

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



**SUPPLEMENTAL REQUESTS FOR FY2007-08
AND FY 2008-09**

DEPARTMENT OF LAW

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

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January 30, 2009**

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Prioritized Supplementals

**Supplemental Request, Department Priority #1
 Republican River Compact Litigation**

	Request	Recommendation
Total - Cash Funds	\$19,144	\$19,144

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [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.]	YES
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 an additional appropriation of \$19,144 cash funds for FY 2008-09 for the Defense of the Republican River Compact. The funding source is the Colorado Water Conservation Board's litigation fund.

Staff Recommendation: Staff recommends that the Committee approve this request and appropriate \$19,144 cash funds for FY 2008-09 for the Defense of the Republican River Compact. The funding source is the Colorado Water Conservation Board's litigation fund.

Staff Analysis: The Republican River Compact between Colorado, Kansas, and Nebraska governs the use of water in the Republican River Basin, which lies in northeastern Colorado, southwestern Nebraska and northwestern Kansas. In 1998, Kansas sued Nebraska and Colorado, alleging overuse of river water. In 2003, the three states entered into a settlement decree to resolve the dispute, but in 2007 Kansas began legal action against Nebraska, claiming that state was not doing enough to comply. Knowing that Colorado would inevitably be pulled into the arbitration proceedings that must, under the terms of the decree, precede a trip to court, the Attorney General requested and the Colorado Water Conservation Board approved a \$240,000 grant from the Board's Litigation Fund to prepare Colorado's defense. The General Assembly subsequently appropriated this grant to the Department of Law, appropriating \$130,000 in a FY 2007-08 supplemental bill and the remaining \$110,000 in the FY 2008-09 Long Bill. The appropriation has been used to pay for negotiation and litigation expenses and the hiring of experts.

During FY 2007-08, the Department spent \$23,499 of its appropriation and rolled forward \$87,356, thus accounting for a total of \$110,856 of its \$130,000 appropriation. Under the State Controller's rules, it was unable to roll forward the remaining \$19,144. With this supplemental, the Department requests that this lapsed FY 2007-08 appropriation be appropriated to the Department for FY 2008-

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09. The Colorado Water Conservation Board's grant from its litigation fund is still valid. Arbitration proceedings are expected to begin in March and staff recommends that the Department of Law be given the authority to spend the remainder of its grant in support of those proceeding. An adverse decision could be very costly.

**Supplemental Request, Department Priority #2
 Colorado River Compact Technical Supplemental**

	Request	Recommendation
Total	<u>\$0</u>	<u>\$0</u>
Cash Funds - Colorado Water Conservation Board	(150,000)	(150,000)
Cash Funds - Payments from other states	150,000	150,000

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [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.]	YES
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 \$150,000 of its \$545,000 FY 2008-09 appropriation for the Defense of the Colorado River Basin Compact, which is entirely cash funded from the Colorado Water Conservation Board's Litigation Fund, be refinanced with cash funds received from the three other upper Colorado river basin states.

Staff Recommendation: Staff recommends that the Committee approve this request and refinance \$150,000 of the FY 2008-09 appropriation for Defense of the Colorado River Basin Compact with cash funds received from other upper basin states.

Staff Analysis: In 2005, the four upper Colorado River states – Colorado, Wyoming, Utah and New Mexico – agreed to jointly fund a project to identify, research and image documents relevant to potential Colorado-River-Compact litigation. Each state pledged \$50,000 towards the effort. Colorado took the lead; it managed the project and dealt with the contractors who collected the documents. This collection effort continues and should be finished within a year. However, the \$150,000 that Colorado received from the three other upper basin states was forgotten and only recently rediscovered. The money is currently being held in an account managed by the Division of Natural Resources. Had staff been aware of this \$150,000 during figure setting last year, staff would

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have recommended that the entire amount be appropriated for the Defense of the Colorado River Basin Compact.

**Supplemental Request, Department Priority #3
 Consumer Protection and Antitrust Technical - FTE**

	Request	Recommendation
Total	<u>\$4</u>	<u>\$4</u>
FTE - Cash Funds	4.0	4.0
FTE - Reappropriated Funds	(4.0)	(4.0)

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [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.]	YES
JBC staff and the Department agree that this request is the result of <i>a technical error in calculating the original appropriation.</i>	

Department Request: A total of 20.0 FTE are currently appropriated for FY 2008-09 for the Consumer Protection and Anti-Trust program line item, of which 11.5 are supported by General Fund, 1.5 FTE by cash funds and 7.0 by reappropriated funds. The Department requests that 4.0 of the reappropriated-funds FTE be switched to cash funding. There will be no change in the overall level of FTE for this line item.

Staff Recommendation: Staff recommends that the Committee approve this request and increase the cash-funds FTE appropriation for the Consumer Protection and Anti-Trust line item by 4.0 FTE while reducing the reappropriated-funds FTE by 4.0 FTE.

Staff Analysis: This supplemental is the result of a technical error that occurred during last year's switch from cash funds exempt to reappropriated funds. The dollar amounts were switched from cash funds exempt to reappropriated funds, but the corresponding FTE were not switched.

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**Supplemental Request, Department Priority #4
 Litigation Management and Technology Fund Letternote Change**

	Request	Recommendation
Total - Cash Funds	\$0	\$0

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [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.]	YES
JBC staff and the Department agree that this request is the result of a <i>technical error</i> , specifically an error that was made in implementing the appropriation.	

Department Request: The Department requests that the letternote that attaches to the \$325,000 Litigation Management and Technology Fund appropriation in the Department of Law's portion of the Long Bill be amended so that the correct amount of FY 2007-08 General Fund surplus will be transferred to the Highway Users Tax Fund and to the Capital Construction Fund in accordance with Section 24-75-218, C.R.S.

Background: The Litigation Management and Technology Fund line item is used to pay for unanticipated legal costs and for information technology expenditures that would otherwise require General Fund appropriations. The appropriation comes from two sources:

1. Excess earnings of the Legal Services to State Agencies (LSSA) program during the previous fiscal year, which arise when the revenues earned by the program exceed the costs of operating the program. Without the Litigation Management and Technology Fund appropriation and the related letternote, 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 the next year. These excess earnings fluctuate substantially from year to year and the amount is not known with certainty until after the close of the fiscal year. The excess earnings for FY 2007-08, for example, were not known with certainty until July of FY 2008-09, the first month of the fiscal year in which those earnings could be expended.
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. The Attorneys Fees and Costs Account serves as a backup, filling in the remainder of the Litigation Management and Technology Fund appropriation when excess LSSA earnings are not large enough to fund the entire amount.

The reason for this request: When the Long Bill was entered into the state's accounting system before the start of FY 2008-09, the Department of Law initially assumed that the excess revenues

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in the LSSA line would be sufficient to cover the entire \$325,000 Litigation Management and Technology Fund appropriation, which is its standard practice. At the start of FY 2008-09, this entry caused the State Controller to reserve \$325,000 of the ending General Fund fund balance for FY 2007-08 to cover the Litigation Management and Technology Fund appropriation. The Department was supposed to make a second accounting entry a few weeks later to reflect the \$267,456 of excess FY 2007-08 revenues that it actually earned, but failed to do so. This oversight was not discovered until early December, 2008, after the State's financial statements were complete.

Because the State's books have been closed, the State Controller has requested that the Department submit this technical supplemental request in order to release the \$57,544 of ending General Fund fund balance that should not have been set aside for the Litigation Management and Technology Fund appropriation. Once this change is made, this \$57,544 will flow one third to capital construction and two thirds to the HUTF as directed by Section 24-75-218, C.R.S.

The requested revision to the letternote is as follows:

^a ~~This amount~~ OF THIS AMOUNT, \$267,456 shall be from ~~either~~ General Fund fund balance generated by excess earnings in the Legal Services to State Agencies program in FY 2007-08 ~~or~~ AND \$207,544 SHALL BE from the Attorney Fees and Costs Account created in Section 24-31-108 (2), C.R.S. IN ADDITION \$57,544 OF THE FISCAL YEAR 2007-08 GENERAL FUND FUND BALANCE RESERVE SHALL BE RELEASED AND DISTRIBUTED IN ACCORDANCE WITH SECTION 24-75-218, C.R.S., AS IF IT HAD BEEN PART OF THE GENERAL FUND SURPLUS AT THE CLOSE OF FISCAL YEAR 2007-08.

Note that the \$207,544 amount in this letternote from the Attorney Fees and Costs Account equals \$57,544 that is to flow to capital construction and the HUTF plus \$150,000 for the Mill Levy Lawsuit interim supplemental discussed below.

Staff Recommendation: Staff recommends that the Committee approve this request and amend the letternote attaching to the Litigation Management and Technology Fund appropriation as described above.

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**Supplemental Request, Department Priority #5
 Legal Services for Client Agencies**

Part 1: Legal Services for the Departments of Education and Public Health and Environment

	Request	Recommendation
Total - Reappropriated Funds	<u>\$19,526</u>	<u>\$19,526</u>
FTE	0.1	0.1

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria?	YES
[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.]	
Staff and the Department agree that this supplemental request is the result of an <i>unforeseen contingency</i> .	

Department Request: The Department of Law requests an additional appropriation of \$19,526 reappropriated funds and 0.1 FTE for its Legal Services to State Agencies Division. Eighty percent of this increase is for personal service and 20 percent is for Operating and Litigation Expenses. This additional appropriation, equals the sum of supplemental requests listed below for FY 2008-09 legal services by two other agencies of state government: the Department of Education and the Department Public Health and Environment. This appropriation will allow the Department to provide increased legal services in amounts approved by the JBC for these other agencies.

Staff Recommendation: Staff recommends that Committee approve this supplemental and change the reappropriated-funds appropriation to the Department of Law in step with supplemental adjustments to the FY 2008-09 legal services appropriations to other state agencies listed below. Approval of such supplemental adjustments 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 other supplementals. Staff asks permission to adjust the Department's appropriation in this manner once the Committee has finalized the supplemental adjustments to legal services appropriations for the other departments.

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

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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. The appropriation to the Department of Law is a transfer of reappropriated funds.

The following table summarizes the amounts and status of the requests from other Departments that are presented in this part of this supplemental. The Department of Law is requesting a corresponding change in the appropriation to its Legal Services to State Agencies Division. Eighty percent of this increase will go to personal service and 20 percent to Operating and Litigation Expenses.

Agency - Reason for Request	Amount	Hours	FTE Equivalent	Status
1. Department of Education - Legal Services for H.B. 08-1344 (Background Checks for School Employees)	\$16,898	225	0.1	Pending
2. Department of Public Health - Legal Services for the Colorado Oil and Gas Commission	2,628	35	0.0	Approved
Total	\$19,526	260	0.1	

Part 2: Legal Services for the Department of State

	Request	Recommendation
Total - Reappropriated Funds	\$155,307	\$155,307
FTE	1.1	1.1

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria?	YES
[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.]	
Staff and the Department agree that this supplemental request is the result of an <i>unforeseen contingency</i> and a <i>technical error</i> .	

Department Request: The Department of Law requests an additional appropriation of \$155,307 reappropriated funds and 1.1 FTE for its Legal Services to State Agencies Division.

Staff Analysis: During Figure Setting last session, the Department of State submitted a last minute budget amendment that increased the Department's legal services request. The Committee approved the amended request but staff failed to adjust the corresponding reappropriated-funds appropriation to the Department of Law accordingly. As a result the FY 2008-09 legal services appropriation to

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the Department of Law was \$300,307 lower than it should have been. In addition, during this session's supplementals, the Department of State has requested and the Committee has approved a \$145,000 reduction in its FY 2008-09 legal services appropriation. The net result of these two adjustments is an appropriation increase of \$300,307 - \$145,000 = \$155,307 reappropriated funds, which corresponds to 1.1 FTE.

Staff Recommendation: Staff recommends that the Committee approve this request and appropriate \$155,307 reappropriated funds and 1.1 FTE to the Legal Services to State Agencies program.

Part 3: Legal Services for Rocky Flats

Department of Public Health and Environment	Request	Recommendation
Total - Federal Funds	30,866	30,866

Department of Law	Request	Recommendation
Total - Reappropriated Funds	<u>30,866</u>	<u>30,866</u>
FTE	0.2	0.2

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [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.]	YES
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 Requests:

1. The *Department of Public Health and Environment* requests an appropriation of \$30,866 federal funds for an extra 411 hours of legal services to be purchased from the Department of Law. The funding source is a federal Department of Energy grant.
2. The *Department of Law* requests a corresponding appropriation of \$30,866 and 0.2 FTE, which will give it the authority to spend the payments it would receive from the Department of Public Health and Environment. Eighty percent of this increase is for personal service and 20 percent is for operating and litigation expenses.

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(Normally the Department of Public Health and Environment's request would be presented with other supplemental requests from CDPHE, but the documentation for this request came from the Department of Law and was received after CDPHE supplementals were presented, thus staff has included the CDPHE request here.)

Staff Analysis: After Rocky Flats was closed and the site had been cleaned up, the federal government paid Colorado \$10.0 million for the natural resource damages that remained after the cleanup effort. Under CERCLA rules, which apply to this payment, this money can only be spent on the restoration, replacement or acquisition of equivalent natural resources; the state could not, for example, use the recovery to support the General Fund. The natural resources trustees who oversee the disbursement of these moneys decided to use \$5.5 million of the payment to acquire land and mineral rights in the area, mineral rights being a suitable use of the funds because their acquisition precludes future sand and gravel surface mining. The trustees wanted to use the entire \$10.0 million in this fashion, but when they discovered this would not be possible, they decided to make the remaining \$4.5 million available to local governments and non-profits through an RFP (Request for Proposals) process that is currently under way. A local government applicant might apply for a grant to acquire open space, for example.

This request is for a \$30,866 federal funds increase in the Department of Public Health and Environment's appropriation for legal services and a corresponding appropriation to the Department of Law, which will allow it to expend the revenues that it receives from CDPHE. These legal services will support the RFP process, including development of selection criteria that are consistent with CERCLA, the selection of grantees, the drafting of contracts, and the subsequent review of grantee actions under the contracts. The appropriation will also provide legal services in support of the Attorney General, who is one of the Natural Resource Damages trustees. The funding source is a Department of Energy grant.

Staff Recommendation: Staff recommends that the Committee approve both components of this request and appropriate (1) \$30,866 federal funds and 411 hours of legal services to the Department of Public Health and Environment, and (2) \$30,866 reappropriated funds and 0.2 FTE to the Department of Law.

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**Part 4: Legal Services for the Department of Regulatory Agencies for H.B. 08-1353
 (Conservation Easements)**

Recommendation	
Total - Reappropriated Funds	<u>\$40,481</u>
FTE	0.3

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [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.]	YES
The Department and Staff agree that this supplemental is the result of <i>a technical error in calculating the original appropriation.</i>	

Department Request: The Department requests a FY 2008-09 appropriation of \$40,481 reappropriated funds and 0.3 FTE for implementation of H.B. 08-1353 (Conservation Easements) to correct an error in the bill's appropriations clause.

Staff Recommendation: Staff recommends that the Committee approve this request and amend the appropriation clause of H.B. 08-1353 by adding a FY 2008-09 appropriation to the Department of Law of \$40,481 reappropriated funds and 0.3 FTE. Of this amount, \$6,771 is reappropriated-funds from the Conservation Easement Appraisal Review Fund and \$33,710 is reappropriated funds from the Conservation Easement Holder Certification Fund.

Staff Analysis: This supplemental corrects a technical error in the appropriation clause of H.B. 08-1353. The recommended supplemental adjustment allows the Department of Law to provide legal services to DORA related to DORA's conservation easement work. The appropriation was indicated in the Legislative Council Staff Fiscal Note for H.B. 08-1353, but was inadvertently omitted from the bill's appropriation clause. Without it, the Department of Law will be unable to provide the required services.

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**Supplemental Request, Department Priority #6
 General Fund Reductions**

	Request	Recommendation
Total	(\$705,000)	(\$705,000)
FTE	<u>(0.5)</u>	<u>(0.5)</u>
General Fund	(790,000)	(790,000)
Cash Funds	120,000	120,000
Reappropriated Funds	25,000	25,000
Federal Funds	(60,000)	(60,000)

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [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.]	YES
JBC staff and the Department agree that this request is the result of <i>an unforeseen contingency</i> .	

In mid January the department submitted a revised request that reduces its FY 2008-09 General Fund appropriations. This multipart request was numbered "Base Reduction Item #1", but, with the Department's agreement, staff has assigned departmental priority 6 to the request, which is in accord with the OSPB supplemental numbering system.

The Department indicates that it is abiding by the hiring freeze to the extent possible ;it is keeping positions open where the vacancies will not have an impact on health, life and safety issues. The Department has included the resulting hiring-freeze savings in this supplemental request.

Department Request: The department requests a series of supplemental adjustments that reduce its overall appropriation by \$705,000, comprised of a \$790,000 General Fund reduction, a \$120,000 cash funds increase, a \$25,000 reappropriated funds increase, and a \$60,000 federal funds decrease.

The request has the following components:

(1) Administration and Support

Health, Life and Dental, SB 04-257 Amortization Equalization Disbursement, SB 06-235 Supplemental Amortization Equalization Disbursement, Salary Survey, Performance-based Pay Awards, Workers' Compensation, Capital Complex Leased Space: \$43,348 General Fund Reduction. The Department has reduced the General Fund Expenditure for these line items by a

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combined \$43,348 by refinancing General Fund with some of the Department's Colorado-River Grant from the Colorado Water Conservation Board.

Salary Survey, Performance-based Pay Awards: Vacancy savings related to the hiring freeze within the administration division have freed reappropriated funds derived from indirect cost recoveries. These recoveries are being used to reduce the amount of General Fund used to pay Salary Survey and Performance-based Pay for Administration Division employees.

(3) Criminal Justice and Appellate Division

Special Prosecutions Unit: \$10,000 General Fund reduction. Based on year-to-date expenditures, the Department believes that this Unit will be able to expend \$10,000 less General Fund than it has been appropriated.

Securities Fraud Unit: \$10,000 General Fund reduction. This reduction will come from reduced operating and litigation expenditures.

Appellate Unit: \$120,000 General Fund reduction. This reduction will come from vacancy savings related to the hiring freeze. The unit had a recent retirement and the Department held two positions open for an extended period, though these positions are now filled because of the growing backlog of cases; the Department feared that it would miss some filing deadlines if it held the positions open longer.

Medicaid Fraud Grant: \$20,000 General Fund reduction, \$60,000 matching federal funds reduction. Based on year-to-date expenditures, the Department believes that this Unit will expend \$20,000 less General Fund than it has been appropriated.

Capital Crimes Prosecution Unit: \$70,000 General Fund reduction. This reduction results from vacancy savings. The unit had a retirement and the position was held open for several months.

(3) Water and Natural Resources Division

Federal and Interstate Water Unit: \$30,000 General Fund reduction. Thus far this has been a relatively quiet year for the unit with less than the usual need for outside experts. Expenditures have been lower as a consequence.

Comprehensive Environmental Response, Compensation and Liability Act: \$70,000 General Fund reduction. One of the unit's employees will be retiring and the position will be permanently

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abolished due to lower level workloads in the unit. A budget amendment will reduce FTE 1.3 next year.

Comprehensive Environmental Response, Compensation and Liability Act Contracts: \$155,000 General Fund reduction, \$25,000 cash fund increase. The CERCLA unit is delaying work performed by outside contractors, allowing for a \$130,000 reduction of expenditures. In addition, the Department of Public Health and Environment has agreed to refinance \$25,000 of the General Fund reduction to pay for California Gulch and Rocky Mountain Arsenal remediation work. The funding source is the following transfer appropriation found within the Department of Public Health and Environment's portion of the Long Bill:

- (7) Hazardous Materials and Waste Management Division
 - (E) Contaminated Site Cleanups
- Transfer to the Department of Law for CERCLA Oversight-Related Costs

The funding source for this line item is the Hazardous Substance Response Fund. Please see the "Related Staff Initiated Supplemental Recommendation" below for more.

(5) Consumer Protection Division

Consumer Protection and Anti-Trust Unit: \$153,495 General Fund reduction, \$120,000 cash funds increase. One of the Unit's employees recently began working part time, generating savings. The unit will also refinance \$120,000 of it's General Fund appropriation with its cash funds, the refinancing cannot be maintained beyond the current fiscal year given current fund balances and fund revenues.

Related Staff Initiated Supplemental Recommendation for the Department of Public Health and Environment:

As indicated above, the Department of Public Health and Environment has informally agreed to refinance \$25,000 of the General Fund reduction for the Department of Law's "Comprehensive Environmental Response, Compensation and Liability Act Contracts" line item. Funding will come through the following line item in the Department of Public Health and Environment:

- (7) Hazardous Materials and Waste Management Division
 - (E) Contaminated Site Cleanups
- Transfer to the Department of Law for CERCLA Oversight-Related Costs

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The funding source for this line item is the Hazardous Substance Response Fund. This is a two part appropriation, in addition to a \$25,000 appropriation to the Department of Law, a \$25,000 appropriation is required for CDPHE.

Staff Recommendation: Staff recommends that the Committee increase the cash funds appropriation on the "Transfer to the Department of Law for CERCLA Oversight-Related Costs" in CDPHE by \$25,000. The \$41.7 million balance in the Hazardous Substance Response fund is more than adequate to fund this increase, even with the \$10.0 million transfer to the General Fund that the Committee has already approved.

Non-Prioritized Supplementals

**Staff Initiated Supplemental
 Legal Services for the Judicial Department**

Recommendation	
Total - Reappropriated Funds	(\$100,000)
FTE	(0.7)

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [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.]	YES
This supplemental is the result of <i>an unforeseen contingency</i> .	

Department Request: The Department did not request this supplemental.

Staff Recommendation: Staff recommends that the Committee reduce the FY 2008-09 appropriation to the Department of Law for the provision of legal services by \$100,000 reappropriated funds and 0.7 FTE, which corresponds to the reduced legal services appropriation approved for the Judicial Department. Eighty percent of the recommended reduction is from personal services and the remainder is from operating and litigation expenses.

Staff Analysis: The Judicial Department has requested and the Committee has approved a \$100,000 reduction in Judicial's General Fund appropriation for legal services. The corresponding reduction for the Department of Law's Legal Services to State Agencies Division is \$100,000 and 0.7 FTE.

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**Previously Approved Interim Supplemental
Mill Levy Lawsuit**

FY 2007-08	Previously Approved
Total - Cash Funds Exempt	\$22,000

FY 2008-09	Previously Approved
Total - Cash Funds	\$150,000

Description of Supplemental: This supplemental was approved in June 2008 when the Department of Law requested an additional appropriation of \$22,000 cash funds exempt for FY 2007-08 and an additional appropriation of \$150,000 cash funds for FY 2008-09 to pay for the outside council that is representing the Department of Education in the Mill Levy Lawsuit. The fund source in both years is the Litigation Management and Technology Fund, which was classified as cash funds exempt in FY 2007-08 and now is classified as cash funds. The \$150,000 appropriation for FY 2008-09 will come from the Attorney Fees and Cost Fund, which is one of the components of the Litigation Management and Technology Fund line item.

When the Mill Levy Lawsuit challenging the constitutionality of S.B. 07-199 (The School Finance Act) was filed in late 2007, the Attorney General could not represent the Department of Education or the Governor due to a conflict of interest. This activated Section 24-31-101 (1) (e), C.R.S., which requires the Attorney General's Office to pay for outside council to represent an agency when the Attorney General is unable to do so. The Attorney General's Office agreed to pay for outside council for the Department of Education, but declined to pay for council for the Governor's Office, stating that it was only obligated to defend the original defendant in the case. In June the Committee approved a \$22,000 FY 2007-08 interim supplemental and a \$150,000 FY 2008-09 interim supplemental to pay for the Department of Education's litigation expenses.

The rules governing interim supplementals in Section 24-75-109 (5), C.R.S., require the Committee to introduce all interim supplementals that it approves. Staff will include this supplemental in the Department's supplemental bill.

**DEPARTMENT OF LAW
FY 2008-09 SUPPLEMENTAL RECOMMENDATIONS
JBC WORKING DOCUMENT - SUBJECT TO CHANGE**

**Previously Approved Interim Supplemental
Arkansas River Litigation**

FY 2007-08	Previously Approved
Total - General Fund	\$0

FY 2008-09	Previously Approved
Total - Cash Funds	\$70,000

Description of Supplemental: This supplemental was approved in June 2008 when the Department of Law requested funding for unexpected legal expenses for outside counsel that were incurred in defending Colorado's interests in the Arkansas River case. The Committee approved an additional FY 2007-08 appropriation of \$20,000 General Fund for the Consultant Expenses line item in the Department's Water and Natural Resources Division and an added FY 2008-09 appropriation of \$70,000 cash funds from the Department's Attorney Fees and Costs Account for the same line item. To offset the FY 2007-08 General Fund appropriation, the Committee approved a \$20,000 reduction of the FY 2007-08 General Fund appropriation for the Department's Capital Crimes Prosecution Unit, making the overall FY 2007-08 impact of the supplemental zero.

The rules governing interim supplementals in Section 24-75-109 (5), C.R.S., require the Committee to introduce all interim supplementals that it approves. Staff will include this supplemental in the Department's supplemental bill.

Statewide Common Policy Supplemental Requests

Staff Recommendation: Neither the Department nor OSPB has submitted statewide supplemental requests, but these requests may be received in the near future. If requests are submitted, they will be presented to the Committee by the Common Policy analyst. **Staff asks permission to include the corresponding appropriations in the Department's supplemental bill if the Committee approves a 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.

**DEPARTMENT OF LAW
 FY 2008-09 SUPPLEMENTAL RECOMMENDATIONS
 JBC WORKING DOCUMENT - SUBJECT TO CHANGE**

Other Balancing Options

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

Options with <i>Revenue Impacts</i>	GF	CF	RF	FF	Total	FTE
1						
Transfer from the Defense Account of the Tobacco Litigation Settlement Fund to the General Fund						
<p>The balance of the Defense Account of the Tobacco Litigation Settlement Fund, created in 24-22-115 (2) (a), was transferred to the General Fund during the last economic downturn. The transfer was subsequently repaid. The account has no sources of income; if its balance is transferred to the General Fund without a repayment, the fund will remain empty. The account has a balance of \$3.5 million as of January 1, 2009 and is currently being used to pay for legal work in the dispute with tobacco manufacturers over the state's diligent enforcement of its non-participating manufacturer laws. The account is also used to pay for non-participating manufacturer enforcement work. Projected expenditures from the fund this year are \$486,000. These are necessary expenses that will have to be paid from the General Fund if the balance of the fund is transferred to the General Fund.</p>						

	FY 2007-08	FY 2008-09	Fiscal Year 2008-09 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
DEPARTMENT OF LAW					
John Suthers - Attorney General					
Supplemental #1 - Republican River Compact Litigation					
<i>(4) Water and Natural Resources</i>					
Defense of the Republican River Compact - CF					
	23,499	110,000	19,144	19,144	129,144
Supplemental #2 - Colorado River Compact Litigation					
<i>(4) Water and Natural Resources</i>					
Defense of the Colorado River Basin Compact					
	376,116	545,000	0	0	545,000
FTE	<u>3.8</u>	<u>4.0</u>	<u>0.0</u>	<u>0.0</u>	<u>4.0</u>
Cash Funds	0	545,000	0	0	545,000
Cash Funds Exempt/RF	376,116	0	0	0	0

	FY 2007-08	FY 2008-09	Fiscal Year 2008-09 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
Supplemental #3 - Consumer Protection and Antitrust Technical - FTE					
<i>(5) Consumer Protection</i>					
Consumer Protection and Anti-Trust	1,721,339	1,768,735	0	0	1,768,735
FTE	<u>18.0</u>	<u>20.0</u>	<u>0.0</u>	<u>0.0</u>	<u>20.0</u>
General Fund	965,065	874,473	0	0	874,473
FTE		<u>11.5</u>	0.0	0.0	11.5
Cash Funds	79,988	651,557	0	0	651,557
FTE		1.5	4.0	4.0	5.5
Reappropriated Funds	676,286	242,705	0	0	242,705
FTE		7.0	(4.0)	(4.0)	3.0
<hr/>					
Supplemental #4 - Litigation Management and Technology Fund Letternote Change					
<i>(6) Special Purpose</i>					
Litigation Management and Technology					
Fund	<u>330,828</u>	<u>325,000</u>	<u>0</u>	<u>0</u>	<u>325,000</u>
Cash Funds	0	325,000	0	0	325,000
Cash Funds Exempt/RF	330,828	0	0	0	0
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	FY 2007-08	FY 2008-09	Fiscal Year 2008-09 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
Supplemental #5 - Legal Services for Client Agencies					
<i>(2) Legal Services to State Agencies</i>					
Personal Services	15,831,413	17,575,709	196,944	196,944	17,772,653
FTE	<u>0.0</u>	<u>214.5</u>	<u>1.7</u>	<u>1.7</u>	216.2
Cash Funds	1,000,000	1,000,000	0	0	1,000,000
Cash Funds Exempt/RF	14,831,413	16,575,709	196,944	196,944	16,772,653
Operating and Litigation	<u>1,188,470</u>	<u>1,315,645</u>	<u>49,236</u>	<u>49,236</u>	<u>1,364,881</u>
Cash Funds	0	0	0	0	0
Cash Funds Exempt/RF	1,188,470	1,315,645	49,236	49,236	1,364,881
Total for Supplemental #5	17,019,883	18,891,354	246,180	246,180	19,137,534
FTE	<u>0.0</u>	<u>214.5</u>	<u>1.7</u>	<u>1.7</u>	<u>216.2</u>
Cash Funds	1,000,000	1,000,000	0	0	1,000,000
Cash Funds Exempt/RF	16,019,883	17,891,354	246,180	246,180	18,137,534

	FY 2007-08	FY 2008-09	Fiscal Year 2008-09 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
Supplemental #6 - General Fund Reductions					
<i>(1) Administration</i>					
Health, Life and Dental	<u>1,423,679</u>	<u>1,783,219</u>	<u>(9,113)</u>	<u>(9,113)</u>	<u>1,774,106</u>
General Fund	461,603	531,993	(9,113)	(9,113)	522,880
Cash Funds	90,556	141,137	0	0	141,137
Cash Funds Exempt/RF	847,378	1,063,960	0	0	1,063,960
Federal Funds	24,142	46,129	0	0	46,129
SB 04-257 Amortization Equalization					
Disbursement	<u>303,805</u>	<u>444,510</u>	<u>(3,921)</u>	<u>(3,921)</u>	<u>440,589</u>
General Fund	92,272	128,608	(3,921)	(3,921)	124,687
Cash Funds	17,229	35,889	0	0	35,889
Cash Funds Exempt/RF	185,792	266,062	0	0	266,062
Federal Funds	8,512	13,951	0	0	13,951
SB 06-235 Supplemental Amortization					
Equalization Disbursement	<u>62,558</u>	<u>206,226</u>	<u>(1,918)</u>	<u>(1,918)</u>	<u>204,308</u>
General Fund	17,229	58,147	(1,918)	(1,918)	56,229
Cash Funds	3,692	16,578	0	0	16,578
Cash Funds Exempt/RF	39,813	124,962	0	0	124,962
Federal Funds	1,824	6,539	0	0	6,539
Salary Survey for Classified Employees	<u>278,941</u>	<u>341,175</u>	<u>(90,062)</u>	<u>(90,062)</u>	<u>251,113</u>
General Fund	114,731	138,299	(90,062)	(90,062)	48,237
Cash Funds	37,397	55,068	0	0	55,068
Cash Funds Exempt/RF	108,862	128,644	0	0	128,644

	FY 2007-08	FY 2008-09	Fiscal Year 2008-09 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
Federal Funds	17,951	19,164	0	0	19,164
Salary Survey for Exempt Employees	<u>759,834</u>	<u>658,444</u>	<u>(9,128)</u>	<u>(9,128)</u>	<u>649,316</u>
General Fund	196,085	164,387	(9,128)	(9,128)	155,259
Cash Funds	12,305	27,694	0	0	27,694
Cash Funds Exempt/RF	541,856	461,582	0	0	461,582
Federal Funds	9,588	4,781	0	0	4,781
Performance-based Pay Awards for Classified Employees	<u>122,210</u>	<u>133,803</u>	<u>(23,827)</u>	<u>(23,827)</u>	<u>109,976</u>
General Fund	25,543	54,578	(23,827)	(23,827)	30,751
Cash Funds	17,488	20,811	0	0	20,811
Cash Funds Exempt/RF	71,444	49,054	0	0	49,054
Federal Funds	7,735	9,360	0	0	9,360
Performance-based Pay Awards for Exempt Employees	<u>256,353</u>	<u>282,048</u>	<u>(3,167)</u>	<u>(3,167)</u>	<u>278,881</u>
General Fund	66,582	67,997	(3,167)	(3,167)	64,830
Cash Funds	4,133	11,485	0	0	11,485
Cash Funds Exempt/RF	182,369	200,188	0	0	200,188
Federal Funds	3,269	2,378	0	0	2,378
Workers' Compensation	<u>51,406</u>	<u>65,561</u>	<u>(673)</u>	<u>(673)</u>	<u>64,888</u>
General Fund	16,115	19,909	(673)	(673)	19,236
Cash Funds	3,704	5,833	0	0	5,833
Cash Funds Exempt/RF	30,119	37,990	0	0	37,990

	FY 2007-08	FY 2008-09	Fiscal Year 2008-09 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
Federal Funds	1,468	1,829	0	0	1,829
Capital Complex Leased Space	<u>1,165,178</u>	<u>1,159,223</u>	<u>(9,696)</u>	<u>(9,696)</u>	<u>1,149,527</u>
General Fund	367,436	254,948	(9,696)	(9,696)	245,252
Cash Funds	83,723	103,172	0	0	103,172
Cash Funds Exempt/RF	680,846	768,765	0	0	768,765
Federal Funds	33,173	32,338	0	0	32,338
<i>(3) Criminal Justice and Appellate</i>					
Special Prosecutions Unit	1,136,127	1,243,416	(10,000)	(10,000)	1,233,416
FTE	<u>12.8</u>	<u>12.8</u>	<u>0.0</u>	<u>0.0</u>	<u>12.8</u>
General Fund	929,474	1,029,683	(10,000)	(10,000)	1,019,683
Cash Funds	206,653	213,733	0	0	213,733
Cash Funds Exempt/RF	0	0	0	0	0
Federal Funds	0	0	0	0	0
Securities Fraud Unit	456,341	484,293	(10,000)	(10,000)	474,293
FTE	<u>5.6</u>	<u>5.6</u>	<u>0.0</u>	<u>0.0</u>	<u>5.6</u>
General Fund	116,799	123,015	(10,000)	(10,000)	113,015
Cash Funds	0	0	0	0	0
Cash Funds Exempt/RF	339,542	361,278	0	0	361,278
Federal Funds	0	0	0	0	0
Appellate Unit	2,133,564	2,437,059	(120,000)	(120,000)	2,317,059
FTE	<u>26.4</u>	<u>30.0</u>	<u>0.0</u>	<u>0.0</u>	<u>30.0</u>
General Fund	2,133,564	2,437,059	(120,000)	(120,000)	2,317,059

	FY 2007-08	FY 2008-09	Fiscal Year 2008-09 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
Cash Funds	0	0	0	0	0
Cash Funds Exempt/RF	0	0	0	0	0
Federal Funds	0	0	0	0	0
Medicaid Fraud Grant	1,117,462	1,330,808	(80,000)	(80,000)	1,250,808
FTE	<u>12.4</u>	<u>14.0</u>	<u>0.0</u>	<u>0.0</u>	<u>14.0</u>
General Fund	275,871	332,703	(20,000)	(20,000)	312,703
Cash Funds	0	0	0	0	0
Cash Funds Exempt/RF	0	0	0	0	0
Federal Funds	841,591	998,105	(60,000)	(60,000)	938,105
Capital Crimes Prosecution Unit	330,516	376,643	(70,000)	(70,000)	306,643
FTE	<u>3.8</u>	<u>4.0</u>	<u>0.0</u>	<u>0.0</u>	<u>4.0</u>
General Fund	330,516	376,643	(70,000)	(70,000)	306,643
Cash Funds	0	0	0	0	0
Cash Funds Exempt/RF	0	0	0	0	0
Federal Funds	0	0	0	0	0
<i>(4)Water and Natural Resources</i>					
Federal and Interstate Water Unit	436,360	505,555	(30,000)	(30,000)	475,555
FTE	<u>4.6</u>	<u>5.5</u>	<u>0.0</u>	<u>0.0</u>	<u>5.5</u>
General Fund	436,360	505,555	(30,000)	(30,000)	475,555
Cash Funds	0	0	0	0	0
Cash Funds Exempt/RF	0	0	0	0	0
Federal Funds	0	0	0	0	0

	FY 2007-08	FY 2008-09	Fiscal Year 2008-09 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
Comprehensive Environmental Response, Compensation and Liability Act	422,380	472,021	(70,000)	(70,000)	402,021
FTE	<u>4.8</u>	<u>4.8</u>	<u>(0.5)</u>	<u>(0.5)</u>	<u>4.3</u>
General Fund	396,502	446,143	(70,000)	(70,000)	376,143
Cash Funds	0	0	0	0	0
Cash Funds Exempt/RF	25,878	25,878	0	0	25,878
Federal Funds	0	0	0	0	0
Comprehensive Environmental Response, Compensation and Liability Act Contracts	<u>542,304</u>	<u>600,000</u>	<u>(130,000)</u>	<u>(130,000)</u>	<u>470,000</u>
General Fund	117,304	175,000	(155,000)	(155,000)	20,000
Cash Funds	0	0	0	0	0
Cash Funds Exempt/RF	425,000	425,000	25,000	25,000	450,000
Federal Funds	0	0	0	0	0
<i>(5) Consumer Protection</i>					
Consumer Protection and Anti-Trust	1,721,339	1,768,735	(33,495)	(33,495)	1,735,240
FTE	<u>18.0</u>	<u>20.0</u>	<u>0.0</u>	<u>0.0</u>	<u>20.0</u>
General Fund	965,065	874,473	(153,495)	(153,495)	720,978
Cash Funds	79,988	651,557	120,000	120,000	771,557
Cash Funds Exempt/RF	676,286	242,705	0	0	242,705
Federal Funds	0	0	0	0	0
Total for Supplemental #6	12,720,357	14,292,739	(705,000)	(705,000)	13,587,739
FTE	<u>88.4</u>	<u>96.7</u>	<u>(0.5)</u>	<u>(0.5)</u>	<u>96.2</u>
General Fund	7,059,051	7,719,140	(790,000)	(790,000)	6,929,140

	FY 2007-08	FY 2008-09	Fiscal Year 2008-09 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
Cash Funds	556,868	1,282,957	120,000	120,000	1,402,957
Cash Funds Exempt/RF	4,155,185	4,156,068	25,000	25,000	4,181,068
Federal Funds	949,253	1,134,574	(60,000)	(60,000)	1,074,574
Staff Initiated Supplemental - Legal Services for the Judicial Department					
<i>(2) Legal Services to State Agencies</i>					
Personal Services	15,831,413	17,575,709	0	(80,000)	17,495,709
FTE	<u>0.0</u>	<u>214.5</u>	<u>0.0</u>	<u>0.0</u>	214.5
Cash Funds	1,000,000	1,000,000	0	0	1,000,000
Cash Funds Exempt/RF	14,831,413	16,575,709	0	(80,000)	16,495,709
Operating and Litigation	<u>1,188,470</u>	<u>1,315,645</u>	<u>0</u>	<u>(20,000)</u>	<u>1,295,645</u>
Cash Funds	0	0	0	0	0
Cash Funds Exempt/RF	1,188,470	1,315,645	0	(20,000)	1,295,645
Total for Staff Initiated Supplemental	17,019,883	18,891,354	0	(100,000)	18,791,354
FTE	<u>0.0</u>	<u>214.5</u>	<u>0.0</u>	<u>0.0</u>	<u>214.5</u>
Cash Funds	1,000,000	1,000,000	0	0	1,000,000
Cash Funds Exempt/RF	16,019,883	17,891,354	0	(100,000)	17,791,354

	FY 2007-08	FY 2008-09	Fiscal Year 2008-09 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
Previously Approved Interim Supplemental - Mill Levy Lawsuit					
<i>(6) Special Purpose</i>					
Litigation Management and Technology Func	<u>290,899</u>	<u>325,000</u>	<u>150,000</u>	<u>150,000</u>	<u>475,000</u>
Cash Funds	0	325,000	150,000	150,000	475,000
Cash Funds Exempt/RF	290,899	0	0	0	0
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Previously Approved Interim Supplemental - Arkansas River Litigation					
<i>(4) Water and Natural Resources</i>					
Consultant Expenses	<u>36,733</u>	<u>50,000</u>	<u>70,000</u>	<u>70,000</u>	<u>120,000</u>
Cash Funds	0	50,000	70,000	70,000	120,000
Cash Funds Exempt/RF	36,733	0	0	0	0
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Totals Including Pending Items					
Department of _____					
Totals for ALL Departmental line items	42,161,468	47,956,013	(219,676)	(319,676)	47,636,337
FTE	<u>356.0</u>	<u>390.9</u>	<u>1.2</u>	<u>1.2</u>	<u>392.1</u>
General Fund	8,437,862	9,645,044	(790,000)	(790,000)	8,855,044
Cash Funds	4,176,974	7,758,602	359,144	359,144	8,117,746
Cash Funds Exempt/RF	28,615,428	29,395,316	271,180	171,180	29,566,496
Federal Funds	931,204	1,157,051	(60,000)	(60,000)	1,097,051

Key:

N.A. = Not Applicable or Not Available

	FY 2006-07	FY 2007-08	Fiscal Year 2007-08 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation

Supplementals for FY 2007-08

Previously Approved Interim Supplemental - Arkansas River Litigation

(2) Criminal Justice and Appellate

Capital Crimes Prosecution Unit - GF	324,223	361,781	(20,000)	(20,000)	341,781
FTE	3.8	4.0	0.0	0.0	4.0

(4) Water and Natural Resources

Consultant Expenses	<u>0</u>	<u>50,000</u>	<u>20,000</u>	<u>20,000</u>	<u>70,000</u>
General Fund	0	0	20,000	20,000	20,000
Cash Funds	0	0	0	0	0
Cash Funds Exempt/RF	0	50,000	0	0	50,000

Total for Interim Supplemental

FTE	<u>3.8</u>	<u>4.0</u>	<u>0.0</u>	<u>0.0</u>	<u>4.0</u>
General Fund	324,223	361,781	0	0	361,781
Cash Funds	0	0	0	0	0
Cash Funds Exempt/RF	0	50,000	0	0	50,000

Previously Approved Interim Supplemental - Mill Levy Lawsuit

(6) Special Purpose

Litigation Management and Technology Fund -

CFE	290,899	325,000	22,000	22,000	347,000
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Total FY 07-08 Request - DEPARTMENT OF LAW

TOTALS for ALL Departmental line items	37,648,215	46,016,992	22,000	22,000	46,038,992
FTE	<u>343.7</u>	<u>378.4</u>	<u>0.0</u>	<u>0.0</u>	<u>378.4</u>
General Fund	8,719,973	8,675,523	0	0	8,675,523
Cash Funds	3,798,466	6,817,942	0	0	6,817,942
Cash Funds Exempt/RF	24,298,191	29,428,172	22,000	22,000	29,450,172
Federal Funds	831,585	1,095,355	0	0	1,095,355