COLORADO GENERAL ASSEMBLY

JOINT BUDGET COMMITTEE

FY 2007-08 SUPPLEMENTAL: DEPARTMENT OF REGULATORY AGENCIES

PRIORITIZED AND NON-PRIORITIZED REQUESTS

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

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DEPARTMENT OF REGULATORY AGENCIES
FY 2007-08 SUPPLEMENTAL RECOMMENDATION
JBC WORKING DOCUMENT - SUBJECT TO CHANGE

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

DEPARTMENT OF REGULATORY AGENCIES
Executive Director - Rico Munn

	FY 2006-07 Actual	FY 2007-08 Appropriation	Requested Change	Recommended Change	New Total with Recommendation
Supplemental #1 - Lease Space to Accommodate FTE Increase					
(1) Executive Director's Office					
Leased Space	2,268,234	2,532,604	40,931	40,931	2,573,535
General Fund	81,986	87,472	0	0	87,472
Cash Funds	1,762,989	2,017,946	40,931	40,931	2,058,877
Cash Funds Exempt	385,475	401,062	0	0	401,062
Federal Funds	37,784	26,124	0	0	26,124
Supplemental #2 - Banking Commission Expenses					
(2) Division of Banking					
Board Meeting Costs - CF	11,500	11,500	12,000	12,000	23,500

	FY 2006-07 Actual	FY 2007-08 Appropriation	Fiscal Year 2007-08 Supplemental Requested Change	Recommended Change	New Total with Recommendation
Supplemental #3 - Economy of Scale from Mortgage Broker Legislation					
(8) Division of Real Estate					
Personal Services - CF	2,295,406	2,920,933	(86,828)	(86,828)	2,834,105
FTE	28.7	46.6	(1.8)	(1.8)	44.8
Operating Expenses - CF	176,162	214,248	(7,907)	(7,907)	206,341
Total for Supplemental #3	2,471,568	3,135,181	(94,735)	(94,735)	3,040,446
FTE	28.7	46.6	(1.8)	(1.8)	44.8

Totals Excluding Pending Items					
DEPARTMENT OF REGULATORY AGENCIES					
TOTALS for ALL Departmental line items	63,645,386	72,919,036	(41,804)	(41,804)	72,877,232
FTE	492.1	558.5	(1.8)	(1.8)	556.7
General Fund	1,264,186	1,416,593	0	0	1,416,593
Cash Funds	53,055,054	61,899,105	(41,804)	(41,804)	61,857,301
FTE	393.1	446.2	(1.8)	(1.8)	444.4
Cash Funds Exempt	8,193,864	8,446,994	0	0	8,446,994
Federal Funds	1,132,282	1,155,898	0	0	1,155,898

	FY 2006-07 Actual	FY 2007-08 Appropriation	Fiscal Year 2007-08 Supplemental Requested Change	Recommended Change	New Total with Recommendation
Statewide Common Policy Supplementals (see narrative for more detail)	N.A.	N.A.	(92,868)	Pending	N.A.
General Fund			(1,918)		
Cash Funds			(93,307)		
Cash Funds Exempt			2,690		
Federal Funds			(333)		
Totals Including Pending Items in Request					
DEPARTMENT OF REGULATORY AGENCIES					
TOTALS for ALL Departmental line items	63,645,386	72,919,036	(134,672)	Pending	N.A.
FTE	492.1	558.5	(1.8)	(1.8)	556.7
General Fund	1,264,186	1,416,593	(1,918)		
Cash Funds	53,055,054	61,899,105	(135,111)		
FTE	393.1	446.2	(1.8)	(1.8)	444.4
Cash Funds Exempt	8,193,864	8,446,994	2,690		
Federal Funds	1,132,282	1,155,898	(333)		

Key:
"N.A." = Not Applicable

Supplemental # 1 - Lease Space to Accommodate FTE Increase

	Request	Recommendation
Cash Funds	$40,931	$40,931

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 unforseen contingency]	**YES**
Staff and the Department agree that due the extraordinarily high number of bills passed with FTE increases during the 2007 Legislative Session, the request for additional lease space to accommodate the FTE increase meets the JBC criteria of *new data* resulting in substantial changes in funding needs.	

Department Request: The Department requests a supplemental increase of $40,931 cash funds to its lease space appropriation to accommodate a significant increase in new staff as a result of the passage of 13 bills adding 15.3 FTE in FY 2007-08 and 17.5 FTE in FY 2008-09 during the 2007 Legislative Session.

Staff Analysis: During the 2007 Legislative Session, the passage of 13 bills added 15.3 FTE in FY 2007-08 and 17.5 FTE in FY 2008-09 to four Divisions within the Department. Historically, the number of FTE appropriated to the Department has remained relatively flat with an average annual increase of 1.2 percent between FY 2002-03 and FY 2006-07 (five years). However, in FY 2007-08, the Department had an overall annual increase of 21.8 FTE, a 4.1 percent increase and a departure from previous Departmental growth. Although the Department has observed peaks in the number of FTE appropriated to the Department in FY 2002-03 with an 11.3 FTE increase, and in FY 2006-07 with an 11.4 FTE increase, the 2007 legislative session appropriated the most FTE through legislation in recent Department history.

Given that during the 2007 Legislative Session, numerous bills were introduced that made substantive changes to DORA's statutes, and regulatory programs were added and or expanded that Legislative Fiscal Notes Staff assessed as requiring additional staff, it should be noted, however, that while the Fiscal Notes process does cover a broad spectrum of costs associated with the implementation of a legislation, costs for lease space (as well as other costs including group health, life, and dental insurance, short-term disability, etc.) are not included as items like this are thought to be best addressed through the annual budget and supplemental process.

The Department's current appropriation of $2.5 million for leased space finances 149,127 square feet at 1560 Broadway in downtown Denver, as well as 3,453 square feet at 10 small satellite offices around the state. In January 2006, the Department has secured a 10-year lease for its Denver location. The current year rate for this space is $16.10 per square foot and its maximum rate is $18.10 for the final contracted year. These rates are substantially below market value which is estimated to be approximately $25.35 for comparable office space in Denver's central business district, according to the Staubach Corporate Services Third Quarter 2007 report. Staubach Corporate Services serves as the State's central leasing representative.

The Department is requesting 5,849 square feet of office space at the same location that the Department is currently in residence. The space identified by the Department is located on the 12th Floor at the 1650 Broadway location and cost estimates for this specific leased space are calculated to be approximately $28 to $30 per square foot. Given that the State's leasing agent was able to negotiate a below-market rate for the Department in the past, a rate of $28 per square foot is expected to be on the high side of the range of possible lease rates and is the basis for the request by the Department.

Other options that were considered, in place of requesting additional lease space, includes: (1) the reconfiguration of the Department's current space using modular furniture; (2) the leasing of space in less expensive outlying communities; and (3) telecommuting (working at home and communicating with the office by phone, fax and computer). The Department has indicated that it has thoroughly explored these options, but concluded that the costs to procure modular furniture and to reconfigure the office would have a large up-front cost and would limit further expansion, if it were necessary. The Department also indicated that telecommuting would bring with it a number of administrative difficulties, among them inadequate supervision, costs associated with remote network connectivity, added travel time to and from mandatory meetings, and other barriers to service delivery.

At the current time, the Department has not yet determined which agency will be assigned to the space, if the supplemental is approved. However based on calculations provided by the Department, it is estimated that the costs of procuring this space could increase fees for the assigned agency by approximately $4 to $7, depending on how the space will be utilized and configured.

Staff Recommendation: Staff recommends that the committee approve the supplemental request to increase the Department's lease space appropriation $40,931 cash funds to its lease space appropriation to accommodate a significant increase in new staff.

Supplemental # 2 - Banking Commission Expenses

	Request	Recommendation
Cash Funds	$12,000	$12,000

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 unforseen contingency]	
Staff and the Department agree that the request for additional spending authority to fund the increased needs of the Banking Board, qualifies as *new data*, pursuant to the JBC's supplemental criteria.	

Department Request: The Department requests a supplemental increase of $12,000 cash funds spending authority to accommodate the increased reimburseable expenses incurred by the Banking Board.

Staff Analysis: The nine-member Governor-appointed Colorado State Banking Board is the policy and rulemaking authority for the Division. The Banking Board consists of five members who are executive officers of commercial banks, an executive officer of an industrial bank, an executive officer of a trust company, and two public members.

The Colorado State Banking Board conducts monthly hearings on applications for de novo commercial banks, industrial banks, trust companies, and foreign capital depository charters; licensure of Money Transmitters; and on any rulemaking activity. Occasionally an emergency hearing is conducted on other actions that may come before the Banking Board.

As is stipulated in Section 11-102-103 (6), C.R.S., each member of the banking board shall receive the same reimbursement of expenses as those provided for members of boards and commission in the division of registrations, pursuant to Section 24-34-102 (13), C.R.S., which states that members shall be reimbursed for actual and necessary expense incurred in the discharge of official duties.

The Board Meeting Costs line in the Division of Banking has historically been set at $11,500, as is the current appropriation. Over the last five complete fiscal years, starting in FY 2002-03, the Banking Board has utilized 94.1 percent of its appropriated moneys for the operating costs of meeting. However, the Department has observed a significant departure from this historical trend. In particular, Banking Board members are requesting reimbursments for travel that in greater proportion than in previous years. The Department indicates that this is a result of having two Banking Board Members whom are from Montrose and Durango and due to the relative remoteness of these locales, the average cost of air travel is $498 per person[1]. While

[1] Travel costs obtained from Travelocity.com, for an intended travel date of Feb 21, 2008, the next scheduled Banking Board meeting.

in the past some board members have opted to absorb these reimbursable costs of travel, this however was solely at their discretion and would have otherwise been paid for by the State, pursuant to Section 24-102-103 (6), C.R.S.

The following table provides a comparison of the anticipated current year expenses in relation to the average total expenses incurred by the Banking Board for the previous two fiscal years. Based on these calculations, the Department is anticipated to expend 67.5 percent more than what was spent on average the previous two years. This increase is largely driven by two factors: (1) the increase of reimbursable travel expenses; and (2) the pending action against regulated entities that mandates their monthly attendance, of which this is considered atypical.

Board Member Expenses	Average of FY 05-06 and FY 06-07 Total Expenses	FY 2007-08 Expenses Annualized	Variance	Variance %
Total	$16,355	$27,388	$11,033	67.5%

In FY 2006-07, the Department incurred $19,185 in costs for the Banking Board Meeting Costs line item. This is $7,685 (66.8 percent) greater than the line's FY 2006-07 appropriation of $11,500, however the Department had indicated that it was able to absorb these costs elsewhere in the Banking Division's personal services and operating budgets. For the current fiscal year, however, the Department has indicated that it can absorb only some of the Banking Board's expenses beyond its appropriation, but not at the level at which it did in the previous year and thus requires an additional infusion of $12,000 to pay for the expected costs that the board will incur in FY 2007-08.

Staff Recommendation: Staff recommends that the committee approve the supplemental increase of $12,000 cash funds from the Division of Banking Cash Fund to the Board Meeting Costs line in the Division of Banking as the need to cover the increased reimburseable expenses incurred by the Banking Board as the Department can not cover such costs within existing resources.

Supplemental # 3 - Economy of Scale from Mortgage Broker Legislation

	Request	Recommendation
Cash Funds	($94,735)	($94,735)
FTE	(1.8)	(1.8)

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 unforseen contingency]

Staff and the Department agree that the supplemental recognizes economies of scale from the implementation of four inter-related mortgage broker bills and thus qualifies as new data resulting from substantial changes in funding needs, according the JBC's supplemental criteria.

Department Request: For the Division of Real Estate, the Department requests supplemental cash fund decreases of $86,828 and 1.8 FTE to the Personal Services line and $7,907 to the Operating Expenses line to reflect the economy of scale gained with the implementation of four bills passed during the 2007 Legislative Session concerning Mortgage Broker regulation.

Staff Analysis: During the 2007 Legislative Session, the General Assembly considered four related bills impacting the Division of Real Estate: S.B. 07-085, S.B. 07-203, S.B. 07-216, and H.B. 07-1322. As noted in the May 1, 2007, JBC Staff analysis concerning S.B. 07-085:

> "**There are economies of scale involved in implementing these bills**, but the Fiscal Notes for the bills do not reflect the savings that would arise if more than one becomes law. For example, the appropriation to the Department of Regulatory Agencies contained in this bill will not be necessary if H.B. 07-1322, S.B. 07-206 or S.B. 07-216 become law in their current form. These economies will need to be addressed through a supplemental FY 2007-08 appropriation bill that would be introduced by the Joint Budget Committee during the 2008 legislative session."

All four bills were passed by the General Assembly and were signed into law. As JBC Staff also summarized last year, 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 addresses the marketing of nontraditional mortgage products to people for whom those products may be unsuitable.

During the 2007 Legislative Session, when JBC Staff recognized the economy of scale involved with the implementation of these related bills, Staff requested of the Department to assist with a calculation of the cost avoidance that would be created by the economy of scale if one, all, or any other combination of bills were passed by the General Assembly and eventually signed into law. The Department also recognized this economy of scale and so prepared an analysis that was disseminated on April 4, 2007, outlining the fiscal impact per bill as well as the estimated fiscal impact if given scenarios showing how the fiscal impact of one, all, or any given combination in between of the four related bill were passed by the General Assembly and signed into law. Given the complexities of calculating the cost sharing these bills would have and with the limited time available to Department and JBC Staff, the Department agreed to furnish a supplemental request reflecting the economy of scale when the actual resource needs of the Department were more evident after the start of the FY 2007-08 fiscal year.

Table 1 provides an overview of the appropriations made for the bills impacting the Division of Real Estate for FY 2007-08 and then at the bottom of the table, the proposed supplemental changes made by the Department are applied:

Table 1. FY 2007-08 Appropriations for Mortgage Broker Bills

Bill	FTE	Personal Services	Operating	Legal Services	Other	Total[1]
S.B. 07-085	0.3	$14,471	$1,563	$40,662	$0	$56,696
S.B. 07-203	1.8	68,440	6,885	59,299	101,490	236,114
S.B. 07-216	1.5	72,357	6,344	48,456	0	127,157
H.B. 07-1322	2.5	104,618	7,260	118,598	0	230,476
Total Appropriation	6.1	$259,886	$22,052	$267,015	$101,490	$650,443
Dept. Proposed Supplemental	(1.8)	(86,828)	(7,907)	0	0	(94,735)
Adjusted/Proposed Appropriation	**4.3**	**$173,058**	**$14,145**	**$267,015**	**$101,490**	**$555,708**
Percent Decrease	**-29.5%**	**-33.4%**	**-35.9%**	**0.0%**	**0.0%**	**-14.6%**

[1]Note that appropriations for Fraud Prosecution included in S.B. 07-203, S.B. 07-216, and H.B. 07-1322 have been omitted from the appropriated total as these funds are passed through to the Department of Law and are not administered by the Division of Real Estate and thus are not applicable to the economy scale involved in the implementation of these bills.

At this point in time we understand that all four bills were adopted and as such JBC Staff has since compared the April 4, 2007 estimated cost avoidance to the supplemental request that has since been furnished by the Department and has observed that some costs that were originally reduced by the passage of all four bills in the April 4, 2007 analysis, were not reduced in the January 1, 2008 supplemental request. Table 2 (below) provides a comparison of the April 2007 analysis and the January 2008 supplemental request.

Table 2. Comparison of April 2007 Analysis and the January 2008 Supplemental Request						
Calculation	**FTE**	**Personal Services**	**Operating**	**Legal Services**	**Other**	**Total Cost Avoidance**
April 4, 2007 Analysis	n/a	($84,416)	($12,312)	($87,491)	($310)	($184,529)
January 1, 2008 Supplemental Request	(1.8)	(86,828)	(7,907)	0	0	(94,735)
Total	**1.8**	**$2,412**	**($4,405)**	**($87,491)**	**($310)**	**($89,794)**

When comparing the April 4, 2007 analysis to the January 1, 2008 supplemental, the most notable expense that was not reduced as are result of the economy of scale are legal services. Legal services account for $267,015 (41.1 percent) of the total $650,443 current appropriation that these four bill provided to the Division of Real Estate (funds the division actually controls) for enforcement. JBC Staff had expected, based on the Department's April 4, 2007 analysis, that the supplemental request would have also included a decrease its legal appropriations, however this is not the case.

When JBC Staff addressed this omission to the Department, it was learned that the Department does not calculate that any legal services costs will be avoided with the passage of all four bills. The Department indicates that because foreclosure-related issues are burgeoning, and that the provisions of S.B. 07-203 (Mortgage Broker Licensure), became effective on January 1, 2008, the need for legal services is still to a large degree unknown. Further, the Department has calculated that it has utilized $62,843 in legal services through December 2007, related to mortgage broker regulation. When these legal service expenditures are annualized, this sums to approximately $125,686, or approximately $141,329 less than they are currently appropriated ($267,015) to implement the provisions of the legislation. It should be noted that estimating legal services costs using a straight-line methodology is not likely to reflect the actual needs of the Department as these are generally lower when a program is first implemented and increase because enforcement does not reach its peak until a program's rules are actually drafted, its licenses are actually applied for, and its investigators receive complaints regarding misconduct.

Staff sought further guidance from the Department of Law regarding the legal resource requirements of implementing the provisions of these four bills and asked if from their perspective economies of scale results from the passage of this family of related legislation. The Department of Law indicated that it is their position that these four bills in essence *create legal inefficiencies* rather than efficiencies. They base this position on the following: (1) the complexity of rulemaking is enhanced as a result of factoring in the various facets of all four bills in their totality; (2) the staggered dates of when the various provisions of the legislation take effect adds a heightened level of complexity for the industry it regulates to meet the new guidelines imposed by the legislation, thus driving members of this group to be out of compliance and thus increasing the likelihood of legal action; (3) S.B. 007-216 requires the adoption of federal guidelines, however federal policy regarding related mortgage industry products has changed since the bill's passage and thus the interpretation of the law has led to some debate requiring legal expertise; and (4) and the inclusion of the substantive director-authority which was bestowed upon the Director of Real Estate in article 61 of title 12, C.R.S., provides the Director the ability to deny, refuse to renew, or revoke the registration, implement a summary suspension, subpoena, and order cease and desist against licensees is likely to drive the need for legal services as the professional entities will question the interpretation of the law to defend their livelihood.

Given the insufficiency of valid available data to determine the level of legal services that will be required, and given that both the Department of Regulatory Agencies and the Department of Law are in agreement with respect for the continued need to keep the legal services appropriation at its current appropriated level, JBC Staff recognizes the Department's omission of a decrease in its FY 2007-08 legal services appropriation related to the four mortgage broker bills.

Regarding the decreased staffing need of 1.8 FTE and the requisite decrease in $94,735 in personal services and operating appropriations, these decreases are the result of the Department forecasting a below-average caseload assignment per investigative FTE for Mortgage Brokers as compared to investigative FTE related to Real Estate Appraisers. Recognizing that within the current appropriation, the forecasted average caseload for each Mortgage Broker FTE would be approximately 49.2 per year, as compared to 69 cases per for each Real Estate Appraiser FTE. By reducing the FTE appropriation by 1.8 FTE, the annual case load for each Mortgage Broker FTE is raised to 75, which is more on par with the caseload associated with existing programs doing similar work.

Staff Recommendation: Staff recommends that the committee approve the supplemental cash fund decreases of $86,828 and 1.8 FTE to the Personal Services line and $7,907 to the Operating Expenses line to reflect the economy of scale gained with the implementation of four bills passed during the 2007 Legislative Session concerning Mortgage Broker regulation.

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 Regulatory Agencies' Portion of Statewide Supplemental Request	Total	General Fund	Cash Funds	Cash Funds Exempt	Federal Funds	FTE
1. Workers' Compensation	($57,454)	($2,051)	($48,466)	($5,949)	($988)	0.0
2. Risk Mangement	1,082	40	860	156	26	0.0
3. Computer Service (GGCC)	9,207	94	0	8,484	629	0.0

Department of Regulatory Agencies' Portion of Statewide Supplemental Request	Total	General Fund	Cash Funds	Cash Funds Exempt	Federal Funds	FTE
4. Statewide Vehicle Replacement	(45,651)	0	(45,651)	0	0	0.0
5. ALJ Adjustments	(80)	(1)	(78)	(1)	0	0.0
9. Capitol Complex Leased Space	28	0	28	0	0	0.0
Total Statewide Supplemental Requests for the Department of Regulatory Agencies	($92,868)	($1,918)	($93,307)	$2,690	($333)	0.0

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