

COLORADO GENERAL ASSEMBLY

JOINT BUDGET COMMITTEE



FY 2006-07 SUPPLEMENTAL:

DEPARTMENT OF LAW

**PRIORITIZED AND NON-PRIORITIZED
REQUESTS**

JBC Working Document - Subject to Change

Staff Recommendation Does Not Represent Committee Decision

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**DEPARTMENT OF LAW
FY 2006-07 SUPPLEMENTAL RECOMMENDATION
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	FY 2005-06	FY 2006-07	Fiscal Year 2006-07 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
DEPARTMENT OF LAW					
Attorney General John Suthers					
Supplemental # 1 - Fraudulent Documents Program Funding					
<i>(6) SPECIAL PURPOSE</i>					
Appropriation in S.B.06-110	0	68,879	4,291	0	68,879
FTE	<u>0.0</u>	<u>1.0</u>	<u>1.0</u>	<u>0.0</u>	<u>1.0</u>
General Fund	0	0	73,170	0	0
Cash Funds	0	68,879	(68,879)	0	68,879
Supplemental # 2 - Referendum K Funding					
<i>(1) ADMINISTRATION</i>					
ADP Capital Outlay	<u>49,543</u>	<u>26,825</u>	<u>2,725</u>	<u>2,725</u>	<u>29,550</u>
General Fund	0	0	2,725	2,725	2,725
Cash Funds	2,165	0	0	0	0
Cash Funds Exempt	1,083	26,825	0	0	26,825
Federal Funds	46,295	0	0	0	0
<i>(6) SPECIAL PURPOSE</i>					
Referendum K	0	0	43,466	43,446	43,446
FTE	<u>0.0</u>	<u>0.0</u>	<u>0.5</u>	<u>0.5</u>	<u>0.5</u>
General Fund	0	0	43,466	43,446	43,446

	FY 2005-06	FY 2006-07	Fiscal Year 2006-07 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
Total	49,543	26,825	46,191	46,171	72,996
FTE	<u>0.0</u>	<u>0.0</u>	<u>0.5</u>	<u>0.5</u>	<u>0.5</u>
General Fund	0	0	46,191	46,171	46,171
Cash Funds	2,165	0	0	0	0
Cash Funds Exempt	1,083	26,825	0	0	26,825
Federal Funds	46,295	0	0	0	0
Supplemental # 3 - Replacement Vehicle for the Attorney General					
<i>(1) ADMINISTRATION</i>					
Vehicle Lease Payments	<u>25,353</u>	<u>33,281</u>	<u>798</u>	<u>798</u>	<u>34,079</u>
General Fund	7,448	12,629	798	798	13,427
Cash Funds	3,543	4,020	0	0	4,020
Cash Funds Exempt	6,452	8,740	0	0	8,740
Federal Funds	7,910	7,892	0	0	7,892
Supplemental # 4 - Supplemental Legal Service Hours Appropriated to Other Departments (see narrative for more detail)					
<i>(2) LEGAL SERVICES TO STATE AGENCIES</i>					
Personal Services	14,055,579	15,159,885	204,308	204,308	15,364,193
FTE	<u>186.2</u>	<u>197.2</u>	<u>2.5</u>	<u>2.5</u>	<u>199.7</u>
Cash Funds	1,000,000	945,000	0	0	945,000
Cash Funds Exempt	13,055,579	14,214,885	204,308	204,308	14,419,193
Operating and Litigation - CFE	690,050	867,422	102,154	102,154	969,576

	FY 2005-06	FY 2006-07	Fiscal Year 2006-07 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
Total	14,745,629	16,027,307	306,462	306,462	16,333,769
FTE	186.2	197.2	2.5	2.5	<u>199.7</u>
Cash Funds	1,000,000	945,000	0	0	945,000
Cash Funds Exempt	13,745,629	15,082,307	306,462	306,462	15,388,769
Previously Approved 1331 Supplemental - Funding for Tobacco Settlement Litigation					
<i>(6) SPECIAL PURPOSE</i>					
Tobacco Litigation (New Line Item)	<u>0</u>	<u>0</u>	<u>225,000</u>	<u>125,000</u>	<u>125,000</u>
General Fund	0	0	100,000	0	0
Cash Funds Exempt	0	0	125,000	125,000	125,000
Totals Excluding Pending Items					
DEPARTMENT OF LAW					
TOTALS for ALL Departmental line items	35,488,628	39,490,933	582,742	478,431	39,969,364
FTE	<u>327.4</u>	<u>359.2</u>	<u>4.0</u>	<u>3.0</u>	<u>201.2</u>
General Fund	7,344,733	8,980,883	220,159	46,969	9,027,852
Cash Funds	3,699,331	3,924,568	(68,879)	0	3,924,568
Cash Funds Exempt	23,599,189	25,703,616	431,462	431,462	26,135,078
Federal Funds	845,375	881,866	0	0	881,866

	FY 2005-06	FY 2006-07	Fiscal Year 2006-07 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
Statewide Supplementals (see narrative for more detail)					
Total	<u>N.A.</u>	<u>N.A.</u>	158,868	<u>Pending</u>	<u>N.A.</u>
General Fund			137,700		
Cash Funds			8,785		
Cash Funds Exempt			8,155		
Federal Funds			4,228		
Totals Including Pending Items in Request					
DEPARTMENT OF LAW					
TOTALS for ALL Departmental line items	35,488,628	39,490,933	741,610	478,431	39,969,364
FTE	<u>327.4</u>	<u>359.2</u>	<u>4.0</u>	<u>3.0</u>	<u>362.2</u>
General Fund	7,344,733	8,980,883	357,859	46,969	9,027,852
Cash Funds	3,699,331	3,924,568	(60,094)	0	3,924,568
Cash Funds Exempt	23,599,189	25,703,616	439,617	431,462	26,135,078
Federal Funds	845,375	881,866	4,228	0	881,866

Key:

"N.A." = Not Applicable

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Supplemental # 1 - Fraudulent Documents Program Funding

	Request	Recommendation
Total	<u>\$4,291</u>	<u>\$0</u>
General Fund	73,170	0
Cash Funds	(68,879)	0
FTE	1.0	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 the appropriation / new data / an unforeseen contingency]	NO
<p>The Department states that this supplemental is the result of technical errors, but the Department's supplemental submission does not describe the errors. If technical errors occurred, they were presumably (1) the General Assembly's decision to provide the Department with an appropriation that is less than half the appropriation identified in the fiscal note, and (2) the General Assembly's decision to fund the bill from the Judicial Stabilization Cash Fund, whose owner, the Judicial Department, is reluctant to transfer moneys from that fund to the Department. Staff does not believe that these General Assembly decisions can be characterized as technical errors. Staff is also reluctant to characterize the situation as an emergency, since it is not an emergency in the sense of a flood, a fire, or another act of God. The reluctance of the Judicial Branch to transfer moneys from the Judicial Stabilization Fund to the Department could possibly be characterized as an unforeseen contingency, but, as discussed below, this reluctance is not an obstacle. The Judicial Department must make this transfer.</p>	

Department Request: The Department requests that the \$68,879 FY 2006-07 cash funds exempt appropriation that it received in the appropriation clause of S.B. 06-110 be changed to a \$73,170 General Fund appropriation. The Department also requests that the FTE appropriation for the bill be increased from 1.0 to 2.0.

Legislative History: Senate Bill 06-110, as it emerged from the Senate Judiciary Committee last March, 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.

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

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

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

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

The Department is also frustrated by the Judicial Department's reluctance to transfer dollars from the Judicial Stabilization Cash Fund in support of the program. In September, the Judicial Department sent a letter to the Department of Law stating that

the Stabilization Fund revenues are fully appropriated to fund court staff. Judicial does not believe it was the intent of the General Assembly to reduce case processing resources in the courts to fund new prosecution capacity in the AG's Office. Therefore, until such time as the Attorney General's office deposits money into the fund through this new civil penalty, the fund is unable to cover the \$68,879 associated with S.B. 06-110 without cutting current court staff.

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The appropriation clause in S.B. 06-100 states:

SECTION 2. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the judicial stabilization cash fund created in section 13-32-101 (1.5), Colorado Revised Statutes, not otherwise appropriated, to the department of law, for the fiscal year beginning July 1, 2006, the sum of sixty-eight thousand eight hundred seventy-nine dollars (\$68,879) and 1.0 FTE, or so much thereof as may be necessary, for the implementation of this act.

This clause constitutes an unqualified directive by the General Assembly to the Judicial Department, the "owner" of the Judicial Stabilization Cash Fund, to transfer \$68,879 from that fund to the Department of Law. The fund has a balance of slightly over \$1 million, meaning that there are sufficient moneys in the fund to support the required transfer. The Controller's Office indicates that the Judicial Department *must* provide the Department of Law with the indicated moneys; it has no choice in the matter.

Staff Recommendation: As discussed in the criteria box above, staff does not believe that this request meets any of the criteria for a supplemental, therefore staff cannot recommend it.

The request will be considered at figure setting. The Department's request includes a budget amendment that asks for an increased appropriation of \$80,467 and 1.0 FTE for the program next year, comprised of a \$146,341 increase of General Fund and a \$65,847 decrease of cash funds. Whether or not the JBC funds this supplemental request, this budget amendment is now a decision item and as such will be considered along with the Department's other decision items during figure setting.

Supplemental # 2 - Referendum K Funding

	Request	Recommendation
Total	<u>\$46,191</u>	<u>\$46,191</u>
General Fund	46,191	46,191
FTE	0.5	0.5

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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 the appropriation / new data / an unforeseen contingency]	
The Department states that this supplemental is an emergency. JBC staff believes that the supplemental is the result of an unforeseen contingency; neither House Bill 06S-1022, which sent Referendum K to voters, nor the success of Referendum K at the polls could have been foreseen when the Department prepared its FY 2006-07 budget request.	

Department Request: The Department requests an appropriation of \$46,191 General Fund and 0.5 FTE in order to begin the litigation mandated by voters when they approved Referendum K by a 56 to 44 percent margin in November 2006. Referendum K directs the Colorado Attorney General to initiate, or join other states in a lawsuit against the U.S. attorney general to demand that the federal government enforce existing federal immigration laws. The referendum became effective on December 31, 2006, upon proclamation of the vote by the Governor.

Analysis: The 2006 Blue Book, which was distributed to voters prior to the 2006 election, states that Referendum K will cost the state \$190,000 annually until the lawsuit is resolved. It further states that the Department of Law will require two new attorneys plus support staff for time and work associated with the lawsuit.

The Attorney General's office examined has the prospects of a lawsuit that demands enforcement of all existing federal immigration laws by the federal government and has concluded that it is likely to be dismissed prior to trial. Based on this conclusion, the Department is requesting only a quarter of the appropriation envisioned in the Blue Book. These funds will be used to prepare a complaint and related filings and respond to an anticipated motion to dismiss. Should the case proceed to a full trial, the Department will seek additional funds and FTE through the supplemental process.

Staff Recommendation: Staff believes that the Attorney General's approach is consistent with voter desires yet is suitably cautious. Staff recommends that the Committee approve the Department's request.

Supplemental # 3 - Replacement Vehicle for the Attorney General

	Request	Recommendation
Total	\$798	\$798
General Fund	798	798

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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 the appropriation / new data / an unforeseen contingency]	
Staff and the Department agree that this supplemental is the result of new data.	

Department Request: The Department requests an appropriation of \$798 General Fund for the out-of-cycle lease acquisition of a new vehicle for the Attorney General. The \$798 appropriation represents three months of lease expense during the current year. Lease expense will equal \$3,192 for the following six fiscal years if the request is approved. The \$14.50 monthly management fee charged by state fleet is already in the base and does not require an appropriation.

The state vehicle currently used by the Attorney General, a 2000 Ford Taurus, has been driven over 100,000 miles and is becoming increasingly unreliable. Until recently, the Attorney General relied on this vehicle for statewide travel. On a Sunday morning last September, as the Attorney General traveled through South Park, the radiator cracked, rendering the vehicle inoperable. The Attorney General was stranded for several hours and had to rely on family members for a rescue. The Attorney General is now understandably reluctant to use the vehicle.

The Attorney General plans to use this car exclusively for official travel, an expected 10,000 miles per year. On rare occasion, the car may be used by other Department employees. The Attorney General does not plan to use the vehicle for commuting; if did do so he would be required to reimburse the state for this use.

The prior Attorneys General had a state-provided vehicle; both the Secretary of State and the Governor have state-provided vehicles. The Treasurer is the only elected official holding state-wide office who lacks a state vehicle.

Staff Recommendation: Staff recommends that the Committee approve this request. The Secretary is a statewide elected official who must travel substantially on official business. He deserves a reliable vehicle.

Supplemental # 4 - Supplemental Legal Service Hours Appropriated to Other Departments

	Request	Recommendation
Total - CFE	\$306,462	\$306,462
FTE	2.5	2.5

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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 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 \$306,462 cash funds exempt appropriation for its Legal Services to State Agencies Division. This additional appropriation, which is for personal services and for operating/litigation expenses, equals the sum of the supplemental requests for FY 2006-07 legal services by other agencies. This appropriation will allow the Department to provide increased legal services in amounts approved by the JBC.

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 2006-07 legal services appropriations. At this writing, the last three of these requests have been approved; the CCHE request is pending.

Agency - Reason for Request	Amount	Hours	FTE Equivalent	Status
1. Colorado Commission on Higher Education - Legal services for a case involving Colorado Christian University.	\$37,051	547	0.3	Pending
2. Department of State - Additional Legal Hours	160,978	2,375	1.3	Approved
3. Department of Natural Resources - Oil Shale Permit Reviews	57,605	850	0.5	Approved
4. Department of Regulatory Agencies - Legal Services for Implementation of H.B. 06S-1009.	50,828	750	0.4	Approved
Total	\$306,462	4,522	2.5	

The Department requests a corresponding increase in the appropriation to its Legal Services to State Agencies Division.

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Staff Recommendation: Staff recommends that the cash funds exempt appropriation to the Department be changed in step with Committee-approved supplemental adjustments to the FY 2006-07 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 \$306,462 cash funds exempt and 2.5 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.

Previously Approved 1331 Supplemental - Funding for Tobacco Settlement Litigation. Staff recommended appropriation adjustment and staff recommended Committee Bill

	Previously Approved	Current Staff Recommendation
Total	\$225,000	\$125,000
General Fund	100,000	0
Cash Funds Exempt	125,000	125,000

Description of Supplemental: In June, the Committee approved a \$225,000 1331 supplemental that funds litigation defending the state's interests in the Tobacco Master Settlement Agreement (MSA). The supplemental was funded with \$100,000 of General Fund and \$125,000 of cash funds exempt from excess earnings in the Legal Services to State Agencies program.

Background: Concern that the MSA would increase costs for participating manufactures and cause them to lose market share to lower cost "Non-participating Manufacturers" (NPMs), who did not participate in the agreement, led to two NPM provisions in the MSA. The first provision required each state to enact a qualifying NPM statute that forces NPMs to make payments into escrow accounts that are approximately equal to the amount they would pay if the joined the MSA. The Department of Revenue and the Department of Law together enforce this qualifying statute. The second provision requires an "NPM adjustment" that reduces a state's MSA payment if three tests are met. The first two tests apply at a national level:

1. An independent auditor must find that the participating manufacturers must have lost at least 2 percent of their national market share since 1998.
2. An independent economic consulting firm must determine that the MSA was a "significant" factor contributing to this loss.

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If these two tests are passed, a third test must be applied on a state-by state basis:

3. A court or an arbitrator must find that a state did not "diligently" enforce its qualifying NPM statute.

By 2003, the market share of participating manufacturers, which exceeded 99 percent when the agreement was signed in 1998, had fallen substantially. In 2004, the participating manufactures went ahead and made their full 2003 payment, knowing that an auditor had already determined that the market share of participating manufactures was down more than 2 percent. In late March 2006, an economic consultant determined that the MSA was a significant factor behind this decline. Weeks later, two participating manufacturers decided not to wait for courts or arbitrators to make a "diligent enforcement" decision; they reduced their 2006 payment by the amount of the 2003 NPM adjustment and placed the withholding in an escrow account.

A flurry of legal activity followed the release of the economic consultant's report and the withholding of settlement payments. Colorado and the other participating states went to court to argue that the diligent enforcement determination should be made by a state court, rather than an arbitrator. About half the state courts, including a Denver district court, have now ruled on this question and they have almost uniformly chosen arbitration.

The FY 2006-07 Long Bill included no appropriation for this NPM litigation because it was unclear at that time whether litigation would be required – the economic consultants had not yet released their final report and the participating manufactures had not yet withheld payment. Several weeks after the Long Bill was set, it became clear that a FY 2006-07 appropriation for litigation was necessary. At the time, the Department estimated that a diligent enforcement proceedings would require a minimum of 2,000 hours of outside counsel and cost between \$500,000 and \$750,000. Outside counsel is required because the state's enforcement of its qualifying NPM statute is the subject of the diligent enforcement proceeding and the Department of Law is one of the two state agencies that enforces the statute. Staff members from the Department will probably serve as witnesses during arbitration and conflict of interest rules prevent the Department from representing the state in a proceeding where it is also a witness.

In June 2006, the Department requested and received a \$225,000 FY 2006-07 supplemental appropriation, comprised of \$125,000 cash funds exempt from FY 2005-06 excess earning of the Legal Services to State Agencies program and \$100,000 General Fund. The Department anticipated that it would require even more during the course of FY 2006-07 and stated that it would likely request further funding this January.

Updated Information. Recent events have shown that the diligent enforcement proceedings will progress more slowly than was previously believed. There is still substantial uncertainty concerning timing, but it now appears likely that arbitration will not begin for at least a year. The arbitrators' decisions will probably not be issued until 2009 or 2010. As a consequence, it now appears unlikely that the Department will expend the entire \$225,000 appropriation during FY 2006-07.

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Staff recommendation, eliminate the General Fund appropriation: Staff recommends that the General Fund portion of this supplemental appropriation be reduced to zero. The Department indicates that a \$125,000 cash funds exempt appropriation will comfortably cover its FY 2006-07 needs.

Staff-recommended Committee Bill to reduce future General Fund Appropriations: Future diligent enforcement litigation appropriations of at least \$400,000 to \$600,000 now appear inevitable. The Department may be able to cover a portion of these expenses out of excess earning of the Legal Services to State Agencies program, but that funding source is unreliable and it is likely that a substantial part of the appropriation will come from the General Fund.

Another potential funding source for this litigation has recently become available. With minor statutory change, the Defense Account of the Tobacco Litigation Settlement Cash Fund created in Section 24-22-115 (2) (a), C.R.S. could be used to fund this litigation. The "Defense Account" was established in 1999 out of MSA moneys received in compensation for attorney fees, court costs, and other expenses incurred in obtaining the tobacco litigation settlement. Most of the balance in the Defense Account was transferred to the General Fund in 2002. Last year, however, the Defense Account was repaid, leaving it with a balance of \$3.8 million.

Section 24-22-115 (2) (a), C.R.S., summarizes the purposes for which the Defense Account can be appropriated. It reads in part,

...the tobacco settlement defense account... shall be used by the department of law in defending the state in lawsuits arising out of challenges to the master settlement agreement,... challenges to duly enacted Colorado laws related to the tobacco litigation settlement... or claims of entitlement to tobacco litigation settlement moneys by any person.

Past appropriations from the Defense Account have paid some of the costs that the Department of Law incurs in enforcing the state's qualifying NPM statute. Staff believes that such appropriations are inconsistent with Section 24-22-115 (2) (a), C.R.S. as quoted above.

In conjunction with an attorney at the Department of Law, staff has reviewed Section 24-22-115 (2) (a), C.R.S., and concludes that the section does not allow Defense Account moneys to be spent for the state's current NPM litigation. The problem is that the NPM litigation is *within* the scope of the MSA; there is no outside challenge to the agreement.

A small addition to Section 24-22-115 (2) (a), C.R.S., would allow appropriations from the Defense Account in support of the diligent enforcement litigation. Another minor modification would permit moneys in the Defense Account to pay the costs that the Department of Law incurs in enforcing the state's qualifying NPM statute. The Department annually spends about \$150,000 to enforce the state's qualifying NPM statute.

Staff recommends that the Committee carry a bill that modifies Section 24-22-115 (2) (a), C.R.S. in this

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fashion.

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 Statewide Supplemental Request	Total	General Fund	Cash Funds	Cash Funds Exempt	Federal Funds	FTE
1. Vehicle Lease	5,825	2,210	704	1,530	1,381	0.0
2. Computer Service (GGCC)	24,675	24,675	0	0	0	0.0
3. ALJ Adjustments	1,186	0	1,186	0	0	0.0
4. Communication Services Payments	1,111	441	79	234	357	0.0
5. Capitol Complex Lease - Technical	96,376	84,724	6,402	2,902	2,348	0.0
6. Workers Compensation	5,838	1,793	414	3,489	142	0.0
7. Risk Management	23,857	23,857	0	0	0	0.0
Total Statewide Supplemental Requests for Department of Law	158,868	137,700	8,785	8,155	4,228	0.0

Staff Recommendation: The staff recommendation for these requests is pending Committee approval of common policy supplementals. However, staff notes that these adjustments involve a substantial increase in the Department's General Fund appropriation. Unfortunately, this increase appears unavoidable. The problem is the Department's legal services billing rate, which is locked in place during figure setting and cannot be subsequently be adjusted. When the legal rate is set, it takes into account the expected amounts that the Department will have to pay for Capitol Complex Leased Space and the other items on the above list. A few cents of each dollar that the Department bills for legal services go to pay these appropriations. If charges for Capitol Complex Leased Space and other items on this list increase unexpectedly, the Department has limited options for paying the increase. If billings by the Legal Services to State Agencies Division are exceeding expenditures by the Division, then this excess provides a potential funding source. However, at this point in FY 2006-07, it does not appear that the Division will produce such a surplus.

Staff asks permission to include the corresponding appropriations in the Department's supplemental bill when the committee approves this common policy supplemental. If staff believes there is reason to deviate from the common policy, staff will appear before the committee later to present the relevant analysis.