

This document contains two supplemental requests that were presented to the Joint Budget Committee for the Department of Law:

1. An emergency 1331 supplemental request presented on December 20, 2007.
2. A supplemental request presented on January 17, 2008.

**COLORADO GENERAL ASSEMBLY**

**JOINT BUDGET COMMITTEE**



**FY 2007-08 SUPPLEMENTAL:**

**DEPARTMENT OF LAW**

**EMERGENCY 1331**

**REQUEST**

**JBC Working Document - Subject to Change**

**Staff Recommendation Does Not Represent Committee Decision**

**Prepared By:**

**Stephen Allen, JBC Staff**

**December 20, 2007**

**For Further Information Contact:**

**Joint Budget Committee  
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**DEPARTMENT OF LAW  
FY 2007-08 1331 SUPPLEMENTAL RECOMMENDATION  
JBC WORKING DOCUMENT - SUBJECT TO CHANGE**

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	FY 2006-07	FY 2007-08	Fiscal Year 2007-08 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
<b>DEPARTMENT OF LAW</b>					
<b>Attorney General - John Suthers</b>					
<b>Emergency 1331 Supplemental - Defense of the Republican River Compact</b>					
<i>(4) Water and Natural Resources</i>					
Defense of the Republican River Compact	<u>0</u>	<u>0</u>	<u>130,000</u>	<u>130,000</u>	<u>130,000</u>
Cash Funds Exempt	0	0	130,000	130,000	130,000
<b>Total Request</b>					
DEPARTMENT OF LAW					
TOTALS for ALL Departmental line items	37,648,215	46,269,779	130,000	130,000	46,399,779
FTE	<u>343.7</u>	<u>383.5</u>	<u>0.0</u>	<u>0.0</u>	<u>383.5</u>
General Fund	8,719,973	8,744,803	0	0	8,744,803
Cash Funds	3,798,466	6,888,797	0	0	6,888,797
Cash Funds Exempt	24,298,191	29,540,471	130,000	130,000	29,670,471
Federal Funds	831,585	1,095,708	0	0	1,095,708

**DEPARTMENT OF LAW  
 FY 2007-08 1331 SUPPLEMENTAL RECOMMENDATION  
 JBC WORKING DOCUMENT - SUBJECT TO CHANGE**

**Emergency 1331 Supplemental - Republican River Compact Litigation**

	Request	Recommendation
Total	<u>\$130,000</u>	<u>\$130,000</u>
General Fund	0	0
Cash Funds	0	0
Cash Funds Exempt	130,000	130,000
Federal Funds	0	0

<p>Does JBC staff believe the request is consistent with the emergency supplemental criteria outlined in Section 24-75-111, C.R.S.? Pursuant to statute, the Controller may authorize an over expenditure of the existing budget if the over expenditure meets the following criteria: (1) Is approved in whole or in part by the Joint Budget Committee; (2) Is necessary due to unforeseen circumstances arising while the General Assembly is not meeting in regular or special session during which such over expenditure can be legislatively addressed; (3) Is approved by the Office of State Planning and Budgeting (except State, Law, Treasury, Judicial, or Legislative Departments); (4) Is approved by the Capital Development Committee, if a capital request; (5) Is consistent with all statutory provisions applicable to the program, function or purpose for which the over expenditure is made; and (6) Does not exceed the unencumbered balance of the fund from which the over expenditure is made as of the date of the over expenditure.</p>	<b>YES</b>
<p>JBC Staff and the Department agree that this supplemental is the result of unforeseen circumstances arising while the General Assembly is not meeting in regular or special session.</p>	

**Department Request:** The Department of Law requests an additional appropriation of \$130,000 cash funds exempt for FY 2007-08, which will allow it to expend \$130,000 of the \$240,000 cash funds exempt allocation that the Colorado Water Conservation Board voted to provide to the Department at the Board's November 2007 meeting. These moneys will be used to defend Colorado against claims that the State of Kansas is expected to assert under the Republican River Compact. The fund source is the Litigation Fund established in Section 27-60-121 (2.5) (a), which is continuously appropriated to the Colorado Water Conservation Board. During figure setting this coming winter, the Department will request authority to spend in FY 2008-09 the remaining \$110,000 that the Colorado Water Conservation Board has allocated for defense of Colorado's interests in this matter.

Note that this FY 2007-08 request and the anticipated FY 2008-09 request will only cover the costs of Republican-River litigation; they will not cover the cost of damages that Colorado may have to pay, nor will they cover the cost of remedies that Colorado may be required to undertake.

**DEPARTMENT OF LAW  
FY 2007-08 1331 SUPPLEMENTAL RECOMMENDATION  
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**Analysis:** *Background on the Republican River Compact and Disputes Related to the Compact:* The Republican River Compact between Colorado, Kansas, and Nebraska was signed 1942. It governs the use of water in the 24,900 square mile Republican River Basin, which lies in northeastern Colorado, southwestern Nebraska and northwestern Kansas. The Compact provides for the division of Republican River water among the three states. In 1998, Kansas sued Nebraska and Colorado, alleging overuse of Republican River water. In 2003, Kansas, Nebraska and Colorado entered into a settlement decree to resolve the dispute. As a result of that decree, Colorado has developed new water enforcement rules, retired thousands of acres of irrigated land and taken additional actions such as the partial draining of Bonny Reservoir, which is near the Kansas border.

Recently, the Kansas Attorney General indicated that the states of Nebraska and Colorado are not doing enough to comply with the settlement decree, and that Kansas intends to initiate legal action against those states to enforce the decree. The Department of Law anticipates that shortly after the beginning of the new year, Kansas will file a complaint with the United States Supreme Court against Colorado, claiming that Colorado has consumed more Republican River water than it is allowed under the Compact. Compact compliance is calculated according to a 5-year rolling average with the first compliance period ending on December 31, 2007. It is clear that Colorado will have consumed more water than allowed under the terms of the Compact as of that date. Kansas will file similar claims against Nebraska. The Department of Law also anticipates cross-claims from Nebraska alleging that Colorado's over consumption of water injured Nebraska or contributed to Nebraska's over use.

The requested \$130,000 appropriation will be used to pay for negotiation and litigation expenses, primarily for travel and the hiring of experts to bolster Colorado's arguments in the case. Stipulations stemming from the 2003 settlement require that Colorado participate in non-binding arbitration before the case can proceed to the U.S. Supreme Court. The Department expects that this arbitration proceeding will begin shortly after Kansas files its complaint, perhaps as early as February 2008. As a consequence, the Department does not believe it can safely wait for the normal supplemental process to provide the additional funds that it needs to proceed. There are no suitable appropriations within the Long Bill that the Department can draw upon as it waits for a regular supplemental to provide it with funding. The Department is hopeful that fast legal work supported by strong expert opinion will help it reach a favorable negotiated settlement without the need for protracted litigation.

*Background on the Colorado Water Conservation Board and 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 Colorado Water Conservation Board's Litigation Fund, which is established in Section 37-60-121 (2.5) (a) (III), was created to support the State in water-related litigation. The fund's balance, which currently equals \$3.6 million, derives from periodic appropriations that the General Assembly makes into the Fund. The most recent transfer into the fund occurred in 2006 when Section 17 of H.B. 06-1313 transferred \$2 million from the Operational Account of the

**DEPARTMENT OF LAW  
FY 2007-08 1331 SUPPLEMENTAL RECOMMENDATION  
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Severance Tax Trust Fund into the litigation fund. Moneys in the Litigation Fund are continuously appropriated to the Colorado Water Conservation Board and all expenditures from the fund must be approved by the Board. By statute, the Attorney General may request moneys from the Litigation Fund to support water-related lawsuits. At its November 2007 meeting, in response to a request from the Attorney General, the Colorado Water Conservation Board allocated \$240,000 from the Litigation Fund to support anticipated litigation costs related to the Republican River Compact. The Department of Law requests authority to expend \$130,000 of this amount in FY 2007-08 and requests spending authority for the remaining \$110,000 in FY 2008-09, though the request for FY 2008-09 spending authority will not be considered until figure setting for the Department of Law, which will occur during the upcoming session.

Like many appropriations involving the Department of Law, this is a two part appropriation. The first part of the appropriation occurred when the Colorado Water Conservation Board used its continuous spending authority to allocate \$240,000 to the Department of Law for defense of the Republican River Compact, while the second appropriation will occur within the Department of Law's portion of the Long-Bill. The second part of this appropriation gives the Department the authority it needs to expend the moneys allocated to it by the Colorado Water Conservation Board. The Joint Budget Committee could approve an appropriation that is less than the \$130,000 for FY 2007-08 requested by the Department of Law. If the Committee approves an appropriation that exceeds \$130,000 with the intent of ultimately appropriating more than the \$240,000 allocated by the Colorado Water Conservation Board, the Board would have to revisit its allocation decision.

**Staff Recommendation:** Staff recommends that the Committee approve the Department's request for a \$130,000 cash funds exempt appropriation from the Colorado Water Conservation Board's Litigation Fund. The request clearly falls within the scope of Section 37-60-121 (2.5), C.R.S., which governs the use of the Litigation Fund and there is sufficient balance in the fund to cover the request. There is also reason to believe that a funding delay will harm Colorado's position in the mandatory non-binding Republican-River arbitration that is likely to occur early in 2008.

Staff recommends that this appropriation be presented on a new line in division (4) Water and Natural Resources of the Department of Law's portion of the Long Bill. The new line will be titled "Defense of the Republican River Compact" and an associated letter note will indicate that the appropriation is from the Colorado Water Conservation Board's Litigation Fund.

**COLORADO GENERAL ASSEMBLY**

**JOINT BUDGET COMMITTEE**



**FY 2007-08 SUPPLEMENTAL:**

**DEPARTMENT OF LAW**

**PRIORITIZED AND NON-PRIORITIZED  
REQUESTS**

**JBC Working Document - Subject to Change**

**Staff Recommendation Does Not Represent Committee Decision**

**Prepared By:**

**Stephen Allen, JBC Staff**

**January 17, 2008**

**For Further Information Contact:**

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	FY 2006-07	FY 2007-08	Fiscal Year 2007-08 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 - Refinance the Tobacco Litigation Line Item</b>					
<i>(6) Special Purpose</i>					
Tobacco Litigation	90,556	225,000	0	0	225,000
Excess Earnings of the Legal Services to State Agencies Program - CFE	90,556	125,000	(125,000)	(125,000)	0
Tobacco Litigation Settlement Defense Account within the Tobacco Litigation Settlement Cash Fund - CFE	0	100,000	125,000	125,000	225,000
<b>Supplemental #2 - Eliminate Fraudulent Documents Program Funding</b>					
<i>(6) Special Purpose</i>					
Fraudulent Documents (S.B. 06-110) - CF	0	65,874	(65,874)	(65,874)	0
FTE	0.0	1.0	(1.0)	(1.0)	0.0
<b>Supplemental #3 - Supplemental Legal Service Hours Appropriated to Other Departments</b>					
<i>(2) Legal Services to State Agencies</i>					
Personal Services	14,414,186	16,446,532	155,056	155,056	16,601,588
FTE	<u>188.7</u>	<u>204.2</u>	<u>1.8</u>	<u>1.8</u>	<u>206.0</u>
Cash Funds	945,000	1,000,000	0	0	1,000,000
Cash Funds Exempt	13,469,186	15,446,532	155,056	155,056	15,601,588

	FY 2006-07	FY 2007-08	Fiscal Year 2007-08 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
Operating and Litigation - CFE	895,240	969,576	77,512	77,512	1,047,088
<b>Total for Supplemental #3</b>	15,309,426	17,416,108	232,568	232,568	17,648,676
FTE	<u>188.7</u>	<u>204.2</u>	<u>1.8</u>	<u>1.8</u>	<u>206.0</u>
Cash Funds	945,000	1,000,000	0	0	1,000,000
Cash Funds Exempt	14,364,426	16,416,108	232,568	232,568	16,648,676
<b>Supplemental #4 - General Fund Reductions to Assist the Governor's Office with Mill Levy Lawsuit Expenses</b>					
<i>(4) Water and Natural Resources</i>					
Federal and Interstate Water Unit - GF	406,164	482,426	(35,000)	(45,000)	437,426
FTE	4.9	5.5	0.0	0.0	5.5
<i>(6) Special Purpose</i>					
Referendum K - GF	13,019	43,466	(15,000)	(20,000)	23,466
FTE	0.5	0.5	0.0	(0.5)	0.0
<b>Total for Supplemental #4</b>					
General Fund	419,183	525,892	(50,000)	(65,000)	460,892
FTE	5.4	6.0	0.0	(0.5)	5.5

	FY 2006-07	FY 2007-08	Fiscal Year 2007-08 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
<b>Supplemental #5 - Eliminate Unnecessary Appropriations in Mortgage Bills from the 2007 Session</b>					
<i>(5) Consumer Protection</i>					
Consumer Protection and Anti-Trust	1,249,400	2,197,271	(450,957)	(450,957)	1,746,314
FTE	<u>15.1</u>	<u>25.3</u>	<u>(5.3)</u>	<u>(5.3)</u>	<u>20.0</u>
General Fund	620,160	841,874	0	0	841,874
FTE		11.5	0.0	0.0	11.5
Cash Funds	64,737	65,799	0	0	65,799
FTE		1.5	0.0	0.0	1.5
Cash Funds Exempt	564,503	1,289,598	(450,957)	(450,957)	838,641
FTE		12.3	(5.3)	(5.3)	7.0
<b>Previously Approved 1331 Supplemental - Defense of the Republican River Compact</b>					
<i>(4) Water and Natural Resources</i>					
Defense of the Republican River Compact	<u>0</u>	<u>0</u>	<u>130,000</u>	<u>130,000</u>	<u>130,000</u>
Cash Funds Exempt	0	0	130,000	130,000	130,000
<b>Totals Excluding Pending Items</b>					
DEPARTMENT OF LAW					
TOTALS for ALL Departmental line items	37,648,215	46,269,779	(204,263)	(219,263)	46,050,516
FTE	<u>343.7</u>	<u>383.5</u>	<u>(4.5)</u>	<u>(5.0)</u>	<u>378.5</u>
General Fund	8,719,973	8,744,803	(50,000)	(65,000)	8,679,803
Cash Funds	3,798,466	6,888,797	(65,874)	(65,874)	6,822,923
Cash Funds Exempt	24,298,191	29,540,471	(88,389)	(88,389)	29,452,082
Federal Funds	831,585	1,095,708	0	0	1,095,708

	FY 2006-07	FY 2007-08	Fiscal Year 2007-08 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
<b>Statewide Supplementals</b> (see narrative for more detail)	<u>N.A.</u>	<u>N.A.</u>	<u>1,866</u>	<u>Pending</u>	<u>N.A.</u>
General Fund			16,086		
Cash Funds			(3,643)		
Cash Funds Exempt			(10,223)		
Federal Funds			(354)		
<b>Totals Including Pending Items in Request</b>					
DEPARTMENT OF LAW					
TOTALS for ALL Departmental line items	37,648,215	46,269,779	(202,397)	(219,263)	46,050,516
FTE	<u>343.7</u>	<u>383.5</u>	<u>(4.5)</u>	<u>(5.0)</u>	<u>378.5</u>
General Fund	8,719,973	8,744,803	(33,914)	(65,000)	8,679,803
Cash Funds	3,798,466	6,888,797	(69,517)	(65,874)	6,822,923
Cash Funds Exempt	24,298,191	29,540,471	(98,612)	(88,389)	29,452,082
Federal Funds	831,585	1,095,708	(354)	0	1,095,708

Key: N.A. = Not Applicable

**DEPARTMENT OF LAW  
 FY 2007-08 SUPPLEMENTAL RECOMMENDATION  
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**Supplemental # 1 - Refinance the Tobacco Litigation Line Item**

	Request	Recommendation
Total	<u>\$0</u>	<u>\$0</u>
Cash Funds Exempt	0	0

<b>Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria?</b>	<b>YES</b>
[An emergency or act of God / a technical error in the appropriation / new data / an unforeseen contingency]	
The Department and Staff agree that this supplemental is the result of new data.	

**Department Request:** The Department requests that \$125,000 of the \$225,000 cash funds exempt appropriation for the Tobacco Litigation Line Item in the Special Purpose division be refinanced. The current funding source for this \$125,000 appropriation is excess earnings of the Legal Services to State Agencies Program; the new funding source is the Defense Account of the Tobacco Litigation Settlement Cash Fund. There will be no change in the overall level of appropriation for this line.

**Staff Recommendation:** Staff recommends that the Committee approve this request.

The appropriation on the Tobacco Litigation line is being used to defend the State's interests in the ongoing dispute with participating tobacco manufacturers over enforcement of the State's laws relating to non-participating manufacturers. Currently the appropriation consists of \$125,000 from the Excess Earnings of the Legal Services to State Agencies Program and \$100,000 from the Defense Account of the Tobacco Litigation Settlement Cash Fund. Since excess earnings of the Legal Services to State Agencies Program are insufficient to support the \$125,000 appropriation from that source, the Department requests that the Tobacco Litigation line be funded entirely from the Defense Account of the Tobacco Litigation Settlement Cash Fund, which currently has a balance of \$4.2 million.

**Background Information:** The Legal Services to State Agencies (LSSA) program provides legal representation to other agencies of state government, charging for the services it provides. The program is said to have excess earnings whenever the revenue earned by the program exceeds the cost of program operation. The Department of Law carefully manages the LSSA program to assure that it always has excess earnings – if LSSA earnings were to fall below expenses in a given year, it would mean that the program couldn't pay some of its invoices or paychecks. Excess earnings fluctuate substantially from year to year; in recent years, they have been as high as \$470,000 and as low as \$238,000. The amount of excess earnings is not known with certainty until after the close of the fiscal year; thus the excess earnings for FY 2006-07 were not known with certainty until July 2007. Since the LSSA program is cash funded but lacks its own cash fund, these excess earnings would normally revert to the General Fund, however, thanks to footnote 99 in the FY 2007-08 Long

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Bill and similar footnotes in earlier years, the excess LSSA earnings of a given fiscal year can be appropriated in the Long Bill for the next fiscal year and then expended by the Department of Law within that subsequent year. Excess earnings that are not appropriated revert to the General Fund. If actual excess earnings prove to be insufficient to support the corresponding Long Bill appropriations for the next year, then a negative supplemental is required, which is what happened last year when excess earnings declined to \$238,000, the lowest level in recent years. In addition, an unexpected demand has been placed of this funding source during the current year; the Department has been required to use this funding source to pay for outside legal counsel for the Department of Education in the Mill Levy lawsuit, a matter that is discussed more completely in the writeup for Supplemental #4 below.

Thanks to Senate Bill 07-113, a JBC bill that was enacted last year, an alternative funding source is available. This bill allowed legal expenses arising out of challenges to the provisions of the Master Settlement Agreement to be paid from the Defense Account of the Tobacco Litigation Settlement Cash Fund, which was established out of Master Settlement Agreement moneys received in compensation for attorney fees and other costs that Colorado incurred in its legal action against tobacco manufacturers that led to the Master Settlement Agreement. The Defense Account is the alternative funding source that the Department requests permission to draw upon with this supplemental.

**Supplemental # 2 - Eliminate Fraudulent Documents Program Funding**

	Request	Recommendation
Total	(\$65,874)	(\$65,874)
Cash Funds	(65,874)	(65,874)
FTE	(1.0)	(1.0)

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God / a technical error in the appropriation / new data / an unforeseen contingency]	YES
The Department states and JBC staff agrees that this supplemental is the result of new data. The Department has not received any fraudulent-document referrals from District Attorneys or from the U.S. Attorney's office and this information has led the Department to conclude that the program is not viable.	

**Department Request:** The Department requests that the FY 2007-08 \$65,874 cash funds exempt 1.0 FTE appropriation for the Fraudulent Documents Program be eliminated. The funding source is the Judicial Stabilization Cash Fund.

**Staff Recommendation:** Staff recommends that the Committee approve this request.

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The Fraudulent Documents Program was created by S.B. 06-110, which appropriated \$68,879 cash funds exempt for program implementation. As the bill was working through the legislative process, the Department indicated that this appropriation was insufficient and it reiterated this position in subsequent requests for General Fund support for the program. The Joint Budget Committee and the General Assembly have twice turned down these requests. In addition, the Judicial Department, which is the principal user of the Judicial Stabilization Cash Fund, has asserted that the fund has insufficient resources to support the programs it is supposed to support within the Judicial branch and also support the Fraudulent Documents Program. The Attorney General has stated that the amount of money that would be recovered by these actions is minimal, so there is little prospect that the program will become self-financing, as was envisioned in the original legislation. The Department has asked District Attorneys and the U.S. Attorney's office for case referrals and has not received a single one. The Attorney General states that this is an extremely low-priority program that does not warrant continuation.

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

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

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

The bill continued unamended through the legislative process until it reached the House Appropriations Committee in late April 2006. The Appropriations Committee adopted an amendment that reduced the bill's



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appropriation from \$172,197 and 2.5 FTE to \$68,879 and 1.0 FTE. The amendment did not change any of the bill's other provisions and thus did not alter the amount of work necessary to enforce the bill.

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

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

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**Supplemental #3 - Supplemental Legal Service Hours Appropriated to Other Departments**

	Request	Recommendation
Total - CFE	\$232,568	\$232,568
FTE	1.8	1.8

<b>Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria?</b>	<b>YES</b>
[An emergency or act of God / a technical error in the appropriation / new data / an unforeseen contingency]	
Staff and the Department agree that this supplemental request is the result of new data.	

**Department Request:** The Department of Law requests an additional appropriation of \$232,568 cash funds exempt and 1.8 FTE for its Legal Services to State Agencies program. This additional appropriation, which is for personal services and for operating/litigation expenses, equals the sum of the supplemental requests for FY 2007-08 legal services by four other agencies of state government: the Departments of Agriculture, Education, Higher Education and 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.

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**Staff Recommendation:** Staff recommends that the cash funds exempt appropriation to the Department of Law be changed in step with Committee-approved supplemental adjustments to the FY 2007-08 legal services appropriations to other state agencies. If the Committee approves all supplemental legal services requests brought forward by other departments, this supplemental appropriation will equal \$232,568 cash funds exempt and 1.8 FTE. Approval of this supplemental adjustment is implicit in the Committee's other decisions; without this appropriation, the Department will be unable to provide the additional legal services envisioned in 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 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 such an appropriation it cannot pay the salaries of the attorneys who provided the legal services or pay associated expenses. Thus, whenever the General Assembly makes an appropriation to a state agency for legal services, an equal appropriation must be made to the Department of Law so it can spend the money it receives. The appropriation to the Department of Law is a cash funds exempt transfer; it appears in the cash funds exempt column of the Long Bill with a (T) notation.

Other departments have requested the following supplemental increases for their FY 2007-08 legal services appropriations. At this writing, three of these requests have been approved and one is pending. The Department requests a corresponding increase in the appropriation to its Legal Services to State Agencies Division.

Agency - Reason for Request	Amount	Hours	FTE Equivalent	Status
1. Department of Education - Charter School Related Appeals	\$76,178	1,057	0.6	Pending
2. Department of Higher Education - Colorado Christian University and the College Opportunity Fund	61,514	854	0.5	Approved
3. Department of Agriculture - Disease Control Efforts	54,323	854	0.4	Approved
4. Department of Public Health - Legal Services for Environmental Divisions	40,553	563	0.3	Approved
<b>Total</b>	<b>\$232,568</b>	<b>3,328</b>	<b>1.8</b>	

**Supplemental # 4 - General Fund Reductions to Assist the Governor's Office with Mill Levy Lawsuit Expenses**

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	Request	Recommendation
Total	( <u>\$50,000</u> )	( <u>\$65,000</u> )
General Fund	(50,000)	(65,000)
FTE	0.0	(0.5)

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God / a technical error in the appropriation / new data / an unforeseen contingency]	YES
The Department states and staff agrees that this supplemental is the result of new data.	

**Department Request:** The Department requests that the General Fund appropriation for its Federal and Interstate Water Unit be reduce by \$35,000 and the General Fund appropriation for its Referendum K line item be reduced by \$15,000, for a total reduction of \$50,000 General Fund.

**Connection to the Mill Levy Lawsuit.** The Department expressly connects this negative supplemental with the request by the Governor's office for a \$100,000 FY 2007-08 supplemental appropriation to fund outside counsel that will represent the Governor's office in the "Mill Levy Lawsuit," which was filed in December 2007. That lawsuit challenges the constitutionality of S.B. 07-199, which changed the method for calculating school district property taxes that support the School Finance Act. The Governor's supplemental request will be considered by the Committee on Tuesday, January 22, when it hears supplemental requests from the Governor's office.

The only named defendant in this lawsuit is the Colorado Department of Education, however, the Governor's office has decided to intervene in the case to defend the constitutionality of S.B. 07-199. There is a possibility that the Governor's office may in the future become a named defendant. Because the Attorney General has issued an informal opinion that was circulated to the Governor's office and the legislature expressing his opinion that S.B. 07-199 is unconstitutional, the Department of Law is unable to represent the Department of Education or the Governor's Office in this action. As a consequence, both the Department of Education and the Governor's office must hire outside counsel to represent them. Section 24.31.101 (3) (e), C.R.S., states, "Whenever the attorney general is unable or has failed or refused to provide legal services to an agency of state government, as determined by the governor.... such agency may employ counsel of its own choosing to provide such legal services. Any expense incurred by reason of the employment of counsel pursuant to this paragraph (e) shall be a lawful charge against appropriations for this purpose made by the general assembly to the department of law." Because of this statute, the Department of Law is paying for the outside counsel that the Department of Education is hiring to defend itself in this lawsuit. However, the Department of Law has stated informally that it believes that it has discharged its statutory duties by paying the legal expenses of the Department of Education. It does not feel the same obligation to cover the expenses of the Governor's office, which has voluntarily decided to intervene in the case. None-the-less, the Department of Law has stated

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that it wants to help pay the legal expenses of the Governor's Office related to this lawsuit to the extent that it is able.

Expenses of this sort, which arise infrequently, are usually paid out of excess earnings of the Legal Services to State Agencies (LSSA) Program. As noted in the presentation of Supplemental #1 above, FY 2006-07 LSSA excess earnings, which would normally fund outside legal costs in FY 2007-08, were much lower than they have been in recent years. As a consequence, there are enough LSSA excess earnings to fund outside legal representation for the Department of Education in the Mill Levy case, but there are not enough excess earnings to fund representation for the Governor's office. With this supplemental, the Department of Law is, in effect, offering to help to pay some of the legal expenses of the Governor's Office, which will reduce the Department's General Fund appropriation.

**Staff Recommendation:** Staff recommends that the Committee reduce the Department's appropriation by a total of \$65,000 General Fund and 0.5 FTE, comprised of reductions of \$45,000 General Fund for the Interstate Water Unit by and \$20,000 General Fund and 0.5 FTE for the Referendum K line. This recommendation is based on a review of the most recent monthly closing figures from COFRS, the state accounting system. Staff recommends this adjustment whether or not the Committee approves the \$100,000 supplemental request of the Governor's Office for legal representation in the Mill Levy lawsuit.

**Referendum K Background:** Referendum K, which was approved by voters in November 2006, directed the Attorney General to initiate, or join other states in a lawsuit against the U.S. Attorney General to demand that the federal government enforce existing federal immigration laws. The case has been dismissed by a federal judge and remainder of the appropriation for this line is no longer needed. A review of the most recent COFRS report for this line indicates that the appropriation can be reduced by \$20,000 General Fund and 0.5 FTE.

**Interstate Water Unit Background:** Due to staffing shortfalls during the current year, the unit is unable to utilize its entire appropriation. A review of the most recent COFRS report for this line indicates that the appropriation can be reduced by \$35,000 General Fund. Note, however, that this is a one-time reduction in the level of appropriations, the unit will not be able to absorb such a reduction next year, when it is expected to be fully staffed.

**Supplemental #5 - Eliminate Unnecessary Appropriations in Mortgage Bills from the 2007 Session**

	Request	Recommendation
Total	( <u>\$450,957</u> )	( <u>\$450,957</u> )
General Fund	(450,957)	(450,957)

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	Request	Recommendation
FTE	(5.3)	(5.3)

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God / a technical error in the appropriation / new data / an unforeseen contingency]	YES
<p>The Department states and JBC staff agrees that this supplemental is the consequence of new data. The appropriations that this supplemental alters are contained in two mortgage bills enacted by the General Assembly during the 2007 session. At that time the Department stated that economies of scale would result if more than one of the four mortgage bills then being considered by the General Assembly became law, but it was not known which of the bills, if any, would become law and thus the economies could not then be computed.</p>	

**Department Request:** The Department requests that the Committee eliminate the appropriations to the Department's Consumer Protection Division that are contained in S.B. 07-203, Mortgage Loan Transactions, and H.B. 07-1322, Mortgage Fraud Prevention. These appropriations total \$450,957 cash funds exempt and 5.3 FTE.

**Staff Recommendation:** Staff recommends that the Committee Approve this request.

During the 2007 session, the General Assembly enacted four mortgage bills: H.B. 07-1322, S.B. 07-085, S.B. 07-216, and S.B. 07-203. As a broad generalization, H.B. 07-1322 deals with fraud, prohibited acts, and the relationship of mortgage brokers to their customers; S.B. 07-085 deals with the relationship between mortgage brokers and real estate appraisers; S.B. 07-203 changes the current mortgage broker registration system to a licensing system; and S.B. 07-216 deals with the marketing of nontraditional mortgage products to people for whom those products may be unsuitable.

As these bills were making their way through the General Assembly, the Department of Law and the Department of Regulatory Agencies, the agencies charged with implementing the bills, indicated that there would be economies of scale if two or more of the bills became law. With this supplemental, the Department of Law indicates that the appropriation to the Consumer Protection Division contained in S.B. 07-216 is sufficient to also implement the Consumer Protection provisions contained in S.B. 07-203 and H.B. 07-1322. This is consistent with statements the Department made as the bills were being considered by the General Assembly.

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**Previously Approved 1331 Supplemental - Defense of the Republican River Compact**

	Previously Approved	Current Staff Recommendation
Total	\$130,000	\$130,000
Cash Funds Exempt	130,000	130,000

**Description of Supplemental:** In December, the Committee approved an additional appropriation of \$130,000 cash funds exempt for FY 2007-08 for the Department to defend the State's interests against claims that the State of Kansas is expected to assert under the Republican River Compact. The fund source is the Litigation Fund established in Section 27-60-121 (2.5) (a), C.R.S.

**Staff Recommendation:** Staff recommends that this previously-approved amount be included in the supplemental bill for the Department of Law.

**Background:** The Kansas Attorney General has indicated that the states of Nebraska and Colorado are not doing enough to comply with the 2003 Republican River settlement decree, and that Kansas will initiate legal action against Nebraska and Colorado to enforce the decree. The Department of Law anticipates Kansas will soon file a complaint with the United States Supreme Court against Colorado, claiming that Colorado has consumed more Republican River water than it is allowed under the Compact. This \$130,000 appropriation will be used to pay for negotiation and litigation expenses, primarily for travel and the hiring of experts to bolster Colorado's arguments in the case.

**Statewide Common Policy Supplemental Requests**

These requests are not prioritized and are not analyzed in this packet. These items will be acted on separately by the JBC when it makes a decision regarding common policies.

Department of Law's Portion of the Statewide Supplemental Request	Tot al	General Fund	Cash Funds	Cash Funds Exempt	Federal Funds	FTE
1. Vehicle Lease	(9,307)	(1,341)	(3,016)	(4,890)	(60)	0.0
2. Computer Service (GGCC)	24,757	20,238	0	4,519	0	0.0
3. Communication Services Payments	(87)	0	0	0	(87)	0.0
4. Capitol Complex Lease - Technical	18,066	5,656	1,262	10,732	416	0.0

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<b>Department of Law's Portion of the Statewide Supplemental Request</b>	<b>Tot al</b>	<b>General Fund</b>	<b>Cash Funds</b>	<b>Cash Funds Exempt</b>	<b>Federal Funds</b>	<b>FTE</b>
5. Workers Compensation	(27,044)	(8,467)	(1,889)	(16,065)	(623)	0.0
6. Risk Management	(4,519)	0	0	(4,519)	0	0.0
Total	1,866	16,086	(3,643)	(10,223)	(354)	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 common policy supplementals. If staff believes there is reason to deviate from the common policy, staff will appear before the Committee later to present the relevant analysis.

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