuss some prospective legislation because the Department of Revenue did not want to be billed for the discussion. These tensions have led the Department of Law to explore the possibility of charging an internal account for legislative and fiscal review in lieu of charging clients. In order to keep the change revenue neutral, the Department would increase the rates that it charges clients for other legal work by an amount that would exactly offset the lost revenue. On net there would be no change in the total amount that clients collectively pay to the Department of Law.

This proposed change to the Department's billing system will be considered during figure setting for FY 2010-11 when the Committee approves the blended legal rate – the hourly rate that the Department charges client agencies for the services it performs. The main obstacle to implementing the change is the lack of information concerning the number of hours that the Department's attorneys spend conducting fiscal and legislative reviews -- the Department's billing system does not record enough detail to compute the number of hours attorneys spend performing fiscal and legislative

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review. Without knowledge of the number of review hours, it will be hard to set the blended rate accurately for FY 2010-11 if the proposed change is implemented. For example, if the Department's attorneys spend 1000 hours in fiscal and legislative review, the proposed change to the billing system would require the blended hourly legal rate to be increased by 30 cents per hour. If the Department's attorneys spend 2000 hours performing fiscal and legislative review, the blended hourly legal rate would be 60 cents per hour higher.

During the term of this study project, the Department will implement half of the proposed change to its billing system: it will stop billing client agencies for legislative and fiscal review of proposed legislation, thus reducing the revenue it collects, but it will not increase the blended legal rate by an offsetting amount because of the difficulties that would result from such a mid-year adjustment. The Department believes that it will be able to absorb the resulting revenue shortfall, but the proposed changes to footnote 36 will provide the Department with a back-up source of funds in case the revenue shortfall turns out to be larger than expected.

The Department notes that approval of this footnote change does not obligate the Committee to approve the proposed changes to its FY 2010-11 billing methods during figure setting.

**Staff Analysis:** Staff does not recommend that the Committee approve the proposed amendment to the Long Bill for two reasons:

1. The Department should be able to measure the hours attorneys devote to legislative and fiscal review during the upcoming session while continuing to bill client agencies for the cost of these reviews. The resulting measure may be less precise than the measure that would be produced by the proposed study, but it should still give sufficient guidance when setting the blended legal rate for FY 2010-11.
2. The decline in revenue resulting from a suspension of client billings during the proposed pilot study may reduce FY 2010-11 revenues to the General Fund by a difficult-to-estimate amount that could potentially run into the tens of thousands of dollars. Alternately, if an emergency legal expenditure arises that would normally be paid from the Litigation Management and Technology Fund, the change could necessitate a General Fund expenditure that could otherwise be avoided. These possibilities are a consequence of the way that the Litigation Management and Technology Fund operates.

The Litigation Management and Technology Fund, despite its name, is not a cash fund. Instead, it is an appropriation that is funded from two sources:

1. Excess earnings of the Legal Services to State Agencies program during the previous fiscal year. Excess Legal Services to State Agencies earnings arise when the revenues earned by

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the LSSA program exceed the costs of operating the program. Without the Litigation Management and Technology Fund appropriation and the related footnote, this excess would revert to the General Fund. The Litigation Management and Technology Fund appropriation allows the Department to keep some of this excess and use it in the next year.

2. Various court awards that are deposited into the Attorneys Fees and Costs Account, established in Section 24-31-108 (2), C.R.S. This account serves as a backup, filling in the remainder of the appropriation for the Litigation Management and Technology Fund when excess LSSA earnings come up short.

Declines in revenue from the Legal Services to State Agencies program resulting from reduced client billings during the proposed pilot study will reduce excess earnings of the Legal Services to State Agencies program, the major source of funding for the Litigation Management and Technology Fund appropriation. This will reduce the ending balance in the Litigation Management and Technology Fund, which would translate into reduced transfers to the General Fund. Alternately, the reduced amount available for appropriation from the Litigation Management and Technology Fund could mean that the fund will be unable to support some unexpected legal expenses that would otherwise be paid from this fund, thus necessitating a General Fund appropriation.

**Supplemental Request, Department Priority #2  
 Auto Theft Prevention Grant**

	<b>Request</b>	<b>Recommendation</b>
Total - CF	<u>\$72,083</u>	<u>\$72,083</u>
FTE	0.5	0.5

<b>Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria?</b> [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]	<b>YES</b>
JBC staff and the Department agree that this request is the result of <i>data that was not available when the original appropriation was made.</i>	

**Department Request:** The Department of Law requests an appropriation that will allow it to expend \$72,083 from a one-year grant that it has received from the Colorado Automobile Theft Prevention Authority. The grant, which totals \$256,068, runs from April 2010 to April 2011. The Department also requests an appropriation of 0.5 FTE, with which it will hire a full-time investigator and a full-time prosecutor, beginning in April 2010. During figure setting for FY 2010-11, Staff will present the department's request for authority to expend the remainder of this grant.

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**Staff Recommendation:** Staff recommends that the Committee approve this request and appropriate \$72,083 cash funds and 0.5 FTE to the Department on a new Long Bill line titled "Auto-Theft Prevention Grant".

**Background and Analysis:** Colorado Automobile Theft Prevention Authority grants are funded by the \$1 annual fee that S.B. 08-060 (Automobile Theft Prevention Authority) placed on auto insurance policies in Colorado. The Department's grant, which can potentially be renewed for up to four years, will fund a specialized multi-jurisdictional auto theft prosecution team comprised of a full time prosecutor and an investigator. The team will be able to investigate and prosecute large multi-jurisdictional auto theft rings, particularly those involving organized criminal activity. The team will also help increase public awareness of auto theft, and provide training and assistance to local law enforcement investigators and deputy district attorneys in working complex cases. The lack of access to the state grand jury, and the lack of ability of local prosecutors to act outside of their own jurisdictions makes multi-jurisdictional criminal activity difficult or impossible to handle effectively at the local level. The Department of Law has the ability to obtain state-wide jurisdiction and can utilize the statewide Grand Jury, pursuant to the State Grand Jury Act of Section 13-73-101, C.R.S., to investigate crime without regard to county or judicial district boundaries.

**Supplemental Request, Department Priority #3  
 CERCLA Contract Line Refinancing**

<b>Department of Law</b>	<b>Request</b>	<b>Recommendation</b>
Total	<u>\$20,000</u>	<u>\$20,000</u>
General Fund	(75,000)	(75,000)
Reappropriated Funds	95,000	95,000

<b>CDPHE</b>	<b>Request</b>	<b>Recommendation</b>
Total	\$95,000	\$95,000
Cash Funds	\$75,000	\$75,000
Federal Funds	\$20,000	\$20,000

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<b>Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria?</b> [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]	<b>YES</b>
<i>JBC staff and the Department agree that this request is the result of data that was not available when the original appropriation was made.</i>	

**Department Request:** This request is comprised of two parts which can be approved or disapproved separately. Both parts of the request affect the "CERCLA contracts" line item in the Department's portion of the FY 2009-10 Long Bill. In conjunction with the Department of Public Health and Environment, the Department uses CERCLA (the federal Comprehensive Environmental Response, Compensation, and Liability Act) to direct and finance clean up and restoration of sites that have been contaminated by hazardous substances. The CERCLA contracts line item provides funding for contractors who support the work of the CERCLA litigation unit. These contractors include expert witnesses, scientists, hydrologists, and economists.

1. The Department requests that the \$75,000 General Fund appropriation for "CERCLA Contracts" in the Department's FY 2009-10 Long Bill be replaced with a \$75,000 cash funds, FY 2009-10 appropriation of reappropriated funds. These funds originate in the Natural Resource Damage Recovery Fund created in Section 25-16-104.7, C.R.S., which is operated by the Department of Public Health and Environment. The Department of Law will use the appropriation to pay for natural resource damage assessments costs at the California Gulch superfund site near Leadville. This is a two-step appropriation that also requires a \$75,000 increase of the FY 2009-10 cash funds appropriation to the Department of Public Health and Environment in the Long Bill for "Transfer to the Department of Law for CERCLA Contract Oversight-Related Costs." The extra cash funds appropriation to CDPHE would come from the Natural Resource Damage Fund.
  
2. The Department requests an appropriation of \$20,000 reappropriated funds for FY 2009-10 for the "CERCLA Contracts" line item. This spending authority will be used for an existing water-quality monitoring contract at the California Gulch superfund site. The Department of Public Health and Environment has \$20,000 in federal funds available for this work. This is another two-step appropriation that requires a \$20,000 increase of the FY 2009-10 federal funds appropriation to the Department of Public Health and Environment for "Transfer to the Department of Law for CERCLA Contract Oversight-Related Costs."

**Staff Recommendation:** Staff recommends that the Committee approve both parts of this requests and reduce the FY 2009-10 General Fund appropriation to the Department of Law for "CERCLA Contracts" by \$75,000 while increasing the FY 2009-10 appropriation of reappropriated funds for CERCLA Contracts by \$95,000. The reappropriated funds would originate in the

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Department of Public Health and Environment, where FY 2009-10 appropriations for "Transfer to the Department of Law for CERCLA Contract Oversight-Related Costs" would increase by \$20,000 federal funds and by \$75,000 cash funds from the Natural Resource Damage Recovery Fund.

**Background and Analysis:** Part 1 of this request takes advantage of an unusual opportunity to expend moneys from the Natural Resource Damage Recovery Fund for CERCLA contract work. Pursuant to federal law, moneys in this fund can only be used for the restoration, replacement, or acquisition of natural resources that are equivalent to those that were injured, destroyed, or lost as a result of the release of a hazardous substance. In this instance, the Natural Resource Damage Recovery Fund can be used to pay Stratus Consulting, a Boulder-based environmental consulting firm, for restoration analysis at the California Gulch superfund site. The Natural Resource Damage Fund had a \$23.8 million balance at the beginning of FY 2009-10 and only about 10% of the fund balance is expected to be spent during FY 2009-10, so the fund can easily absorb this appropriation. If these funds are not spent for this purpose, they would still have to be used for the restoration, replacement, or acquisition of natural resources. Note that all other appropriations from the Natural Resource Damage Recovery Fund are found in the CDPHE section of the capital construction section of the Long Bill.

Part 2 of this request takes advantage of Federal Funds that are available in the Department of Public Health and Environment, meaning that there will be no net cost to the state, which is the reason that Staff recommends the second part of the supplemental.

**Supplemental Request, Department Priority #4  
 Adjustments to Legal Services to State Agencies**

	Request	Recommendation
Total - RF	\$263,370	\$263,370
FTE	1.9	1.9

<b>Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria?</b> [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]	<b>YES</b>
JBC staff and the Department agree that this request is the result of <i>data that was not available when the original appropriation was made.</i>	

**Department Request:** The Department of Law requests an additional appropriation of \$263,370 reappropriated funds and 1.9 FTE for its Legal Services to State Agencies Division. Of this amount, \$45,218 is for operating and litigation expenses and the remainder is for personal services. This

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request equals the sum of the supplemental requests listed below for FY 2009-10 legal services by other agencies of state government.

Agency - Reason for Request	Amount	Hours	FTE Equivalent	Status
1. Department of Education - ARRA funding for concurrent federal enrollment	\$3,004	40	0.0	Approved
2. Governor's Office - Lobato law suit	330,902	4,390	2.4	Approved
3. Department of Health Care Policy and Financing - Internal Legal Services Director	(150,000)	(1,990)	-1.1	Pending
4. Department of Natural Resources - Legal Services for the Colorado Water Conservation Board	70,706	938	0.5	Pending
5. Department of Public Health and Environment - Legal services for the Medical Marijuana Registry	12,513	166	0.1	Pending
6. Department of Regulatory Agencies - Technical correction to H.B. 09-1136 (Electrical Education Licensing Requirements)	(3,755)	(50)	0.0	Pending
<b>Total</b>	<b>\$263,370</b>	<b>3,494</b>	<b>1.9</b>	

**Staff recommends that the appropriation to the Legal Services to State Agencies Division be changed in step with Committee-approved legal-services supplementals for other state agencies.** If the Committee approves all the requests as listed in the above table, the recommended change of the appropriation to the Department of Law will equal \$263,370 reappropriated funds and 1.9 FTE.

Approval of this supplemental adjustment is implicit in the Committee's legal-services decisions for other departments; without adjustments to the Department of Law's appropriation, the Department will be unable to provide the additional legal services envisioned in the supplementals.

Staff asks permission to adjust the Department's appropriation so it corresponds to all of the legal service decisions that the Committee makes for other Departments when it considers supplemental requests.

**Background:** 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 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

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appropriation must be made to the Department of Law so it can spend the money it receives. The appropriation to the Department of Law is typically classified as reappropriated funds.

**Supplemental Request, Department Priority #5  
 General Fund Reductions**

	<b>Request</b>	<b>Recommendation</b>
Total	(\$670,422)	(\$670,422)
FTE	<u>0.0</u>	<u>0.0</u>
General Fund	(690,962)	(690,962)
Reappropriated Funds	50,000	50,000
Federal Funds	(29,460)	(29,460)

<b>Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria?</b> [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]	<b>YES</b>
<i>JBC staff and the Department agree that this request is the result of data that was not available when the original appropriation was made.</i>	

This supplemental is comprised of two parts that can be approved or disapproved separately.

**Part 1, Transfers from the Natural Resource Damage Recovery Fund**

**Part 1 of this request requires separate legislation for a cash funds transfer.**

**Department Request:** The Department proposes that a total of \$400,000 of interest earned by the Natural Resource Damage Recovery Fund be transferred to the General Fund and the Hazardous Substance Response Fund. Of this amount \$150,970 would be transferred to the General Fund and \$249,030 would be transferred to the Hazardous Substance Response Fund.

**Staff Recommendation:** Staff recommends that the JBC carry a bill that transfers these moneys from the Natural Resource Damage Recovery Fund to the General Fund and the Hazardous Substance Response Fund. These transfers could be included as part of a larger transfer bill involving other cash funds.

**Background:** When the Department of Law sought funding for its effort to recover Natural Resource damages for the Rocky Mountain Arsenal site, the intention was to pay back the funding

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sources that financed the effort to the extent possible. The total spent from FY 2001-02 through FY 2007-08 on this litigation effort was \$2,662,450. Of that amount \$1,657,577 (62.3%) was funded from the Hazardous Substance Response Fund and \$1,004,873 (37.7%) from the General Fund. The \$17 million settlement with Shell Oil Company and the U.S. Army for natural resource damages did not provide for recovery of litigation expenses. Therefore, the Natural Resource Trustees (the Executive Director of the Colorado Department of Public Health and Environment, the Executive Director of the Department of Natural Resources, and the Attorney General) decided to replay these funding sources with interest earned on the \$17 million dollar award. The Department estimates that the \$17 million balance will generate \$400,000 of interest during FY 2009-10 and it proposes that this interest be transferred to the General Fund and to the Hazardous Substance Response Fund in the proportions in which these funds supported the litigation effort.

**Part 2, General Fund Reductions:**

**Department Request:** The Department proposes the following supplemental adjustments to appropriations in order to reduce its overall FY 2009-10 General Fund appropriation by \$690,962. Because these are one time adjustments, the Department does not propose to reduce FTE by corresponding amounts.

Division - Line Item	Total	GF	RF	FF
<b>ADMINISTRATION DIVISION</b>				
Personal Services	(\$205,000)	\$0	(\$205,000)	\$0
Operating Expenses	(20,000)	0	(20,000)	0
<b>CRIMINAL JUSTICE AND APPELLATE DIVISION</b>				
Special Prosecutions Unit	(131,198)	(131,198)	0	0
Appellate Unit	0	(275,000)	275,000	0
Medicaid Fraud Grant	(39,280)	(9,820)	0	(29,460)
Peace Officers Standards and Training Board Support	(50,000)	(50,000)	0	0
<b>WATER AND NATURAL RESOURCES DIVISION</b>				
Federal and Interstate Water Unit	(26,840)	(26,840)	0	0
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)	(77,154)	(77,154)	0	0
<b>CONSUMER PROTECTION DIVISION</b>				
Consumer Protection and Anti-trust	(116,950)	(116,950)	0	0

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Division - Line Item	Total	GF	RF	FF
<b>SPECIAL PURPOSE DIVISION</b>				
Statewide HIPAA Legal Services	(4,000)	(4,000)	0	0
Total	(\$670,422)	(\$690,962)	\$50,000	(\$29,460)

**Staff Recommendation:** Staff recommends that the Committee approve the adjustments listed in the above table.

**Staff Analysis:** Most of the reductions in the above table arise from three sources: furloughs, vacancy saving, and a department-wide effort to reduce operating expenses. For example, in the Administration Division, a legal support position, an assistant solicitor position, and an IT position have been left unfilled while in the Special Prosecutions Unit, an administrative position has remained open. The \$225,000 of reappropriated-funds savings created in the Administration Division has been used to refinance \$225,000 of General Fund appropriations to the Appellate Unit. The other \$50,000 of reappropriated funds is a result of the 1.82% base reduction which occurred late during FY 2009-10 figure setting. This reduction was announced after the Department's indirect cost recovery plan had been established. The reduction created a \$50,000 excess appropriation of reappropriated funds in the Administration Division.

The \$50,000 General Fund reduction for Peace Officers Standards and Training Board Support eliminates all General Fund support for this line item. The Department received this appropriation for implementation of H.B. 08-1397, Disposition of Evidence in Criminal Cases, which required it to develop DNA training courses for peace officers. These costs will now be paid out of the existing appropriation from the P.O.S.T. Board Cash Fund. House Bill 09-1036, which increased the motor vehicle registration fee from \$0.25 to \$0.60 beginning on July 1, 2009 has provided this fund with an estimated \$1.5 million of extra revenue from which the expenses will be paid.

The federal funds reduction for the Medicaid Fraud Grant line item reflects the effects of vacancy savings; because the federal government provides a three to one match for this Unit's expenditures it was impossible to reduce General Fund without also reducing federal funds.

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**Non-Prioritized Supplementals**

**Non-prioritized Supplemental Request  
 Legal Services to State Agencies Fund Split Correction**

	Request	Recommendation
Total	\$0	\$0
Cash Funds	718,714	718,714
Reappropriated Funds - Fund A	(718,714)	(718,714)

<b>Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria?</b> [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]	<b>YES</b>
JBC staff and the Department agree that this request is the result of <i>data that was not available when the original appropriation was made.</i>	

**Department Request:** The Department requests that the FY 2009-10 cash funds appropriation to its Legal Services to State Agencies Division, which is bottom-line funded, be increased by \$718,714 and the FY 2009-10 reappropriated-funds appropriation to the Division be reduced by an exactly offsetting amount.

**Staff Recommendation:** Staff recommends that the Committee approve this request and increase the FY 2009-10 cash funds appropriation to the Department's Legal Services to State Agencies Division by \$718,714 while reducing FY 2009-10 appropriation of reappropriated-funds to the Division by \$718,714. The fund sources in the Long Bill letter notes will remain unchanged.

**Staff Analysis:** As described in more detail in the Staff analysis of supplemental request #4, state agencies purchase legal services from the Department of Law much as they would purchase legal services from a private sector law firm. The Department then requires an appropriation in order to spend the revenues that it collects.

Revenues expended by the Department of Law fall into two categories: (1) expenditures of moneys that were previously appropriated to other state agencies, such as moneys received from DORA for legal work, and (2) expenditures of moneys received from state government entities that were not previously appropriated, such as moneys received from CollegeInvest or PERA for legal work. In the Long Bill, the Department of Law's expenditures of previously appropriated funds are classified

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as reappropriated funds while expenditures of revenues from non-appropriated sources are classified as cash funds.

The Department's supplemental request is a consequence of an inaccurate forecast of the mix of the revenue that the Department receives from other agencies, it does not indicate an inaccurate forecast of the total revenue from legal services. The proposed fund-split adjustment has no substantial consequences for the state's budget. Staff recommends that the Committee approve the request.

**Statewide Common Policy Supplemental Requests**

These requests are not prioritized and are not analyzed in this packet. The JBC will act on these items later when it makes decisions regarding common policies.

Department's Portion of Statewide Supplemental Request	Total	General Fund	Cash Funds	Reapprop. Funds	Federal Funds	FTE
Risk Management Contract Review and Reduction	0	0	0	0	0	0.0
Capitol Complex Building Maintenance Reductions	(17,445)	(5,243)	(1,483)	(10,254)	(465)	0.0
Risk Management Reduction of Liability, Property and Workers' Compensation Volatility	(7,891)	(664)	(189)	(6,979)	(59)	0.0
Elimination of Noxious Weed Abatement	0	0	0	0	0	0.0
State Fleet Rebates - One Time Refinance	(1,687)	0	0	(1,687)	0	0.0
Annual Fleet Vehicle Replacement True-up	0	0	0	0	0	0.0
Mail Equipment Upgrade	(6,218)	(1,467)	(1,557)	(3,194)	0	0.0
OIT Personal Services Reduction Initiative	(3,182)	(3,182)	0	0	0	0.0
FY 2009-10 OIT Management and Administration One-time Adjustment	0	0	0	0	0	0.0
Department's Total Statewide Supplemental Requests	(36,423)	(10,556)	(3,229)	(22,114)	(524)	0.0

**Staff Recommendation:** The staff recommendation for these requests is pending Committee approval of common policy supplementals. **Staff asks permission to include the corresponding appropriations in the Department's supplemental bill when the Committee approves this common policy supplemental.** If staff believes there is reason to deviate from the common policy, staff will appear before the Committee later to present the relevant analysis.

	FY 2008-09	FY 2009-10	Fiscal Year 2009-10 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
<b>DEPARTMENT OF LAW</b>					
<b>Attorney General John Suthers</b>					
<b>Supplemental #1 - Fiscal Note and Legislative Review Pilot</b>					
<i>(5) Special Purpose</i>					
Litigation Management and Technology Fund - CF	327,006	325,000	0	0	325,000
<b>Supplemental #2 - Auto Theft Prevention Grant</b>					
<i>(3) Criminal Justice and Appellate</i>					
Auto-Theft Prevention Grant (new line item) - CF	<u>0</u>	<u>0</u>	<u>72,083</u>	<u>72,083</u>	<u>72,083</u>
FTE	0.0	0.0	0.5	0.5	0.5
<b>Supplemental #3 - CERCLA Contract Line Refinancing</b>					
<i>(4) Water and Natural Resources</i>					
Comprehensive Environmental Response, Compensation and Liability Act Contracts	<u>526,861</u>	<u>500,000</u>	<u>20,000</u>	<u>20,000</u>	<u>520,000</u>
General Fund	76,861	75,000	(75,000)	(75,000)	0
Reappropriated Funds	450,000	425,000	95,000	95,000	520,000

	FY 2008-09	FY 2009-10	Fiscal Year 2009-10 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
<b>Supplemental #4 - Adjustments to Legal Services to State Agencies</b>					
<i>(2) Legal Services to State Agencies</i>					
Personal Services	17,138,755	18,397,569	218,152	218,152	18,615,721
FTE	<u>203.5</u>	<u>218.5</u>	<u>1.9</u>	<u>1.9</u>	220.4
Cash Funds	1,582,342	981,826	0	0	981,826
Reappropriated Funds	15,556,413	17,415,743	218,152	218,152	17,633,895
Operating and Litigation	<u>880,632</u>	<u>1,354,987</u>	<u>45,218</u>	<u>45,218</u>	<u>1,400,205</u>
Cash Funds	0	0	0	0	0
Reappropriated Funds	880,632	1,354,987	45,218	45,218	1,400,205
<b>Total for Supplemental #4</b>	18,019,387	19,752,556	263,370	263,370	20,015,926
FTE	<u>203.5</u>	<u>218.5</u>	<u>1.9</u>	<u>1.9</u>	<u>220.4</u>
Cash Funds	1,582,342	981,826	0	0	981,826
Reappropriated Funds	16,437,045	18,770,730	263,370	263,370	19,034,100
<b>Supplemental #5, General Fund Reductions</b>					
<i>(1) Administration</i>					
Personal Services	2,792,460	2,960,059	(205,000)	(205,000)	2,755,059
FTE	<u>39.6</u>	<u>42.2</u>	<u>0.0</u>	<u>0.0</u>	<u>42.2</u>
General Fund	(9)	0	0	0	0
Cash Funds	0	0	0	0	0
Reappropriated Funds	2,792,469	2,960,059	(205,000)	(205,000)	2,755,059
Federal Funds	0	0	0	0	0

	FY 2008-09	FY 2009-10	Fiscal Year 2009-10 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
Operating Expenses	<u>192,297</u>	<u>194,679</u>	<u>(20,000)</u>	<u>(20,000)</u>	<u>174,679</u>
General Fund	0	0	0	0	0
Cash Funds	0	0	0	0	0
Reappropriated Funds	192,297	194,679	(20,000)	(20,000)	174,679
Federal Funds	0	0	0	0	0
<i>(3) Criminal Justice and Appellate</i>					
Special Prosecutions Unit	2,569,528	2,905,614	(131,198)	(131,198)	2,774,416
FTE	<u>29.1</u>	<u>31.0</u>	<u>0.0</u>	<u>0.0</u>	<u>31.0</u>
General Fund	1,418,984	1,612,257	(131,198)	(131,198)	1,481,059
Cash Funds	213,484	221,805	0	0	221,805
Reappropriated Funds	937,060	1,071,552	0	0	1,071,552
Federal Funds	0	0	0	0	0
Appellate Unit	2,288,824	2,583,983	0	0	2,583,983
FTE	<u>28.3</u>	<u>31.0</u>	<u>0.0</u>	<u>0.0</u>	<u>31.0</u>
General Fund	2,288,824	2,583,983	(275,000)	(275,000)	2,308,983
Cash Funds	0	0	0	0	0
Reappropriated Funds	0	0	275,000	275,000	275,000
Federal Funds	0	0	0	0	0

	FY 2008-09	FY 2009-10	Fiscal Year 2009-10 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
Medicaid Fraud Grant	1,232,421	1,368,866	(39,280)	(39,280)	1,329,586
FTE	<u>13.7</u>	<u>14.0</u>	<u>0.0</u>	<u>0.0</u>	<u>14.0</u>
General Fund	302,876	342,276	(9,820)	(9,820)	332,456
Cash Funds	0	0	0	0	0
Reappropriated Funds	0	0	0	0	0
Federal Funds	929,545	1,026,590	(29,460)	(29,460)	997,130
Peace Officers Standards and Training Board Support	1,053,301	2,741,970	(50,000)	(50,000)	2,691,970
FTE	<u>4.6</u>	<u>7.0</u>	<u>0.0</u>	<u>0.0</u>	<u>7.0</u>
General Fund	57,107	50,000	(50,000)	(50,000)	0
Cash Funds	996,194	2,691,970	0	0	2,691,970
Reappropriated Funds	0	0	0	0	0
Federal Funds	0	0	0	0	0
<i>(4)Water and Natural Resources</i>					
Federal and Interstate Water Unit	470,910	526,872	(26,840)	(26,840)	500,032
FTE	<u>5.5</u>	<u>5.5</u>	<u>0.0</u>	<u>0.0</u>	<u>5.5</u>
General Fund	470,910	526,872	(26,840)	(26,840)	500,032
Cash Funds	0	0	0	0	0
Reappropriated Funds	0	0	0	0	0
Federal Funds	0	0	0	0	0

	FY 2008-09	FY 2009-10	Fiscal Year 2009-10 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
Comprehensive Environmental Response, Compensation and Liability Act	397,637	391,178	(77,154)	(77,154)	314,024
FTE	<u>3.9</u>	<u>3.5</u>	<u>0.0</u>	<u>0.0</u>	<u>3.5</u>
General Fund	380,905	365,300	(77,154)	(77,154)	288,146
Cash Funds	0	0	0	0	0
Reappropriated Funds	16,732	25,878	0	0	25,878
Federal Funds	0	0	0	0	0
<i>(5) Consumer Protection</i>					
Consumer Protection and Anti-Trust	1,667,444	1,819,320	(116,950)	(116,950)	1,702,370
FTE	<u>19.1</u>	<u>21.0</u>	<u>0.0</u>	<u>0.0</u>	<u>21.0</u>
General Fund	720,977	912,882	(116,950)	(116,950)	795,932
Cash Funds	717,531	663,695	0	0	663,695
Reappropriated Funds	228,936	242,743	0	0	242,743
Federal Funds	0	0	0	0	0
<i>(6) Special Purpose</i>					
Statewide HIPAA Legal Services	17,490	7,538	(4,000)	(4,000)	3,538
FTE	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
General Fund	17,490	7,538	(4,000)	(4,000)	3,538
Cash Funds	0	0	0	0	0
Reappropriated Funds	0	0	0	0	0
Federal Funds	0	0	0	0	0

	FY 2008-09	FY 2009-10	Fiscal Year 2009-10 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
<b>Total for Supplemental #5</b>	12,682,312	15,500,079	(670,422)	(670,422)	14,829,657
FTE	<u>143.8</u>	<u>155.2</u>	<u>0.0</u>	0.0	<u>155.2</u>
General Fund	5,658,064	6,401,108	(690,962)	(690,962)	5,710,146
Cash Funds	1,927,209	3,577,470	0	0	3,577,470
Reappropriated Funds	4,167,494	4,494,911	50,000	50,000	4,544,911
Federal Funds	929,545	1,026,590	(29,460)	(29,460)	997,130
<hr/>					
<b>Legal Services to State Agencies Fund Split Correction</b>					
<i>(2) Legal Services to State Agencies (a bottom-line-funded division)</i>					
	20,695,518	22,450,362	0	0	22,450,362
FTE	203.5	218.5	0.0	0.0	0.0
Cash Funds	1,582,342	981,826	718,714	718,714	1,700,540
Reappropriated Funds	19,113,176	21,468,536	(718,714)	(718,714)	20,749,822
<hr/>					
<b>Totals Excluding Pending Items</b>					
Department of _____					
Totals for ALL Departmental line items	44,903,064	49,339,568	(314,969)	(314,969)	49,024,599
FTE	<u>370.1</u>	<u>396.2</u>	<u>2.4</u>	<u>2.4</u>	398.6
General Fund	8,821,800	10,008,042	(765,962)	(765,962)	9,242,080
Cash Funds	7,109,055	8,155,331	790,797	790,797	8,946,128
Reappropriated Funds	27,883,718	29,883,133	(310,344)	(310,344)	29,572,789
Federal Funds	1,088,491	1,293,062	(29,460)	(29,460)	1,263,602

	FY 2008-09	FY 2009-10	Fiscal Year 2009-10 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
<b>Statewide Common Policy Supplemental Requests</b> (see narrative for more detail)	<u>N.A.</u>	<u>N.A.</u>	(36,423)	<u>Pending</u>	<u>N.A.</u>
General Fund			(10,556)		
Cash Funds			(3,229)		
Reappropriated Funds			(22,114)		
Federal Funds			(524)		
<b>Totals Including Pending Items</b>					
Department of _____					
Totals for ALL Departmental line items	44,903,064	49,339,568	(351,392)	(314,969)	49,024,599
FTE	<u>370.1</u>	<u>396.2</u>	<u>2.4</u>	<u>2.4</u>	<u>398.6</u>
General Fund	8,821,800	10,008,042	(776,518)	(765,962)	9,242,080
Cash Funds	7,109,055	8,155,331	787,568	790,797	8,946,128
Reappropriated Funds	27,883,718	29,883,133	(332,458)	(310,344)	29,572,789
Federal Funds	1,088,491	1,293,062	(29,984)	(29,460)	1,263,602

Key:

N.A. = Not Applicable or Not Available

**COLORADO GENERAL ASSEMBLY  
JOINT BUDGET COMMITTEE**



**ADDITIONAL SUPPLEMENTAL REQUESTS  
FOR FY 2009-10**

**DEPARTMENT OF LAW**

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

**Prepared By:  
Stephen Allen, JBC Staff  
February 3, 2010**

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**DEPARTMENT OF LAW  
FY 2009-10 SUPPLEMENTAL RECOMMENDATIONS  
JBC WORKING DOCUMENT - SUBJECT TO CHANGE**

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**DEPARTMENT OF LAW  
 FY 2009-10 SUPPLEMENTAL RECOMMENDATIONS  
 JBC WORKING DOCUMENT - SUBJECT TO CHANGE**

**Additional Supplementals**

**Supplemental Request #1  
 Irrigation Improvement Rules for the Arkansas River Basin**

	Request	Recommendation
Total - CF	\$50,000	\$50,000

<b>Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria?</b> [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]	<b>YES</b>
The Department and JBC staff agree that this supplemental is the result of <i>an unforeseen contingency</i> .	

**Department Request:** The Department of Law requests a FY 2009-10 appropriation of \$50,000 cash funds to allow it to spend a \$50,000 grant that it received last week from the Colorado Water Conservation Board. The appropriation will pay for litigation costs related to the State Engineer's proposed Arkansas River Irrigation Improvement Rules. The fund source is the Colorado Water Conservation Board's Litigation Fund.

**Staff Recommendation:** Staff recommends that the Committee approve this request and appropriate \$50,000 cash funds to the Department of Law from the Colorado Water Conservation Board's Litigation Fund.

**Analysis:** This appropriation will be used to fund litigation costs resulting from the State Engineer's proposed Irrigation Improvement Rules for the Arkansas River Basin. The Department states that these rules, which are being issued under the authority of Section 37-80-104, C.R.S., are necessary to ensure Colorado's compliance with the 1948 Arkansas River Compact and reduce the chances of future litigation with Kansas. The State Engineer consulted with affected farmers, water districts, and the State of Kansas as he developed the rules, which govern surface water and are unrelated to Colorado's long running dispute with Kansas over the use of ground water in the Arkansas River Basin. That earlier dispute led to a U.S. Supreme Court decree requiring Colorado to reduce its groundwater pumping and pay Kansas \$34 million in damages and interest.

The Irrigation Improvement Rules will enable the State Engineer's Office to ensure that improvements to surface water irrigation systems in the Arkansas River basin do not violate the Arkansas River Compact by materially diminishing the flow of usable river water from Colorado into Kansas. Colorado statute requires that a water court approve the rules after protests are judicially resolved. (Sections 37-92-501 and 37-92-304, C.R.S.) The requested appropriation will

**DEPARTMENT OF LAW  
 FY 2009-10 SUPPLEMENTAL RECOMMENDATIONS  
 JBC WORKING DOCUMENT - SUBJECT TO CHANGE**

pay for water-court litigation support expenses, including expert witness fees. The expert must, among other duties, submit a report to the court by March 22, 2010.

**Background on the Colorado Water Conservation Board's Litigation Fund:** The Colorado Water Conservation Board is established in Section 37-60-102, C.R.S. The board's budget is located in the Department of Natural Resources. The Board's Litigation Fund, which is established in Section 37-60-121 (2.5) (a) (III), C.R.S., was created to support the State in water-related litigation involving the federal government or other states, such as this case involving an interstate water compact. The fund's balance, which currently equals \$3.1 million, derives from periodic appropriations and transfers that the General Assembly makes into the Fund. Moneys in the Litigation Fund are continuously appropriated to the Colorado Water Conservation Board and all expenditures from the fund must be approved by the Board. By statute, the Attorney General may request moneys from the Litigation Fund to defend and protect Colorado's allocations of water in interstate streams and rivers with respect to specifically identified lawsuits, such as this case involving rule making litigation.

Appropriations to the Department of Law from the Litigation Fund require two steps. The first occurs when the Colorado Water Conservation Board uses its continuous spending authority to allocate funds to the Department of Law. The second occurs when the General Assembly gives the Department the authority to expend the moneys allocated by the Board.

While investigating this request, Staff discovered the following interesting link, which reports that Kansas accidentally drained its water litigation fund when it spent \$17 million that had been set aside for water lawsuits against Colorado and Nebraska:

[cjonline.com/news/legislature/2010-02-01/gaffe\\_depletes\\_water\\_legal\\_fund](http://cjonline.com/news/legislature/2010-02-01/gaffe_depletes_water_legal_fund)

**Supplemental Request #2  
 Tobacco Settlement Arbitration Expenses**

	Request	Recommendation
Total - CF	\$300,000	\$300,000

<b>Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria?</b> [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]	<b>YES</b>
The Department and JBC staff agree that this supplemental is the result of <i>an unforeseen contingency</i> .	

**DEPARTMENT OF LAW  
FY 2009-10 SUPPLEMENTAL RECOMMENDATIONS  
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**Department Request:** The Department of Law requests an appropriation of \$300,000 cash funds to pay for the outside counsel that is representing the state in its continuing legal dispute with the manufacturers who participate in the Master Settlement Agreement. This appropriation will be paid from the Defense Account of the Tobacco Litigation Settlement Cash Fund.

**Staff Recommendation:** Staff recommends that the Committee approve this request and appropriate \$300,000 cash funds from the Defense Account of the Tobacco Litigation Settlement Cash Fund.

**Background and Analysis:** Since 2006, Colorado has been involved in a legal dispute with the manufacturers who participate in the Master Settlement Agreement. The disagreement concerns Colorado's enforcement of its statutes pertaining to "non-participating manufacturers" -- tobacco manufacturers that are not parties to the agreement. Colorado was required to enact these laws when it signed the Master Settlement Agreement. Due to this dispute, some tobacco companies have withheld a portion of their settlement payments, placing them in escrow.

Under the Master Settlement Agreement's rules, this dispute will be resolved by a panel of three arbitrators who must decide the issue in a unified arbitration proceeding that involves all the participating states and manufacturers. It has taken several years to get the parties to the Agreement to agree upon ground rules for arbitration and pick arbitrators. In fact, many states initially rejected arbitration, claiming that the dispute should be heard in their own state courts – a claim that almost all state courts rejected.

Within the last year, the participating states and manufacturers have reached agreement on most of the key questions surrounding the arbitration proceeding and it now appears likely that arbitration will begin in mid 2010. The arbitrators will decide whether Colorado has "diligently enforced" its non-participating manufacturer statutes. If the arbitrators rule that Colorado diligently enforced these laws, the state will receive the escrowed amounts, plus interest. If the arbitrators rule that Colorado did not diligently enforce these laws, the state will probably lose everything placed in escrow, possibly much more.

The Attorney General has engaged outside council (Hale Friesen, LLP) for this proceeding because it cannot represent itself in this matter; attorneys at the Department of Law helped develop, and continue to monitor and assist the non-participating-manufacturer enforcement program in the Department of Revenue and are likely to be called upon to provide testimony during the arbitration proceeding. These efforts by the Department of Law will be on "trial" before the arbitrators.

Staff recommends that the Committee approve this supplemental because tens of millions of dollars potentially rest on the outcome of this case. Without this appropriation, outside counsel will be forced to skimp on or delay preparation for arbitration.

**DEPARTMENT OF LAW**  
**FY 2009-10 SUPPLEMENTAL RECOMMENDATIONS**  
**JBC WORKING DOCUMENT - SUBJECT TO CHANGE**

The appropriation will be paid from the Defense Account of the Tobacco Litigation Settlement Cash Fund, an account that was funded out of Master Settlement Agreement moneys received in compensation for attorney fees, and other costs that Colorado incurred in its legal action against tobacco manufacturers. The Account currently has a balance of \$3.2 million.

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	FY 2008-09	FY 2009-10	Fiscal Year 2009-10 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
<b>DEPARTMENT OF LAW</b>					
<b>Attorney General John Suthers</b>					
<b>Supplemental #1 - Irrigation Improvement Rules for the Arkansas River Basin</b>					
<i>(4) Water and Natural Resources</i>					
Consultant Expenses - CF	92,589	50,000	50,000	50,000	100,000
<b>Supplemental #2 - Tobacco Settlement Arbitration Expenses</b>					
<i>(5) Special Purpose</i>					
Tobacco Litigation - CF	372,226	300,000	300,000	300,000	600,000
<b>Totals for ALL Departmental line items</b>					
Department of Law					
Totals for ALL Departmental line items	44,903,064	49,339,568	350,000	350,000	49,689,568
FTE	<u>370.1</u>	<u>396.2</u>	<u>0.0</u>	<u>0.0</u>	<u>396.2</u>
General Fund	8,821,800	10,008,042	0	0	10,008,042
Cash Funds	7,109,055	8,155,331	350,000	350,000	8,505,331
Reappropriated Funds	27,883,718	29,883,133	0	0	29,883,133
Federal Funds	1,088,491	1,293,062	0	0	1,293,062