

**COLORADO GENERAL ASSEMBLY  
JOINT BUDGET COMMITTEE**



**SUPPLEMENTAL REQUESTS FOR FY 2010-11**

**DEPARTMENT OF PUBLIC HEALTH AND  
ENVIRONMENT**

**(Environmental Divisions Only)**

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

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**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT  
FY 2010-11 SUPPLEMENTAL RECOMMENDATIONS  
JBC WORKING DOCUMENT - SUBJECT TO CHANGE**

**TABLE OF CONTENTS**

	<b>Narrative Page</b>	<b>Numbers Page</b>
<b>Prioritized Supplementals in Department-Assigned Order</b>		
Supplemental #2 - Legal Services	1	5
Supplemental #6 - Technical Corrections	3	5

**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT  
 FY 2010-11 SUPPLEMENTAL RECOMMENDATIONS  
 JBC WORKING DOCUMENT - SUBJECT TO CHANGE**

**Prioritized Supplementals**

**Supplemental Request, Department Priority #2  
 Legal Services**

	Request	Recommendation
Total	\$132,066	\$132,066
Reappropriated Funds	132,066	132,066

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

**Department Request:** The Department requests an increase of \$132,066 reappropriated funds from indirect cost recoveries to purchase additional legal services for the Air Pollution Control Division (APCD) and the Water Quality Control Division (WQCD) from the Department of Law. The request would support 1.0 additional FTE and associated operating and litigation expenses at the Department of Law to meet an increased legal services workload associated with changes in federal and state law and regulations affecting the APCD and WQCD.

Note: Funding for legal services for the APCD and WQCD is appropriated through the legal services line item within Administration and Support but the request is included in this presentation because the environmental divisions are driving the request for additional funding.

**Staff Recommendation:** Staff recommends that the Committee approve the Department's request for an additional \$132,066 reappropriated funds spending authority for legal services provided to the Air Pollution Control Division and the Water Quality Control Division in FY 2010-11. The request requires an increase of the same amount in the Department of Law's appropriation; that portion of the request will be presented at a later date.

**Staff Analysis:** The Department reports that legal services expenses for the APCD and WQCD have increased in recent years (see table below). The request is based on projected increases in expenses from FY 2009-10 to FY 2010-11, with the APCD accounting for the majority of the increase (\$104,048 out of a total increase of \$133,285). The requested increase of \$132,066 is based on the necessary costs to hire an additional attorney at the Department of Law and is slightly lower than the anticipated additional billing relative to FY 2009-10. Even though the Department of Law will not

**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT  
 FY 2010-11 SUPPLEMENTAL RECOMMENDATIONS  
 JBC WORKING DOCUMENT - SUBJECT TO CHANGE**

have the new attorney on staff for the entire fiscal year, the Department's projections indicate that the full increase is necessary based on projected billing.

**Historic Legal Services Expenses for APCD and WQCD**

	<b>FY 2004-05</b>	<b>FY 2005-06</b>	<b>FY 006-07</b>	<b>FY 2007-08</b>	<b>FY 2008-09</b>	<b>FY 2009-10</b>	<b>FY 2010-11 (Est.)</b>	<b>Change from FY 2009-10</b>
APCD	\$307,718	\$346,118	\$408,342	\$435,309	\$399,591	\$471,131	\$575,179	\$104,048
WQCD	<u>319,822</u>	<u>345,630</u>	<u>327,496</u>	<u>368,680</u>	<u>494,459</u>	<u>466,005</u>	<u>495,242</u>	<u>29,237</u>
Total	\$627,540	\$691,748	\$735,838	\$803,989	\$894,050	\$937,136	\$1,070,421	\$133,285

As shown in the table, legal services costs increased relatively steadily for the divisions in question from FY 2004-05 through FY 2009-10. However, the Department has experienced a larger increase this year. The projected increase of roughly \$133,000 from FY 2009-10 to FY 2010-11 represents an increase of 14.2 percent in the cost of legal services provided to these two divisions. The projected costs are increasing relative to FY 2009-10 even though the blended legal services rate decreased from \$75.38 per hour in FY 2009-10 to \$73.37 in FY 2010-11, a 2.7 percent decrease. According to the Department of Law, as of the end of December (half way through FY 2010-11) the APCD had already used 72.9 percent of its anticipated legal services budget for the entire year. The two departments do not expect any decrease in utilization for the remainder of the year or going forward.

The Department reports that the following factors are driving the increased need for legal services:

1. *Changes to federal (E.P.A.) legislation and regulations for air and water quality.* The E.P.A. has promulgated new standards for air and water quality that impact the Department's workload and the amount of legal services time required for the two impacted divisions. For example, new ambient air quality standards (promulgated for nitrogen in April 2010 and for sulphur dioxide in August 2010 and anticipated for ozone in 2011) will impact the State Implementation Plan and the APCD permitting programs, driving a need for additional legal assistance. The E.P.A. is also considering new standards for additional pollutants that would affect future years, and the Department does not expect the need for legal services to decline. For water, new nutrient criteria, revised and more stringent stormwater rules, a court ruling requiring the issuance of permits for pesticide applications in or near water, and revised drinking water rules are also driving a need for additional legal services.
  
2. *Increasing caseload of appeals of permits and enforcement actions and citizen petitions to E.P.A. regarding state determinations.* According to the Department, the APCD has seen an increase in the number of conservation stakeholders' petitions to the E.P.A. challenging

**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT  
 FY 2010-11 SUPPLEMENTAL RECOMMENDATIONS  
 JBC WORKING DOCUMENT - SUBJECT TO CHANGE**

permitting and enforcement actions on matters such as oil and gas permitting and power plant permitting. The Department also reports that the WQCD has experienced an increase in appeals of enforcement and permitting actions requiring legal assistance.

3. *House Bill 10-1365 (APCD).* Neither the Department nor the Public Utilities Commission anticipated significant legal services costs as a result of H.B. 10-1365, and the Department expected any costs to be absorbed within existing resources. However, as discussed at the Department's hearing with the Joint Budget Committee, opponents of the legislation are taking a variety of actions to challenge agency decisions. The Department's response has included: multiple filings before the Public Utilities Commission (PUC), explanation of the APCD's role under the bill relative to the PUC in a variety of administrative and legal settings, response to a Colorado Open Records Act request and defense of the Department's response in district court, and managing unexpected requests for emergency rule making by the Air Quality Control Commission with respect to the Department's role under the bill.
  
4. *Regional Haze (APCD).* The APCD and the Air Pollution Control Commission are completing the State Implementation Plan for the EPA's Regional Haze regulation. The EPA requirements and timelines were finalized in Spring 2010, after the FY 2010-11 budget had been set, and have resulted in significant costs this fiscal year (the Department reports that Regional Haze accounts for roughly 50 percent of the APCD's portion of the additional legal services need in FY 2010-11).
  
5. *WQCD Disinfection Waivers.* The WQCD has withdrawn disinfection waivers from 25 public drinking water systems, requiring ongoing legal support for enforcement efforts. On an ongoing basis, the Department is aware of approximately 70 additional drinking water systems with disinfection treatment problems that will require legal services.

In light of the unanticipated expenses already incurred in FY 2010-11 and the expectation that those expenses will continue for the rest of the year (and beyond), staff recommends approval of the Department's request.

**Supplemental Request, Department Priority #6  
 Technical Corrections**

	<b>Request</b>	<b>Recommendation</b>
Total	(\$314,813)	(\$314,813)
Cash Funds	(314,813)	(314,813)

**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT  
 FY 2010-11 SUPPLEMENTAL RECOMMENDATIONS  
 JBC WORKING DOCUMENT - SUBJECT TO CHANGE**

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

**Department Request:** The Department requests a technical correction to eliminate an appropriation of \$314,813 cash funds that was erroneously included in the appropriation clause for H.B. 10-1018, the legislation consolidating waste tire-related programs within the Department of Public Health and Environment. The legislation appropriated funds to the Department from the Innovative Higher Education Research Fund in FY 2010-11 and should not have done so.

**Staff Recommendation:** Staff recommends that the Committee approve the request to eliminate the Department's appropriation from the Innovative Higher Education Research Fund in the appropriation clause for H.B. 10-1018.

**Staff Analysis:** The Department of Higher Education receives annual appropriations from the Innovative Higher Education Research Fund and will continue to do so through FY 2013-14 under H.B. 10-1018. The appropriation to the Department of Public Health and Environment in H.B. 10-1018 effectively double appropriates this funding and represents a technical error in the appropriation.

	FY 2009-10	FY 2010-11	Fiscal Year 2010-11 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
<b>DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT</b>					
<b>Executive Director - Martha Rudolph</b>					
<b>Supplemental #2 - Legal Services</b>					
<i>(1) Administration and Support</i>					
<i>(A) Administration</i>					
Legal Services for 26,723 hours	<u>1,900,772</u>	<u>2,076,300</u>	<u>132,066</u>	<u>132,066</u>	<u>2,208,366</u>
Cash Funds	0	115,633	0	0	115,633
Reappropriated Funds	1,900,772	1,960,667	132,066	132,066	2,092,733
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<b>Supplemental #6 - Technical Corrections</b>					
<b>Note: This appropriation is in a special bill (H.B. 10-1018) affecting the following subdivision.</b>					
<i>(1) Administration and Support, (C) Special Environmental Programs</i>					
<i>Innovative Higher Education Research Fund</i>	<u>0</u>	<u>314,813</u>	<u>(314,813)</u>	<u>(314,813)</u>	<u>0</u>
Cash Funds	0	314,813	(314,813)	(314,813)	0
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<b>Totals</b>					
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT					
Totals for Environmental Divisions Only	61,436,911	63,909,610	(182,747)	(182,747)	63,726,863
FTE	<u>432.8</u>	<u>474.8</u>	<u>0.0</u>	<u>0.0</u>	<u>474.8</u>
General Fund	3,698,143	3,813,269	0	0	3,813,269
Cash Funds	33,044,277	40,675,528	(314,813)	(314,813)	40,360,715
Reappropriated Funds	353,760	402,803	132,066	132,066	534,869
Federal Funds	24,340,731	19,018,010	0	0	19,018,010