

This Adobe Acrobat file contains the following documents that were presented to the Joint Budget Committee on Wednesday, November 15, 2006.

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# **COLORADO GENERAL ASSEMBLY**

## **JOINT BUDGET COMMITTEE**



### **FY 2007-08 STAFF BUDGET BRIEFING DEPARTMENT OF STATE**

**JBC Working Document - Subject to Change**

**Staff Recommendation Does Not Represent Committee Decision**

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**November 15, 2006**

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**FY 2007-08 BUDGET BRIEFING  
STAFF PRESENTATION TO THE JOINT BUDGET COMMITTEE**

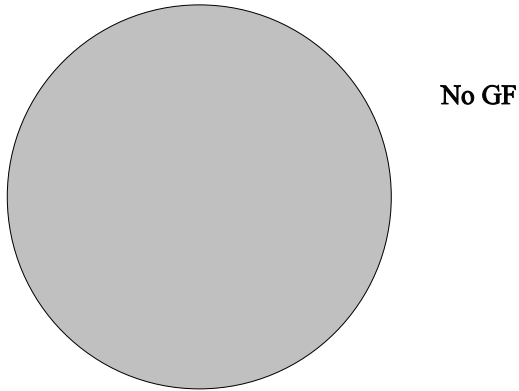
**DEPARTMENT OF STATE**

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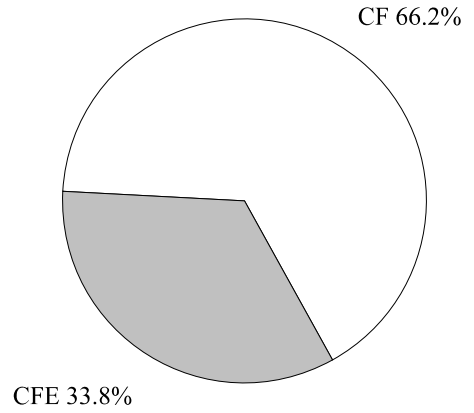
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**FY 2007-08 JBC Staff Budget Briefing  
DEPARTMENT OF STATE  
Graphic Overview**

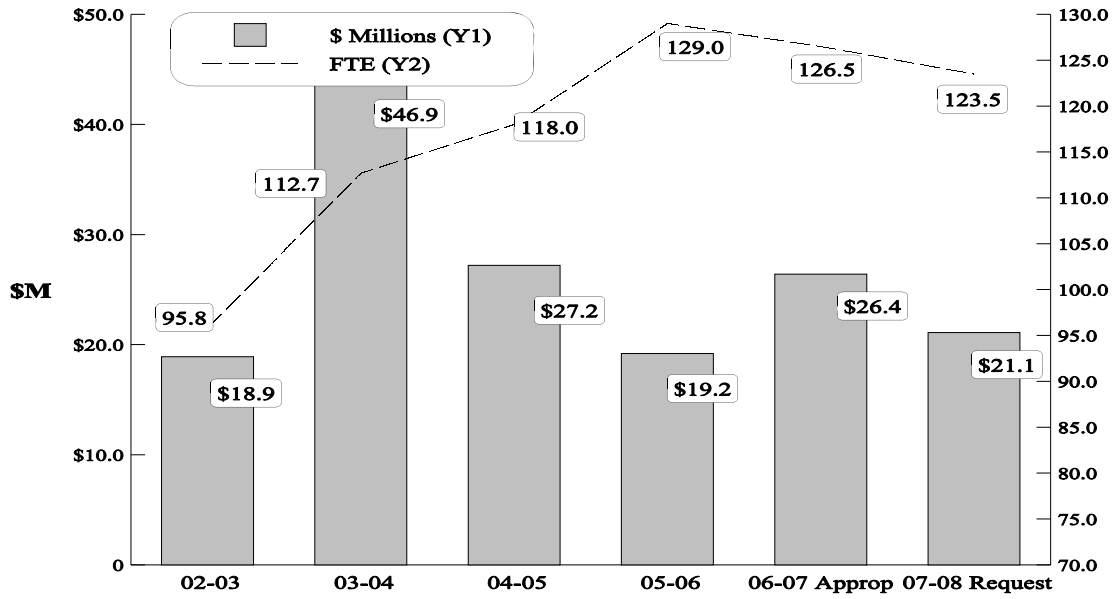
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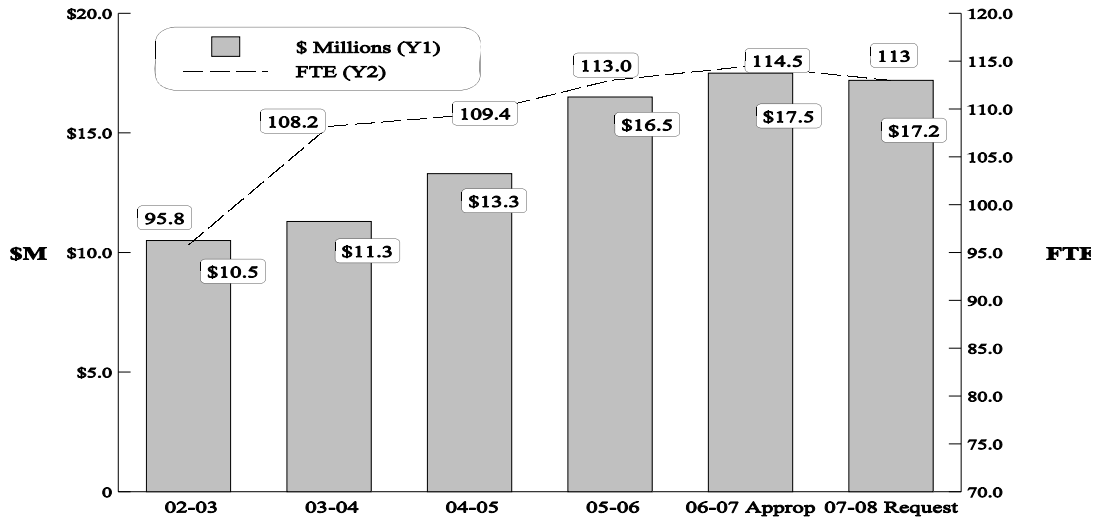
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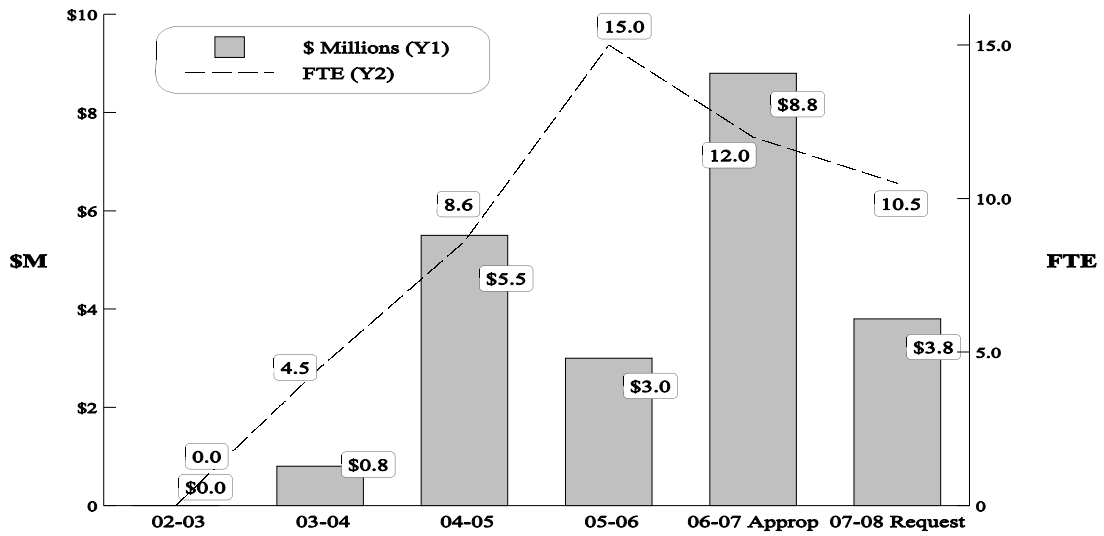
**Budget History**



### Budget History of the Department's Cash-Funded Activities



### Budget History of HAVA Expenditures



**FY 2007-08 JBC Staff Budget Briefing**  
**DEPARTMENT OF STATE**  
**Department Overview**

**Key Responsibilities**

- ▶ Administers Colorado's elections laws, including voter registration laws, initiative and referendum laws, and the Help America Vote Act.
- ▶ Collects, stores and provides public access to disclosure statements filed by public officials and lobbyists under Colorado's Sunshine Law and Fair Campaign Practices Act. Administers related laws.
- ▶ Collects, stores and provides public access to annual reports, articles of incorporation, liens and other documents filed by for-profit and not-for-profit businesses under the Corporation and Association laws and the Uniform Commercial Code. Administers related laws.
- ▶ Collects, stores and provides public access to reports and other documents filed under the Bingo and Raffles charitable gaming laws and the Charitable Solicitations Act. Licenses entities that engage in charitable gaming and enforces related laws.
- ▶ Serves as the depository for many official state government records and documents.
- ▶ Regulates notaries public and administers related laws.
- ▶ Finances and operates the statewide Information Technology Disaster Recovery Center, the e-FOR<sup>3</sup>T project, which became available for service in June 2006.

**Factors Driving the Budget**

**Help America Vote Act Program**

The Federal Help America Vote Act of 2002 (HAVA) required the state to replace outdated voting technology, improve voter education, and institute a statewide computerized voter registration system. The federal government gave Colorado a total of \$41,582,761 in HAVA funds. H.B. 03-1356, which launched the state's HAVA program, established the Federal Elections Assistance Fund to receive the federal HAVA moneys and appropriated \$1.3 million into the fund from the Department of State Cash Fund as the state's required matching contribution. Under the provisions of Section 1-1.5-106, C.R.S., expenditures from the Federal Elections Assistance Fund are continuously appropriated cash funds exempt. The following table shows recent expenditures and appropriations; the appropriations are shown in the Long Bill for informational purposes only. Some expenses driven by the HAVA program have begun to appear in other line items; staff will discuss this in more detail at various points in the briefing.

<b>HAVA</b>	<b>FY 03-04 Actual</b>	<b>FY 04-05 Actual</b>	<b>FY 05-06 Actual</b>	<b>FY 06-07 Approp</b>	<b>FY 07-08 Request</b>
<b>Program Expenditures</b>	\$801,394	\$5,497,564	\$3,032,976	\$8,750,000	\$3,810,214
<b>FTE</b>	4.5	8.6	15.0	11.0	9.5

### **Election-Related Expenditures**

Many of the Department's election-related expenditures are not expressly labeled as such in the Long Bill. Instead they are contained in such lines as Personal Services, Operating Expenses, and Legal Services. Only two lines in the Long Bill, Initiative and Referendum and Local Election Reimbursement, pertain solely to elections. Under the Local Election Reimbursement program, the Department reimburses counties for some of the costs related to statewide TABOR and non-TABOR ballot matters. The Initiative and Referendum line funds such duties as initiative signature verification and related legal work. The following table shows funding levels for these items in recent years. The Initiative and Referendum component tends to follow a two year sawtooth, but low actual expenditures in FY 02-03 and FY 04-05 have obscured this pattern.

<b>Long Bill Appropriations</b>	<b>FY 03-04 Actual</b>	<b>FY 04-05 Actual</b>	<b>FY 05-06 Actual</b>	<b>FY 06-07 Approp</b>	<b>FY 07-08 Request</b>
<b>Local Election Reimbursement</b>	\$719,706	\$867,393	\$867,393	\$1,729,923	\$1,729,923
<b>Initiative and Referendum</b>	49,646	33,063	83,417	200,000	50,000
<b>Total</b>	\$769,355	\$900,460	\$950,815	\$1,929,929	\$1,779,930

### **Information Technology Services**

Since FY 1999-2000, when the Department received a supplemental \$3.1 million appropriation to upgrade its information technology (IT) capabilities, the Department has become a recognized IT leader among Secretaries of State. Businesses, public officials, lobbyists, charitable solicitors and others can now file many reports and documents online and many of these filings can be accessed over the internet, often without charge. The General Assembly has, since FY 1999-2000, enacted a stream of IT-related legislation for the Department. A 2004 data center disruption caused by "zinc whiskers" led to funding for the Department to create a statewide IT disaster-recovery center. Staff will return to the subject of the disaster-recovery center in Issue #3.

	<b>FY 03-04 Actual</b>	<b>FY 04-05 Actual</b>	<b>FY 05-06 Actual</b>	<b>FY 06-07 Approp</b>	<b>FY 07-08 Request</b>
IT Division Total	\$4,206,582	\$5,740,013	\$7,320,237	\$7,641,717	\$6,913,439
IT Division FTE	22.6	22.3	23.3	32.0	33.0

## Legal Services

In each of the fiscal years since 2003-04, the Department has over-expended its Long Bill appropriation for legal services. The following table shows the Department's request, the Long Bill appropriation and the actual expenditure for each year since that time, including a recent estimate for the current year. The over-expenditures range from a low of 66% of the Long Bill appropriation to a high of 247%. Staff will return to this topic in Issue #2.

	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07*
<b>Department Request</b>	\$125,495	\$132,047	\$106,208	\$121,617
<b>Long Bill Appropriation</b>	103,343	106,208	121,617	116,903
<b>Actual Expenditure</b>	358,302	242,670	201,539	277,881
<b>Difference, dollars</b>	(254,959)	(136,462)	(79,922)	(160,978)
<b>Difference, percent</b>	(246.7)%	(128.5)%	(65.7)%	(132.5)%

\*Estimate for actual expenditure based on Department's supplemental request dated October 27, 2006.

## **Summary of Major Legislation**

- ✓ **S.B. 06-170 (Gordon/Buescher) Conduct of Elections.** Increases the reimbursement to the counties for the cost of conducting elections that include state measures and allows the Secretary of State to include this reimbursement when setting fees. Includes a FY 2006-07 appropriation of \$814,534 cash funds for this purpose.
- ✓ **S.B. 06-188 (Evans/Hodge) Filing of Financing Statement.** Changes and clarifies rules and procedures related to effective financing statements (EFS) filings. Requires the Department to distribute the master list of EFS filings electronically. Appropriates \$656,333 cash funds to the Department and reduces the FTE appropriation by a net of 0.5 FTE in FY 2006-07.
- ✓ **H.B. 06-1086 (Crane/Johnson) Regulation of Games of Chance.** Changes the laws governing the Department's regulation of games of chance such as bingo and raffles. Requires the Department to accept electronic filings and allows the Department to require that certain reports be filed electronically. Includes a FY 2006-07 appropriation of \$265,557 cash funds for implementation.
- ✓ **S.B. 05-198 (Gordon/Madden) Conduct of Elections and S.B. 05-206 (Tupa/White) Blue Ribbon Election Panel Proposals.** These identical acts require that there be a paper record of all votes cast, regulate voter registration drives, modify laws governing provisional ballots, require local election officials to be trained and certified by the Secretary of State, make changes to the election calendar, add new types of identification that voters may show to vote, and allow emergency voter registration.



- ✓ **S.B. 05-205: (Shaffer/Sullivan) Charitable Solicitations.** Requires the Department to cooperate in a joint state and federal project that will allow charitable organizations to electronically file uniform multi-state registration statements and information returns. Allows the Department to participate in a national online charity information system.
- ✓ **S.B. 04-219: (Kester/Berry) Clerk and Recorder Electronic Filing.** Changes statute as modified by H.B. 04-1413. Retains the \$1 surcharge imposed by House Bill 02-1119 on filings with county Clerk and Recorders but directs Clerk and Recorders to keep the entire dollar, rather than sending half to the state as happened under prior law. Extends the surcharge to July 1, 2007. Grants rule making authority to the Secretary of State.
- ✓ **S.B. 04-231: (Owen/White) Department of State Electronic Filing and Access.** Authorizes the Secretary of State to require that certain filings be made electronically. Allows the Secretary of State to designate electronic access as the sole means of public access to certain information.
- ✓ **H.B. 04-1227: (Sinclair/Lamborn) Test and Certify Voting Systems.** Requires the Secretary of state to test and certify voting systems before they can be used in the state.
- ✓ **H.B. 04-1300: (Garcia/Sandoval) Notary Public.** Allows the Department to establish an electronic application process for notaries public. Authorizes the department to create and notaries to use electronic journals. Modifies the qualifications to be a notary.
- ✓ **H.B. 04-1413: (Plant/Teck) Clerk and Recorder Electronic Filing Surcharge.** Reduces to 50¢ the \$1 surcharge imposed by House Bill 02-1119 on filings with Clerk and Recorders, effective July 1, 2004. Directs Clerk and Recorders to keep the entire 50¢, rather than sending half to the state as happened under prior law.
- ✓ **H.B. 04-1448: (Spradley/May) Regulation of Trade Names.** Consolidates the filing of trade names in a central database maintained by the Department, effective May 30,2006. Under current law, some trade names are filed with the Department of State and some with the Department of Revenue.
- ✓ **S.B. 03-230 (May/Fritz): Uniform Electronic Signatures Act Rules.** Authorizes the Secretary of State to promulgate rules pursuant to the Uniform Electronic Transactions Act (UETA). UETA provides a framework for electronic transactions and the use of electronic signatures.
- ✓ **H.B. 03-1350 (Rippy/Dyer): Secretary of State - Code of Colorado Regulations and Colorado Register - Electronic Publication.** Extends the date for the Secretary of State to produce an electronic publication of the code of Colorado regulations and the Colorado register.

- ✓ **H.B. 03-1356 (Fairbank/Sandoval): Help America Vote Act.** Implements the federal Help America Vote Act of 2002 (HAVA) in Colorado. Requires the Secretary of State to establish and maintain a centralized statewide voter registration system by January 1, 2006. Establishes the Federal Elections Assistance Fund, administered by the Secretary of State, to implement HAVA and to receive federal moneys under the provisions of the federal legislation.
- ✓ **H.B. 02-1203 (Lee/Linkhart): Continuation of 2001 Rules of Executive Branch Agencies - Publication of Rules.** Requires the Department to publish the code of Colorado regulations in electronic form.
- ✓ **H.B. 02-1119 (Berry/Takis): Electronic Documents.** Authorizes county Clerks and Recorders to accept electronic filings, requires a surcharge to support the development of electronic filing capabilities, and creates the County Clerk and Recorder Electronic Filing Technology Fund, funded with a 50 cent fee on filings received by Clerks and Recorders.
- ✓ **H.B. 02-1147 (Cloer/Hagedorn): Public Information Requirements.** Requires the Secretary of State's office to accept electronic filing of all business entity documents. Removes signature requirements for Business Entity documents.
- ✓ **H.B. 02-1014 (Smith/Fitz-Gerald): Removal of Social Security Numbers from Financing Statements.** Requires the Secretary of State to remove, as soon as feasible, but no later than July 1, 2003, social security numbers from the publicly accessible electronic records of all financing statements in the custody of the Secretary that were filed between April 6, 1989 and July 1, 2001, pursuant to repealed provisions of article 9 of the "Uniform Commercial Code."
- ✓ **H.B. 02-1326 (Scott/Fitz-Gerald): Uniform Electronic Transactions Act.** Adopts the "Uniform Electronic Transactions Act" ("Act") to govern electronic records and electronic signatures relating to specified transactions. Authorizes the secretary of state to raise fees to cover maintenance expenses and improvements necessary for the distribution of electronic records.

**Major Funding Changes FY 2005-06 to FY 2006-07**

<b>Description</b>	<b>CF</b>	<b>CFE</b>	<b>FF</b>	<b>Total</b>	<b>FTE</b>
Increased County Reimbursement	\$813,534	\$0	\$0	\$813,534	0.0
EFS Changes	656,333	0	0	656,333	(0.5)
Bingo/Raffle Changes	265,557	0	0	265,557	0.5
Salary and Benefit Adjustment	171,036	(180)	0	170,856	0.0
Master List	162,247	0	0	162,247	1.0
Initiative and Referendum	150,000	0	0	150,000	0.0
HAVA Program	0	(6,158,166)	0	(6,158,166)	(4.0)
Statewide Disaster Recovery Center	(716,360)	0	0	(716,360)	2.0
Asset Management and Hardware/Software Maintenance	(448,308)	0	0	(448,308)	0.0
Leased Space	(238,065)	(14,658)	0	(252,723)	0.0
Other	4,793	(105,348)	0	(100,555)	0.5
<b>Net Change</b>	<b>820,767</b>	<b>(6,278,352)</b>	<b>0</b>	<b>(5,457,585)</b>	<b>(0.5)</b>

**FY 2007-08 JBC Staff Budget Briefing  
DEPARTMENT OF STATE  
Decision Items**

Priority	Division: Description <i>[Statutory Authority]</i>	GF	CF <i>[Source]</i>	CFE	FF	TOTAL	FTE
1	<p><b>Increase in base appropriation for Legal Services</b></p> <p>For the last several years the Department's costs for legal services have consistently exceeded the budget appropriations for those services. The increase in cost is primarily because of litigation brought against the Secretary of State as the State's Chief Election Official. Since the Department is the defendant rather than the initiator of this litigation, it has little control over the issues and litigation that may arise and the subsequent legal services required. Based on recent experience, the Department is reasonably certain that election-related issues will continue to generate a higher need for legal services.</p> <p><i>[42 U.S.C. 15512, et seq. (federal "Help America Vote Act of 2002"); Article IV, sections 1,3 and 18; Article V, sections 1,44, and 48; Article VII, section 9; Article XVIII, Sections 2 and 12a, and Article XXVIII, Colorado Constitution; Sections 1-1-107, 24-1-111, 24-4-103, 24-31-101 (1)(e), Title 24, Article 21, and Title 24, Article 50, C.R.S.]</i></p>	\$0	\$60,000 <i>[Department of State Cash Fund]</i>	\$0	\$0	\$60,000	0.0
<b>Total Prioritized Requests</b>		<b>\$0</b>	<b>\$60,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$60,000</b>	<b>0.0</b>

**FY 2007-08 JBC Staff Budget Briefing  
DEPARTMENT OF STATE  
Overview of Numbers Pages**

The following table highlights the changes in the Department's FY 2007-08 request compared with the FY 2006-07 appropriation.

**Requested Changes FY 2006-07 to FY 2007-08**

Description	CF	CFE	FF	Total	FTE
Multiuse Network Payments	\$1,704,953	\$0	\$0	\$1,704,953	0.0
Salary Survey and Pay for Performance	77,676	27,710	0	105,386	0.0
Legal Services (DI #1)	60,000	0	0	60,000	0.0
HAVA program	0	(4,939,786)	0	(4,939,786)	(1.5)
Electronic Filing Grants to Counties	(1,500,000)	0	0	(1,500,000)	0.0
IT asset management	(251,075)	0	0	(251,075)	0.0
Initiative and Referendum	(150,000)	0	0	(150,000)	0.0
Master List Distribution Contract	(80,000)	0	0	(80,000)	0.0
Hardware-Software Maintenance	(23,458)	0	0	(23,458)	0.0
Other	(135,141)	(152,423)	110,594	(176,970)	(1.0)
<b>Net Change</b>	<b>(\$297,045)</b>	<b>(\$5,064,499)</b>	<b>\$110,594</b>	<b>(\$5,250,950)</b>	<b>(2.5)</b>

	FY 2004-05 Actual	FY 2005-06 Actual	FY 2006-07 Appropriation	FY 2007-08 Request	FY 2007-08 Change Request
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<b>DEPARTMENT OF STATE</b> <b>Secretary of State - Gigi Dennis</b>
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**(1) Administration**

Primary Functions: administer election laws; administer public official, lobbyist and business entity filing laws; license notaries public and charitable solicitors; regulate bingo and raffles charitable gaming. Line items are cash funded from the Department of State Cash fund unless indicated otherwise.

Personal Services	4,191,266	4,183,239	4,255,740	4,332,466	
FTE	<u>87.1</u>	<u>73.9</u>	<u>83.5</u>	<u>81.0</u>	
Cash Funds	4,191,266	4,158,597	4,180,740	4,260,806	
FTE	87.1	73.6	82.5	80.0	
Cash Funds Exempt	0	24,642	75,000	71,660	
FTE	0.0	0.3	1.0	1.0	
Health, Life and Dental	<u>358,583</u>	<u>301,018</u>	<u>270,577</u>	<u>387,079</u>	
Cash Funds	334,783	273,969	270,577	387,079	
Cash Funds Exempt	23,800	27,049	0	0	
Federal Funds	0	0	0	0	
Short-term Disability	<u>9,961</u>	<u>7,845</u>	<u>6,159</u>	<u>6,784</u>	
Cash Funds	9,149	7,059	6,159	6,784	
Cash Funds Exempt	812	786	0	0	
Federal Funds	0	0	0	0	
Amortization Equalization Disbursement	<u>0</u>	<u>7,760</u>	<u>40,878</u>	<u>57,814</u>	
Cash Funds	0	7,760	40,878	57,814	
Cash Funds Exempt	0	0	0	0	

	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	
	<u>Actual</u>	<u>Actual</u>	<u>Appropriation</u>	<u>Request</u>	<u>Change Request</u>
Salary Survey and Senior Executive Service	<u>112,906</u>	<u>161,258</u>	<u>152,584</u>	<u>207,072</u>	
Cash Funds	112,906	151,935	152,584	184,692	
Cash Funds Exempt	0	9,323	0	22,380	
Federal Funds	0	0	0	0	
Performance-Based Pay Awards	<u>58,817</u>	<u>0</u>	<u>0</u>	<u>50,898</u>	
Cash Funds	54,700	0	0	45,568	
Cash Funds Exempt	0	0	0	5,330	
Federal Funds	4,117	0	0	0	
Workers' Compensation	<u>3,779</u>	<u>7,717</u>	<u>7,630</u>	<u>8,779</u>	
Cash Funds	3,779	6,786	7,630	8,112	
Cash Funds Exempt	0	931	0	667	
Operating Expenses	<u>448,792</u>	<u>549,659</u>	<u>680,086</u>	<u>680,386</u>	
Cash Funds	448,792	549,659	675,086	680,386	
Cash Funds Exempt	0	0	5,000	0	
Legal Services	<u>242,670</u>	<u>108,350</u>	<u>116,903</u>	<u>176,903</u>	DI #1
Cash Funds	242,670	108,350	116,903	176,903	
Cash Funds Exempt	0	0	0	0	
<i>Hours Equivalent</i>	<i>2,070</i>	<i>1,681</i>	<i>1,725</i>		
Administrative Law Judge Services - CF	62,783	109,976	117,488	140,556	
Purchase of Services from Computer Center - CF	1,216	818	829	437	
Multiuse Network Payments - CF	63,044	53,136	52,746	1,757,699	DI-NP DPA

	<b>FY 2004-05</b>	<b>FY 2005-06</b>	<b>FY 2006-07</b>	<b>FY 2007-08</b>	
	<b>Actual</b>	<b>Actual</b>	<b>Appropriation</b>	<b>Request</b>	<b>Change Request</b>
Payments to Risk Management and Property Funds	<u>13,414</u>	<u>6,900</u>	<u>13,712</u>	<u>18,244</u>	
Cash Funds	13,414	6,459	13,712	17,287	
Cash Funds Exempt	0	441	0	957	
Vehicle Lease Payments - CF	1,294	25	4,044	4,044	
Leased Space	<u>765,397</u>	<u>782,033</u>	<u>627,774</u>	<u>621,469</u>	
Cash Funds	765,397	782,033	554,382	621,469	
Cash Funds Exempt	0	0	73,392	0	
Indirect Cost Assessment	<u>112,520</u>	<u>114,860</u>	<u>122,083</u>	<u>165,717</u>	
Cash Funds	112,520	114,860	111,320	116,675	
Cash Funds Exempt	0	0	10,763	38,448	
Federal Funds	0	0	0	10,594	
Discretionary Fund - CF	5,000	5,000	5,000	5,000	
					Request v. Appropriation
<b>TOTAL - ADMINISTRATION</b>	6,451,442	6,399,594	6,474,233	8,621,347	33.2%
FTE	<u>87.1</u>	<u>73.9</u>	<u>83.5</u>	<u>81.0</u>	-3.0%
Cash Funds	6,422,713	6,336,422	6,310,078	8,471,311	34.3%
FTE	87.1	73.6	82.5	80.0	-3.0%
Cash Funds Exempt	24,612	63,172	164,155	139,442	-15.1%
FTE	0.0	0.3	1.0	1.0	0.0%
Federal Funds	4,117	0	0	10,594	



	FY 2004-05 Actual	FY 2005-06 Actual	FY 2006-07 Appropriation		FY 2007-08 Request	Change Request
<b>(2) Special Purpose</b>						
Primary Function: Implement the Help America Vote Act; reimburse counties for elections and ballot initiatives; help clerk and recorders in smaller counties develop electronic filing capabilities; administer the initiative and referendum laws; maintain the central ("master") lien index. Line items are cash funded from the Department of State Cash fund unless indicated otherwise.						
Federal Election Assistance Fund	8,408,666	0	0		0	
Cash Funds Exempt - State Contribution	1,371,270	0	0		0	
Federal Funds	7,037,396	0	0		0	
Help America Vote Act	5,497,564	3,032,976	8,750,000	a/	3,810,214	
FTE	8.6	15.0	11.0		9.5	
Cash Funds Exempt	5,497,564	2,924,037	8,750,000		3,710,214	
Federal Funds	0	108,939	0		100,000	
Local Election Reimbursement - CF	867,393	867,393	1,729,923		1,729,923	
Electronic Filing Grants to Counties - CF	189,034	1,477,613	1,500,000	b/	0	
Initiative and Referendum - CF	33,063	83,417	200,000		50,000	
Master List Distribution Contract - CF	58,365	58,365	80,000		0	

Request v.

	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	
	Actual	Actual	Appropriation	Request	Change Request Appropriation
<b>TOTAL - SPECIAL PURPOSE</b>	15,054,085	5,519,764	12,259,923	5,590,137	-54.4%
FTE	<u>8.6</u>	<u>15.0</u>	<u>11.0</u>	<u>9.5</u>	-13.6%
Cash Funds	1,147,855	2,486,788	3,509,923	1,779,923	-49.3%
Cash Funds Exempt	6,868,834	2,924,037	8,750,000	3,710,214	-57.6%
FTE	8.6	15.0	11.0	9.5	-13.6%
Federal Funds	7,037,396	108,939	0	100,000	

a/ These amounts are continuously appropriated from the Federal Election Assistance Fund by Section 1-1.5-106, C.R.S., and are shown for informational purposes only. They reflect the department's actual and anticipated expenditures from the fund.

b/ These amounts are from the Clerk and Recorder Electronic Filing Technology Fund.

### (3) INFORMATION TECHNOLOGY SERVICES

Primary Function: Create and maintain an internet-oriented record system that allows public officials, lobbyists, businesses, charities, and other entities to file a variety of reports and documents online. Provide online access to many of these records. Line items are cash funded from the Department of State Cash fund unless indicated otherwise.

Personal Services - CF	2,342,106	2,889,520	4,640,870	4,186,810
FTE	22.3	23.3	32.0	33.0
Operating Expenses	<u>543,777</u>	<u>2,626,827</u>	<u>1,404,776</u>	<u>1,405,091</u>
Cash Funds	543,777	2,626,827	1,393,934	1,394,249
Cash Funds Exempt	0	0	10,842	10,842
Hardware/Software Maintenance - CF	779,059	654,401	899,578	876,120
Information Technology Asset Management - CF	144,259	800,839	696,493	445,418
Emergency Repairs to Data Center - CF	0	0	0	0

	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	
	Actual	Actual	Appropriation	Request	Change Request
Data Center Replacement Costs	1,930,812	348,650	0	0	
Cash Funds	1,930,812	348,650	0	0	
Cash Funds Exempt	0	0	0	0	
					Request v. Appropriation
<b>TOTAL - INFORMATION TECHNOLOGY SERVICES</b>	5,740,013	7,320,237	7,641,717	6,913,439	-9.5%
FTE	22.3	23.3	32.0	33.0	3.1%
Cash Funds	5,740,013	7,320,237	7,630,875	6,902,597	-9.5%
FTE	22.3	23.3	32.0	33.0	3.1%
Cash Funds Exempt	0	0	10,842	10,842	0.0%
					Request v. Appropriation
<b>DEPARTMENT OF STATE TOTALS</b>	27,245,540	19,239,595	26,375,873	21,124,923	-19.9%
FTE	118.0	112.2	126.5	123.5	-2.4%
Cash Funds	13,310,581	16,143,447	17,450,876	17,153,831	-1.7%
FTE	109.4	96.9	114.5	113.0	-1.3%
Cash Funds Exempt	6,893,446	2,987,209	8,924,997	3,860,498	-56.7%
FTE	8.6	15.3	12.0	10.5	-12.5%
Federal Funds	7,041,513	108,939	0	110,594	
FTE	0.0	0.0	0.0	0.0	

**FY 2007-08 JBC Staff Budget Briefing**  
**DEPARTMENT OF STATE**  
**Footnote Update**

- 2 All Departments, Totals** -- The General Assembly requests that copies of all reports requested in other footnotes contained in this act be delivered to the Joint Budget Committee and the majority and minority leadership in each house of the General Assembly. Until such time as the Secretary of State publishes the code of Colorado regulations and the Colorado register in electronic form pursuant to section 24-4-103 (11) (b), C.R.S., each principal department of the state is requested to produce its rules in an electronic format that is suitable for public access through electronic means. Such rules in such format should be submitted to the Office of Legislative Legal Services for publishing on the Internet. Alternatively, the Office of Legislative Legal Services may provide links on its internet web site to such rules. It is the intent of the General Assembly that this be done within existing resources.

Comment: None of the other footnotes contained in the Long Bill required reports from the Department. Rules issued by the Department of State are available in electronic form at their Web site, and the Office of Legislative Legal Services site provides a link to the Department of State Web site. A footnote including some form of this request for electronic rules has been included in the Long Bill for the last few years. Section 24-3-103 (11) (b), C.R.S., was first amended to require the Secretary of State to publish the Regulations and the Colorado Register in electronic form in 2002. The Secretary's Office does not yet publish the Regulations or the Colorado Register in such form, although there are placeholders at their Web site announcing that this service will be available soon. Staff recommends that the Committee request the Department discuss the following questions at their hearing. Is there a firm schedule for making the Regulations and the Colorado Register available in electronic form? If not, what additional resources would be required to put this project on a firm schedule?

- 3 All Departments, Totals** – Every Department is requested to submit to the Joint Budget Committee information on the number of additional federal and cash funds exempt FTE associated with any federal grants or private donations that are applied for or received during FY 2006-07. The information should include the number of FTE, the associated costs (such as workers' compensation, health and life benefits, need for additional space, etc.) that are related to the additional FTE, the direct and indirect matching requirements associated with the federal grant or donated funds, the duration of the grant, and a brief description of the program and its goals and objectives.

Comment: *The Governor vetoed this footnote on grounds that it violates the separation of powers, that placing information requirements on federal and private funds could constitute substantive legislation, and that it is an unfunded mandate.* The Department is in compliance with this request.

**FY 2007-08 JBC Staff Budget Briefing  
DEPARTMENT OF STATE  
Performance Measures**

**ISSUE:**

Department of State Performance Measures

**DISCUSSION:**

**Department Mission**

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*Mission Statement:*

The mission of the Department of State is to serve the public by performing constitutional and statutory duties of collecting, securing, and communicating information, ensuring the integrity of elections, and enhancing commerce.

**Goals and Performance Measures**

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The Department's strategic plan is combined with its program narrative; the combination is 67 pages long and includes 49 objectives and 140 performance measures. For each program within the Department, in addition to objectives and performance measures, the document includes customer requirements and an action plan.

**Staff Analysis**

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Joint Budget Committee staff reviewed the Department's performance measures submitted in the budget. Staff assessed these performance measures using the following common checklist:

1. Do the goals and performance measures correspond to the program's directives provided in statute?
2. Are the performance measures meaningful to stakeholders, policymakers, and managers?
3. Does the Department use a variety of performance measures (including input, output, efficiency, quality, outcome)?
4. Do the performance measures cover all key areas of the budget?
5. Are the data collected for the performance measures valid, accurate, and reliable?
6. Are the performance measures linked to the proposed budget base?
7. Is there a change or consequence if the Department's performance targets are not met?

In general, the objectives and measurements demonstrate a focus on meeting the needs of a variety of different types of customers of the Department's services. Staff believes that this emphasis would

be made clearer, and the overall usefulness of the document improved, by rearranging the order in which information is presented. In each section, customer requirements are relegated to the very end; bringing these forward in order to emphasize that the Department's measurements are intended to show how the different types of customers are being served would be helpful. The material on trends and other baseline information is useful and should follow the customer requirements. Finally, objectives based on both customer needs and trends, and measurements for the objectives, should appear last.

The objectives are numbered in a confusing fashion. The numbering scheme is apparently hierarchical, although the scheme is never described. Many, but not all, programs begin with objective 1.1 and proceed from there. Some objectives appear to have disappeared, as is the case in one program which includes objectives 4.1, 4.8, and 4.9, but none of the other 4.x objectives one might expect. Each program's objectives appear to stand alone; multiple programs have an objective numbered 1.1, but none of the objectives sharing a common number seem to have very much to do with one another. The utility of the document would be enhanced if there were a more consistent numbering scheme.

The following are examples of objectives and performance measures from selected programs or divisions. The strengths and weaknesses of each are discussed.

*Information Technology Services Division - Sample Objective and Performance Measures*

**Objective 2.4 EFS Central Filing System. Re-engineering of office systems supporting EFS filing of UCC documents, and will move this division even further toward a fully e-government model. Cooperatively worked with the Business Division, representatives of the Business Law Section of the Colorado Bar Association, and other stakeholders in defining the scope and character of changes to office systems supporting Uniform Commercial Code lien filing (changes required by SB 06-188). Base System must be implemented on July 1, 2008 per statute.**

- Provide new fully functioning business back office, web presence and batch system that meets the requirements of SB-188.

In the document, results for this measurement appear in a table like that shown below. This objective and measurement demonstrate the tactical nature of many of the measurements included in the document. In this specific case, a change in statute required that one or more of the Department's IT systems be modified. The activity of changing the system(s) has been completed. There is no need to set future targets for this measurement as the activity will not occur again. At best, for multi-year projects, this measure provides an extremely high-level view of progress towards completion.

	<b>FY 05-06 Actual</b>	<b>FY 06-07 Actual</b>	<b>FY 07-08 Actual</b>		
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Measure 2.4.1 [Explanatory text deleted]	25%	100%			
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This measurement is entirely tactical in nature. A more strategic goal might be related to the timely completion of all of the IT projects undertaken by the Department. A measure corresponding to that goal might be the percentage of project milestones, across the entire population of projects, that were completed on time and/or within budget. Such a measure would allow the Department to set meaningful targets for the future. This type of measure would also allow the department to demonstrate improvement in their processes by steadily raising the annual score.

Much of the public's interaction with the Department of State involves filing of forms: in the example above, filing of liens. While the Department does not list high-level goals separately, one of its goals that applies to many programs is to "move... toward a fully e-government model." This goal is recognized in several places in the document, as shown in the next objective and some of its measurements.

*Business Division - Sample Objective and Performance Measures*

**Objective 1.1 Increase the speed, accuracy and efficiency of business division documents registration by implementing and expanding Web-enabled electronic filing.**

- Number of months all business organization documents are processed within statutory deadlines.
- Average number of days required to process business documents
- Percentage of eligible business documents filed electronically

A subset of the table containing past achievements and future targets for the measurements associated with this objective is shown below. All three of these measurements can be used to track the success, failure, or improvement of an ongoing activity. All of them relate to the needs of different customers: the first to the legislature, the second to the business community, and the third to the Department's goal of moving towards e-government.

	FY 03-4 Actual	FY 04-05 Actual	FY 05-06 Actual	FY 06-07 Estimate	FY 07-08 Projected
Measure 1.1.1 Number of months all business documents are processed within statutory deadlines	9	8	12	12	12
Measure 1.1.3 Average number of days required to process business documents	7	17	4	4	4
Measure 1.1.5 Percentage of eligible business documents filed electronically	34	72	96.7	98.9	99

## **Questions for Department**

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Staff recommends that the Committee discuss the following questions with the Department during the FY 2007-08 budget hearing:

1. How do your performance measures influence department activities and budgeting?
2. To what extent do the performance outcomes reflect appropriation levels?
3. To what extent do you believe that appropriation levels in your budget could or should be tied to specific performance measure outcomes?
4. As a department director, how do you judge your department's performance? What key measures and targets do you used?



**FY 2007-08 JBC Staff Budget Briefing  
DEPARTMENT OF STATE  
Legal Services Decision Item**

**ISSUE:**

For the past few fiscal years, actual expenditures on the Legal Services line have exceeded the Long Bill appropriation in each year. The Department believes that increased spending in this line, driven primarily by lawsuits associated with the Department's expanded role in elections, will persist in the future. The Department has included a decision item request in the FY 2007-08 budget to increase the Long Bill appropriation for Legal Services by \$60,000.

**RECOMMENDATION:**

Staff recommends that the Committee request the Department discuss the following questions at their hearing.

1. In light of recent history, why is the \$60,000 increase considered adequate to cover the likely future expenditures in the Legal Services line? In years when this increase is not adequate, does the Department intend to absorb the remainder through its operating budget, or to submit supplemental requests?
2. Does the Department include considerations that might reduce the risk of lawsuits, or reduce the size and scope of possible lawsuits, in its rule-writing activities? If so, are these part of the formal procedures used inside the Department? If such risks are not considered, why not?

**DISCUSSION:**

In each of the past several fiscal years, the Department of State actual expenditures for the Legal Services line item have exceeded the Long Bill appropriation for this item. As a consequence, each year the Department has required a supplemental appropriation to address the shortfall. The amount of the Department's budget request amount, the Long bill appropriation amount, and the actual expenditure amount are shown in the following table. The largest over-expenditure was \$254,959 in FY 2003-04; the smallest was about \$53,732 in FY 2002-03.

Fiscal Year	Department Request	Long Bill Appropriation	Actual Expenditure	Over-Expenditure (versus Approp)
2002-03	\$118,029	\$123,786	\$177,518	(\$53,732)
2003-04	\$125,495	\$103,343	\$358,302	(254,959)
2004-05	\$132,047	\$106,208	\$242,670	(136,462)
2005-06	\$106,208	\$121,617	\$201,539	(79,922)
2006-07	\$121,617	\$116,903	\$277,981*	(161,078)

\*Current estimate included in Department's supplemental request.

The specific causes of the higher expenditures have varied from year to year, but the costs are being driven primarily by cases filed against the Secretary of State acting as the State's chief election officer. In FY 2003-04, one of the major lawsuits filed against the Secretary was a challenge to voters' adoption at the 2002 general election of Amendment 27, concerning campaign finance. In FY 2004-05, a large part of the higher cost was the result of the Attorney General's decision to become a candidate for the U.S. Senate; it was determined that the Attorney General could not advise the Secretary on election matters that might affect his candidacy, and the Department was required to obtain advice from private legal counsel instead. In the beginning of FY 2006-07, the Secretary was named as a defendant in *Conroy et. al. v. Dennis et. al.* because of the Department's role in establishing rules for voting systems mandated by the federal Help America Vote Act. The costs associated with this last case during the first three months of the current fiscal year have exceeded the Long Bill appropriation for the year.

The Department states that because its role in these cases is as defendant rather than initiator, the Department has limited control over the issues that may arise and the subsequent amount of legal services that will be required. The Department believes that growing awareness and interest among the public, and more particularly among advocacy groups, has led to an increased number of challenges to election laws, rules and regulations. The Department also believes that election-related issues will continue to generate a higher need for legal services.

The Department has identified three alternatives for addressing this problem:

- Continue as before, with a Long Bill appropriation based on the appropriation history rather than on the actual expense history, and make an annual supplemental request when the funds are depleted. In this case, both the Department of State and the Department of Law must prepare supplemental requests, creating additional work for both departments and for the Joint Budget Committee and its staff.
- Absorb additional costs, if possible, in the operating budget rather than making supplemental requests. At some point in the fiscal year, the Department may no longer be able to make such diversions and it would be necessary to discontinue any legal defense involving the Department. Such action would almost certainly have detrimental effects for the State.

- Increase the base request by a minimum of \$60,000 (equivalent to 885 hours of service purchased from the Department of Law).

The Department believes that the third option would be the best choice. If the goal is to eliminate the need for supplemental appropriations, staff suggests that the \$60,000 increase may, in fact, be too small. Referring to the table above, this amount would have been sufficient to avoid a supplemental appropriation only during FY 2002-03.

However, there may be additional choices which can be considered. While the Department may have limited control over which issues will manifest themselves as court naming the Secretary and/or the Department as defendant, the Department does have the ability to exert some influence through the completeness and quality of the rules and regulations it writes. The HAVA-related *Conroy* case mentioned previously provides a possible example of this.

One of the points challenged in the lawsuit was whether or not the Secretary had fulfilled her duty pursuant to Section 1-6-616 (1) (g), C.R.S. That statute requires that the Secretary adopt rules that establish minimum standards for security requirements for electronic voting systems. In its written opinion, the District Court concluded that the Secretary's Rule 45, 8 CCR 1505, did not establish such requirements, and that the Secretary had not adequately tested the electronic systems which were the subject of the lawsuit. The Court ordered that the Secretary promulgate a revised rule containing such minimum standards and retest previously certified systems. While there can be no guarantees, if the initial rule had more clearly met the requirements of the statute, perhaps the lawsuit would not have been filed, or would have been settled more quickly and at lower cost.

Staff recommends that the Committee request the Department respond to the following questions at their hearing.

1. In light of recent history, why is the \$60,000 increase considered adequate to cover the likely actual future expenditures in the Legal Services line? In years when this increase is not adequate, does the Department intend to absorb the remainder through its operating budget, or to submit supplemental requests?
2. Does the Department include considerations that might reduce the risk of lawsuits, or reduce the size and scope of possible lawsuits, in its rule-writing activities? If so, are these part of the formal procedures used inside the Department? If such risks are not considered, why not?

**FY 2007-08 JBC Staff Budget Briefing  
DEPARTMENT OF STATE  
Multi-Use Network Line Item Increase**

**ISSUE:**

The Department's funding request for the Multi-Use Network line item has increased from \$53,000 to \$1.75 million. The amount that appears on this line is provided by the Department of Personnel and Administration (DPA), which is responsible for administering the network, rather than being set directly by the Department of State. The increase represents two Department of State projects which have, or will, require substantial increases in the number of locations served by the network: HAVA and e-FOR<sup>3</sup>T.

**RECOMMENDATION:**

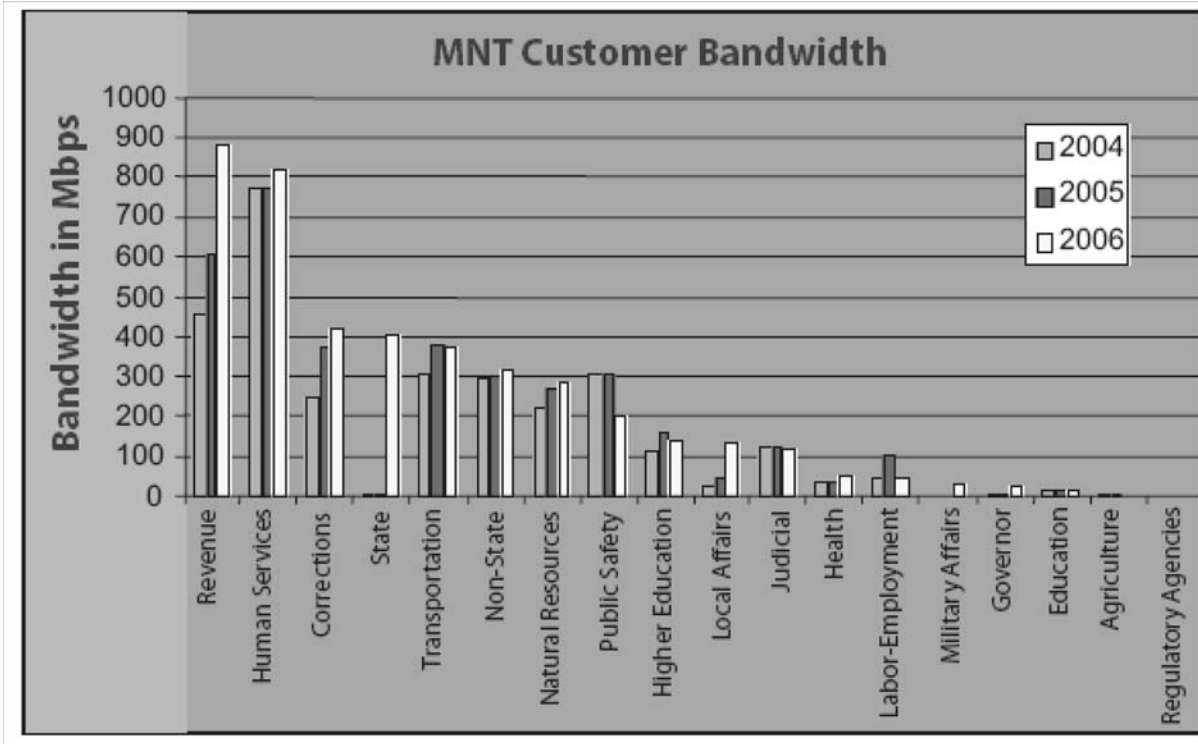
Staff recommends that the Committee request the Department discuss the following questions at their hearing.

1. In addition to legal services and MNT, are there other line items which already include substantial expenses specific to delivering the HAVA mandates that are not being paid with HAVA funds? If not, how likely is it that there will be such expenses in the future?
2. The cash funds for these HAVA-related expenses come from fees charged for various filings and queries against databases containing filings, largely paid by the business community. Are these appropriate sources for funding election-related expenses?

**DISCUSSION:**

The State of Colorado, through its Multi-Use Network (MNT), is the anchor client for the Colorado High Speed Digital Network (CHSDN). CHSDN is a network that provides high-speed digital service that extends to all 64 county seats in the state. MNT provides high-speed data service and Internet access to Colorado public sector entities: state agencies, schools, libraries, hospitals and local governments. MNT is operated by the Department of Personnel and Administration (DPA) and costs are allocated to state agencies that make use of the network. Costs are allocated roughly on the basis of bandwidth used by the individual departments.

The Department of State has two initiatives that have greatly increased the MNT bandwidth that it will use. The size of this increase, relative to both its prior usage and relative to usage by other departments, is shown in the graphic below. In 2004 and 2005, the Department of State's usage was almost insignificant; in 2006 it has become one of the top four bandwidth users. The difference can be attributed to two initiatives: the federal Help America Vote Act (HAVA) and the new state information technology disaster recovery facility (e-FOR<sup>3</sup>T).



Source: Multi-Use Network FY 2005-06 Annual Report, Department of Personnel and Administration.

HAVA requires all states to implement “a single, uniform, official, centralized, interactive, computerized statewide voter registration system, defined, maintained and administered at the state level”. HAVA requires that all local election officials use this list for the administration of federal elections in the state, and that they have immediate access to the list. H.B. 03-1356 made these HAVA requirements part of Colorado state law as well. In order to provide the necessary access, a large number of new locations must be connected to the MNT.

The disaster recovery facility provides a secure physical location for all state agencies to position IT equipment that can be used to restore operations following emergencies that affect those agencies' primary data centers. One of the major factors driving the decision to fund such a facility was the Department of State's "zinc whiskers" disaster which shut down access to the online version of many of their public services for nearly 30 days. In order to meet the goals established for the facility, it must include dedicated equipment and transmission links to connect it to MNT. An update on the disaster recovery facility is the subject of the next issue in this briefing packet.

The number of locations which will be required to be connected to MNT in order to meet the HAVA requirements was estimated by Accenture, a consulting firm, when they were the contractor for the State of Colorado Registration and Election (SCORE) system. This estimate was provided to DPA, and resulted in the line item increase included in the Department of State's budget request. Since Accenture conducted its survey, many counties have received state grants that were, at least in part, intended to provide connection of county locations to MNT.

In responding to JBC staff questions, the Department has indicated that they expect to have more accurate information on the actual unmet connectivity needs for HAVA by either the first or second quarter of 2007. In their response, the Department states, "We expect the timing of this discovery effort to be sufficient to avoid needless expenditure on duplicative network circuits to county sites, but are not confident that it will be completed in time to allow for a supplemental request by DoIT [the division within DPA responsible for MNT] during FY 2006-07 to lower the FY 2008 appropriation request for MNT." The Department believes that the current line item amount significantly overstates the actual funding that will be needed.

HAVA-related expenses appear in at least two line items funded solely with cash funds in this year's budget request: Legal Services and Multiuse Network Payments. The HAVA line item that appears in the Long Bill is provided for informational purposes only pertaining to the original federal HAVA grant and state matching funds. Staff recommends that the Committee request the Department respond to the following questions at their briefing.

1. In addition to legal services and MNT, are there other line items which already include substantial expenses specific to delivering the HAVA mandates that are not being paid with HAVA funds? If not, how likely is it that there will be such expenses in the future?
2. The cash funds for these HAVA-related expenses come from fees charged for various filings and queries against databases containing filings, largely paid by the business community. Are these appropriate sources for funding election-related expenses?

**FY 2006-07 JBC Staff Budget Briefing  
DEPARTMENT OF STATE  
IT Disaster Recovery Facility Update**

**ISSUE:**

The Department of State funds and operates an IT disaster recover facility that is available for use by all state entities. The common costs of the facility -- space, power, and communications -- are paid for by the Department out of its normal revenues. These costs are absorbed into a variety of line items where they are difficult to identify.

**RECOMMENDATION:**

Staff recommends that the Committee ask the Department to discuss the following question at their hearing.

1. At the present time, the expenses for operating the disaster recover facility are scattered over several existing line items in the Long Bill. Would it be more appropriate to separate funding for this important program into its own line item?

**DISCUSSION:**

Since FY 1999-2000, when the Department received a supplemental \$3.1 million appropriation to upgrade its information technology (IT) capabilities, the Department has become a recognized IT leader among Secretaries of State. Businesses, public officials, lobbyists, charitable solicitors and others can now file many reports and documents online and many of these filings can be accessed over the internet, often without charge. The Department's ability to move quickly towards an e-government model in these areas has been facilitated by timely changes to the Colorado statutes by the General Assembly. For some filings, statute now allows or even requires that the Department mandate the filing be made electronically.

The June 2004 zinc whiskers disaster, described at length in previous Department of State briefings and other staff-prepared documents, interrupted many of the Department's e-government operations for a period of nearly 30 days. The Department was in the process of relocating at the time and established a replacement data center at its new offices. During the recovery process, the Department assembled a case for developing a separate disaster recovery facility. The Department's case was absorbed by the IMC/OIT assessment of the state's overall disaster preparedness. In 2005, the Department received an appropriation of \$3.6 million in order to establish a state-wide disaster recovery facility for computer operations. In addition to these funds, \$2.3 million in continuation program funding was appropriated.

This project was named "Enterprise Facility for Response/Readiness/Recovery and Transition Services" (e-FOR<sup>3</sup>T). The facility was prepared as part of a public/private partnership with ViaWest Inc., and opened for operation in June 2006. The facility provides for properly-conditioned space,

electrical power, and communications services for all participating state agencies at no cost to them (each agency must, of course, pay for its own computers, software, etc.). The facility is categorized as "Tier III" in terms of reliability, availability, and security. For example, in case of commercial power failure, the facility has two independent back-up generators; operations can continue even if both commercial power and one of the generators fails.

The Department of State has begun to incorporate the facility into its own IT project designs. One new project includes duplicate copies of the database for reliability. In the Department's implementation, one database server is located in the Department's data center in downtown Denver, while the other is located in the disaster recovery facility. If something happens to the server in the downtown center, the overall system will continue to function (although performance may be somewhat degraded) without the need for corrective action.

Other state agencies have begun planning to make use of the disaster recovery facility. The Department has signed memorandums of understanding regarding the use of the facility with the Department of Public Safety, the Department of Personnel and Administration, and the Department of Regulatory Agencies. In addition, the Department has "handshake" agreements with the Departments of Law and Human Services to use the facility.

Now that the facility is fully operational, staff recommends that the Committee request the Department discuss the following question at their hearing.

1. At the present time, the expenses for operating the disaster recover facility are scattered over several existing line items in the Long Bill. Would it be more appropriate to separate funding for this important project into its own line item?



# M E M O R A N D U M

**TO:** Joint Budget Committee

**FROM:** Michael Cain, Joint Budget Committee Staff

**SUBJECT:** Department of State Emergency Supplemental for Legal Services

**DATE:** November 15, 2006

## Emergency Supplemental - Legal Services

### Applicable Supplemental Criteria:

- An Emergency or Act of God
- A Technical Error in Calculating the Original Appropriation
- Data Which Was Not Available When the Original Appropriation Was Made
- An Unforeseen Contingency

### (1) Administration

#### Line Item Name: Legal Services

	FY 2005-06 Actual	FY 2006-07 Appropriated	Year-to-Date	Supplemental Request	Staff Recommendation
<b>TOTAL</b>	<b>\$ 173,112</b>	<b>\$ 116,903</b>	<b>\$ 170,598</b>	<b>\$ 160,978</b>	<b>\$ 160,978</b>
<u>FTE</u>					
General Fund					
Cash Funds	\$168,980	\$116,903	\$170,598	\$160,978	\$160,978
Cash Funds Exempt	\$4,132				
Federal Funds					

### Department Supplemental Request

The Department of State has submitted an emergency supplemental request for an increase of \$160,978 cash funds for the Legal Services line item in FY 2006-07. The largest portion of the increase is attributable to costs incurred in defending a single case, *Conroy et. al. v. Dennis et. al.*,

brought against the Secretary of State and nine counties concerning the use of electronic voting systems. The remaining portion reflects a continuation of the increase in election-related litigation that began several years ago.

The Department's appropriation for legal services for FY 2005-06 is \$116,903. The funding source is cash funds from the Department of State Cash Fund. The Department has been billed by the Department of Law for \$170,598 for legal services through the first three months of the fiscal year. Based on information from the Department of Law, the Department of State now estimates that the total cost of its legal services for fiscal year 2006-07 will be \$277,881. Without an emergency supplemental appropriation, the Department may be unable to pay for representation in pending or future litigation, or to pay to obtain needed legal opinions from the Department of Law.

### **Staff Recommendation**

**Staff recommends the Department's request for an additional \$160,978 for the Legal Services line item.** The recommendation is based on the following considerations and analysis.

**Request meets the criteria for a 1331 supplemental.** The federal Help America Vote Act (HAVA) mandated that all polling places have at least one direct recording electronic system (DRE) in order to allow persons with disabilities to vote privately and independently. Colorado has complied with this mandate. The *Conroy* lawsuit is one of a series of cases filed in various states this year by a national activist group for the purpose of ending the use of electronic voting systems in the United States. This group is involved in litigation in at least eight states so far: Arizona, California, Colorado, New Jersey, New Mexico, New York, Pennsylvania and Wisconsin. In the *Conroy* case, the plaintiffs initially sought to block the purchase and use of DRE systems in Colorado. The suit was filed on June 1, 2006, almost a month after the close of the last regular session of the General Assembly. Prior to the filing, the Department could not reasonably anticipate this large lawsuit. Nor could the Department accurately predict the duration and cost of the suit. Because of the unexpected nature of the event, staff believes this request meets the criteria for a 1331 supplemental.

**Department has exhausted the legal services line item.** For FY 2006-07, the Department requested \$121,617 for the Legal Services line item. This was the same amount as the Long Bill appropriation of the previous year. For FY 2006-07, the Long Bill appropriation was \$116,903, somewhat less than the amount requested. Through the first three months of this fiscal year, the Department has been billed for \$170,698 by the Department of Law for legal services. The over-expenditure can be accommodated early in the fiscal year by using funds from the operating budget. This does not fix the underlying problem, but only delays it.

**Department will incur additional legal expenses.** The Department is currently involved in five pending lawsuits in which it is represented by the Department of Law. In addition, the Department will require legal opinions from the Department of Law as a part of its routine operations. The Department, in consultation with the Department of Law, estimates that these activities will incur at least another \$107,283 in expenses for the remainder of this fiscal year. This yields an updated

estimate for total legal services expenses for FY 2006-07 of \$277,981. In order to meet this estimate, the Department requires a supplemental appropriation of \$160,978.

**The amount requested appears to be reasonable.** Based on recent history, the projection of actual expenses of about \$278,000 appears to be reasonable. The following table shows the Department's initial request, the Long Bill appropriation, and the actual expenditure for the legal services line item for the last four completed fiscal years as well as the current fiscal year. The average Long Bill appropriation has been about \$114,000 and the average expenditure (excluding the current year estimate) has been about \$245,000. The updated estimate of the expenditures for legal services for the Department for the current fiscal year falls within the range that has been incurred over the past few years.

Fiscal Year	Department Request	Long Bill Appropriation	Actual Expenditure
2002-03	\$118,029	\$123,786	\$177,518
2003-04	\$125,495	\$103,343	\$358,302
2004-05	\$132,047	\$106,208	\$242,670
2005-06	\$106,208	\$121,617	\$201,539
2006-07	\$121,617	\$116,903	\$277,981*

\*Current estimate included in this request.

The data in this table suggest that higher legal services expenses for the Department have become the norm rather than the exception. The Department has recognized this, and its budget request for FY 2007-08 includes a decision item seeking a substantial increase in the Long Bill appropriation for this line.

**HAVA funds not available for litigation.** The *Conroy* lawsuit is a consequence of the efforts of the Department of State and several Colorado counties to implement the requirements of the federal HAVA legislation. The Secretary of State was granted wide latitude in the expenditure of the federal HAVA funds and state matching funds; so much so that the HAVA line item in the budget is included for informational purposes only. However, the Help America Vote Act itself does not generally allow federal HAVA funds and state matching funds to be used for litigation expenses. As a consequence, HAVA-related expenditures for legal services must be paid for out of the Department's other funds.

**Cash funds are available for this request.** The Department's non-HAVA expenses are funded for the most part from the Department of State Cash Fund. The primary revenue sources for this fund are fees charged for the various filings which businesses, charities, lobbyists, and so on, are required to make with the State, and fees charged for access to those public records. As of June 30, 2006, the Department of State Cash Fund contained an uncommitted reserve in excess of five million dollars.

**Similar requests have been granted in the past.** For the past few years, the usual practice has

been to keep the line item appropriation for Legal Services in the Long Bill at roughly the same level as the previous year, and when the funds were exhausted, the Department made a supplemental request. These requests have been granted in the past. If this practice is to be changed, staff believes it would be more appropriate to begin the change by setting a higher funding level in the Long Bill that more accurately reflects the legal costs that the Department has incurred, and is likely to incur in the future.