

DEPARTMENT OF LAW

FY 2025-26 JOINT BUDGET COMMITTEE HEARING AGENDA

Thursday, December 5, 2024

9:00 am – 10:00 am

9:00 – 9:05 Introductions and Opening Comments

- Phil Weiser, Attorney General

9:05 – 9:10 Common Questions

Main Presenters:

- Phil Weiser, Attorney General

Supporting Presenters:

- Natalie Hanlon Leh, Chief Deputy Attorney General
- Jason Schrock, Budget Director
- Jefferey Riester, Senior Assistant Attorney General/Director of Legislative Affairs
- Kurt Morrison, Deputy Attorney General for Legal Policy
- Melissa Moynham, Director of Financial Services/Controller

Topics:

- Question 1: Budget Requests that Replace One-Time General Fund or ARPA, Page 1

9:10 – 9:30 Legal Services to State Agencies and Agency Cash Funds

Main Presenters:

- Phil Weiser, Attorney General

Supporting Presenters:

- Natalie Hanlon Leh, Chief Deputy Attorney General
- Jason Schrock, Budget Director
- Jefferey Riester, Senior Assistant Attorney General/Director of Legislative Affairs
- Kurt Morrison, Deputy Attorney General for Legal Policy
- Melissa Moynham, Director of Financial Services/Controller

Topics:

- Question 2: Legal Services to State Agencies (LSSA) as an Enterprise, Page 1
- Question 3: LSSA Billing Methodology, Page 1
- Question 4: Actual vs. Estimated Legal Hours, Page 2
- Question 5: Spending Down LSSA Reserve, Page 2
- Question 6: Cash Fund Information (Revenue, FTE, Reserves), Page 3
- Question 7: Custodial Fund Information, Page 4
- Question 8: DNR Cash Funds for Water and Natural Resources Section, Page 5

9:30 - 9:45 Budget Reduction Options

Main Presenters:

- Phil Weiser, Attorney General

Supporting Presenters:

- Natalie Hanlon Leh, Chief Deputy Attorney General
- Jason Schrock, Budget Director
- Jefferey Riester, Senior Assistant Attorney General/Director of Legislative Affairs
- Kurt Morrison, Deputy Attorney General for Legal Policy
- Melissa Moynham, Director of Financial Services/Controller

Topics:

- Question 9: Agency Options, Page 6
- Question 10: JBC Staff Options, Page 6
- Question 11: Status of Organized Retail Crime Efforts, Page 8

9:45 - 10:00 Executive Session

Main Presenters:

- Phil Weiser, Attorney General
- Natalie Hanlon Leh, Chief Deputy Attorney General

Supporting Presenters:

- Jason Schrock, Budget Director
- Jefferey Riester, Senior Assistant Attorney General/Director of Legislative Affairs
- Kurt Morrison, Deputy Attorney General for Legal Policy
- Melissa Moynham, Director of Financial Services/Controller

Topics:

- Discussion of Pending Litigation Question 12-13.

DEPARTMENT OF LAW
FY 2025-26 JOINT BUDGET COMMITTEE HEARING

Thursday, December 5, 2024

9:00 am – 10:00 am

COMMON QUESTIONS FOR DISCUSSION AT DEPARTMENT HEARINGS

1. **Please describe any budget requests that replace one-time General Fund or ARPA funded programs with ongoing appropriations, including the following information:**
2. **Original fund source (General Fund, ARPA, other), amount, and FTE;**
3. **Original program time frame;**
4. **Original authorization (budget decision, legislation, other);**
5. **Requested ongoing fund source, amount, and FTE; and**
6. **Requested time frame (one-time extension or ongoing).**

Response: The Department of Law (“Department”) FY 2025-2026 budget request contains no budget requests that meet this criteria.

LEGAL SERVICES TO STATE AGENCIES AND AGENCY CASH FUNDS

Legal Services to State Agencies

7. **Discuss the potential of making the Legal Services to State Agencies section of the Department an enterprise under the Colorado Taxpayer Bill of Rights (TABOR).**

Response: The Department asks that discussion on legal risk related to legislation be conducted in executive session pursuant to the Colorado Open Meetings Law, §§ 24-6-401, 402, C.R.S.

8. **Describe the Department’s current billing methodology, how the Department and client agencies account or pay for extraordinary legal costs when they arise temporarily.**

Response: The Department determines legal services billing by applying a three-year average of each agency’s actual legal service hours. Agencies are billed monthly in equal installments, spreading their total allocation over the year to ensure cost predictability. This approach supports the Department’s ability to maintain adequate staffing to meet service demands while minimizing dependence on more expensive contract attorneys or outside counsel. Annually, actual legal service costs for agencies differ from the estimated allocations based on the three-year average. Discrepancies

are reconciled in a future fiscal year to ensure that agency allocations align with actual expenditures over time. This reconciliation process also incorporates any “extraordinary legal costs” that may occur.

- 9. For the prior three years, provide a comparison between the estimated number of legal services hours that was the basis for the legal services blended rate calculation and the actual number of hours provided for that year.**

Response: The following table shows the actual legal services hours utilized for the past three fiscal years compared with the legal services hours used for budgeting purposes.

	FY 2021-22	FY 2022-23	FY 2023-24
Total Actual Legal Services Hours	467,466	501,319	533,046
Legal Services Hours used for Budgeting	460,045	491,439	471,015

Actual legal services used each fiscal year become the basis for determining the hours for budgeting purposes using the three-year rolling average of each agency’s actual hours described in response to the billing methodology question above. Thus, over time, agencies pay for all legal services they utilize through the budgeting process despite actual hours differing from those used for budgeting on a year-by-year basis.

Agency Cash Funds

- 5. Discuss JBC Staff option of spending down the Legal Services Cash Fund reserve by \$1.5 million. Would the Department recommend a different target for the reserve reduction calculation? What risks are presented by reducing the target reserve for this common policy. What other impacts should the Committee consider before pursuing this policy?**

Response: The Department currently spends down the Legal Services Cash Fund reserve as needed by requesting legal services revenue through common policy appropriations at a rate less than anticipated projected expenditures. This occurs in order to comply with requirements for an Internal Service Fund that programs are being charged not more than the amount to cover the cost of services provided. Spending down of the fund’s reserves is incorporated into the Department’s FY 2025-26 budget request, amounting to \$6 million.

The Department recommends that a further spending down of the reserve for FY 2025-26 than already incorporated into its request is not prudent as the reserve must remain sufficient to maintain solvency to cover its liabilities and any unanticipated litigation expenses. The spending down of the reserve amount for the FY 2025-26 allocations was estimated at the amount needed to ensure

solvency and compliance. It is also important to note that the LSSA fund balance is currently materially below the statutory limit of 16.5 percent.

6. Provide the current balance of each agency cash fund, how many FTE are supported by each, what is done with interest on each, and where the revenues for each originate. Discuss the funds with balances that exceed their reserve and impacts transferring those to the General Fund may have.

Response: The following table provides each Department cash fund’s current balance and FTE supported. As shown in the table, none of the cash funds are at balances that exceed reserve compliance levels. All interest earnings from the funds are credited to the funds and used for fund expenses.

Revenue Source/Revenue Driver	Cash Fund	FTE Supported	Ending FY 2024-25 Est. Fund Balance	Reserve Compl.
Insurance Fraud Fee (insurance providers registering to do business in the state)	Insurance Fraud Cash Fund	18.0	\$374,863	Yes
Business Registrations (availability of credit on the commercial and investment markets impacts whether lenders offer consumer credit)	Consumer Credit Unit Cash Fund	20.9	\$975,217	Yes
Student Loan Servicer Licensing Fee and Student Loan Servicer Investigation Fee (number of student loan servicer licensees)	Student Loan Ombudsperson and Student Loan Servicer Cash Fund	4.1	\$28,107	Yes
Motor Vehicle Registration Fees; Certification and Inspection Fees (number of examinations; number of motor vehicles registered)	Peace Officers Standards and Training Board Cash Fund	19.3	\$985,778	Yes
Grants for implementation of Article 6-19, CRS; Reviewing the transfer of non-profit hospital assets (grant awards)	Nonprofit Health Care Review	0	\$2,801	NA
Court awards of attorney fees and costs	Attorney’s Fees and Costs	0	\$2,547,658	NA
Proceeds retained by the State from false claims actions (court awards and interest)	False Claims Recover Cash Fund	0	\$0	NA
Fees associated with providing legal services to State agencies are hourly rates (LSSA program's billed hours and litigation expenses)	Legal Services Cash Fund	389.6	\$4,955,408	Yes

Note: The funds with “NA” in the reserve compliance column are not subject to the reserve requirement as they do not receive fee revenue.

7. In addition to providing the above information about each of the Department's custodial funds, also include a discussion of custodial funds generally.

Response: Under Colorado Supreme Court caselaw interpreting the Colorado Constitution, state monies are appropriated by the General Assembly and custodial funds do not fall within the legal term of state monies. Rather, custodial funds are provided to the State to be spent for a particular purpose. Such funds are administered directly by the Executive Department in compliance with the purpose for which the funds were provided to the State. Custodial funds under the purview of the Department are held in trust by the Attorney General on behalf of the State for particular purposes attached to such funds. §§ 24-31-108(3) and (4), C.R.S. The ability for the Department to retain and to spend custodial funds is dictated by specific court judgments and settlement agreements. The Department maintains custodial funds in six separate funds.

- **1460–Consumer Protection Custodial Funds.** Contains proceeds from Consumer Protection actions, recent settlement dollars include guaranteed automobile protection (GAP) insurance administrators, Walmart pricing discrepancies, and Google search engine monopoly to be used for the payment of restitution (if any), future consumer fraud or antitrust enforcement, consumer education, or public welfare purposes.
- **146A–Opioids Custodial Funds.** Contains proceeds from the various opioid-related settlements to be use for opioid abatement programs.
- **146E–Electronic Nicotine Delivery Systems Custodial Funds.** Contains proceeds from the JUUL settlement to be used for programs to combat youth vaping.
- **146I–Public Health Initiative Custodial Funds.** Contains proceeds from consumer protection actions, settlement dollars include medical device false and misleading statements and contaminated talc, to be used for the payment of restitution (if any), future consumer fraud or antitrust enforcement, consumer education, or public health initiatives.
- **14D0–Mortgage Fraud Custodial Funds.** Contains proceeds from the 2012 National Mortgage Settlement to be used for programs related to foreclosure prevention, loan modification, and housing.
- **1470–Special Prosecution Custodial Funds.** Contains revenue primarily from federal asset forfeitures, received under a federal Drug Enforcement Agency Task Force agreement. Use of the funds must follow guidance published by the U.S. Department of Justice and can be used for law enforcement training, law enforcement equipment, law enforcement travel and transportation.

The following table provides the requested information on each custodial fund.

Revenue Source	Revenue Driver(s)	Custodial Fund	FTE Supported	FY 2023-24 Fund Balance	Reserve Compl.
2012 National Mortgage Settlement proceeds	One-time court award.	Mortgage Fraud Settlement Custodial	0	\$8,943,449	NA
Consumer protection litigation court awards	Future court awards	Consumer Protection Custodial Account	38.1	\$34,461,401	NA
Various opioid-related settlement proceeds	Future opioid-related settlement awards	Opioids Custodial Fund	0	\$26,101,714	NA
JUUL settlement proceeds	One-time court award	Electronic Nicotine Delivery Systems Custodial Fund	0	\$11,725,294	NA
Consumer protection actions proceeds, settlement dollars include medical device false and misleading statements and contaminated talc	Future proceeds from consumer protection actions	Public Health Initiative Custodial Fund	0	\$3,095,734	NA
Colorado Organized Crime Act forfeitures	Asset forfeitures	Special Prosecution Custodial Fund	2	\$530,986	NA

Note: Interest earnings for each fund are deposited into the fund and used for the funds' expenses along with all other revenue. The custodial funds do not have reserve requirements. Further, funds transferred to the General Fund are subject to TABOR

Question 8. For the Water and Natural Resources section, are there any cash fund sources from the Department of Natural Resources, the Colorado Water Conservation Board, or others that could potentially replace General Fund appropriations that support it? Include whether those refinancing would work on a one-time or ongoing basis.

Response: The Department worked with the Department of Natural Resources (“DNR”) on cash funding options to replace General Fund appropriations to the Water and Natural Resources section. Currently, the Colorado Water Conservation Board (CWCB) provides the revenue to support three Department of Law (DOL) Long Bill Line Items. These line items are: "Defense of the Colorado River Compact", "Defense of the Republican River Compact", and "Consultant Expenses". These budget lines provide specific funding to protect the state's interests with litigation related efforts associated with the various basins, including 3.5 FTE specific to the Defense of the Colorado River Basin.

The CWCB provides up to \$2 million annually from the Construction Fund for the CWCB Litigation Fund via a transfer in the CWCB Projects Bill and based on a budget synopsis provided by DOL staff. Per statute, the CWCB Construction Fund could potentially complement General Fund appropriations associated with the DOL's Federal and Interstate Water Unit, however, any additional funding (one-time or ongoing) would directly reduce available funds for water project investments in the Projects Bill. The DNR and CWCB are not aware of any other programmatic efforts within the

DOL that would be appropriate for funding by CWCB cash funds, based on the statutory purposes of each fund.

BUDGET REDUCTION OPTIONS

Agency-identified budget reduction options

Question 9. Discuss each of the agency-identified budget reduction options. What is the impact on FTE that are funded in each proposal?

Response: The following table provides the proposed agency-identified budget reduction options showing the impact on FTE with each option.

Reduction	Service Impacts
<p>3.0 FTE Reduction (Consumer Protection/Antitrust). Reduction to the Consumer Protection/Antitrust line by 1.0 Senior Assistant Attorney General (“AAG”) and 2.0 FTE AAGs.</p>	<p>These positions are currently filled. Eliminating the FTEs will require the Department to make arrangements for the affected personnel—this may include reprogramming the staff to other budget lines to ensure continued level of service given ongoing consumer protection lawsuits and legal work or reductions in staffing. Reducing AAG staff in this line will weaken the Department’s ability to protect consumers and businesses by enforcing fair business practices, data privacy standards, financial protections, and accountability for the opioid crisis.</p>
<p>4.0 FTE Reduction (Appellate). Reduce the Appellate Unit line item by 1.0 Senior AAG and 3.0 Fellows.</p>	<p>The Senior AAG role is currently vacant with plans to fill the position. The Fellow positions are presently filled. Eliminating funding for these positions may require reductions in staffing and is estimated to slow or reverse the Department’s progress is addressing the appellate caseload backlog. Reductions will hamper the Department’s ability to represent law enforcement interests in appellate cases in which defendants challenge felony convictions.</p>
<p>2.0 FTE (Special Prosecution). Reduce the Special Prosecution Unit by 1.0 Legal Assistant and 1.0 Investigator.</p>	<p>These positions are currently vacant with plans to fill the positions. Eliminating funding for these positions will result in less capacity to handle complex, multi-jurisdictional cases across several areas, such as organized crime, drug-related crimes, election crimes, fraud, homicide, human trafficking, and identity theft.</p>

JBC Staff-identified reduction options

Question 10. Discuss each of the reduction options identified by JBC Staff. Please highlight the hiring status of FTE approved by each incremental budget change.

Response: The following reduction options were identified by JBC Staff in the *Staff Budget Briefing: FY 2025-26 Department of Law* document. The Department recommends that the additional reduction options are suboptimal for reasons stated below. The Department further recommends that, should General Fund reductions to the Department of Law’s budget be necessary, the reductions

recommended by the Department would best position the Department to absorb the reductions with the least impact to services provided.

- ***Spend down Legal Services Cash Fund Reserve (-\$580,000 GF/- \$920,000 Other Funds)***. This reduction option is addressed in the above question within the “Agency Cash Funds” section.
- ***Reverse FY 24-25 Special Prosecution Rural Support (-375,934 GF)***. The reduction of this item impacts the State by limiting the ability of the Department to provide critical support to rural district attorney offices, which often lack the resources, expertise, and staffing to handle complex criminal prosecutions. The reduction would result in increased strain on under-resourced rural judicial districts and potential gaps in public safety. These positions are presently filled, except for a legal assistant position which the Department is actively working to fill.
- ***Reverse FY 24-25 Augment Federal Interstate Water Unit (-255,191 GF)***. The reversal of this item weakens Colorado’s ability to defend the State’s water rights. Increasing demands from climate change, population growth, and federal actions have intensified litigation and policy workloads. Without this funding, Colorado risks being unprepared to protect its water interests, jeopardizing the State’s water security and economy. The AAG position has been filled for this role. The other FTE for a water policy analyst is currently pending.
- ***Reverse FY 23-24 Organized Retail Crime Prosecution (-565,169 GF)***. The reversal of this item limits the State’s ability to address organized retail theft, which impacts businesses, raises consumer prices, and endangers retail employees. These crimes require coordinated enforcement across jurisdictions, but without funding for additional staff, efforts to combat this growing issue will remain insufficient, affecting public safety and the economy. The Department has filled the 4.5 FTE positions.
- ***Reverse FY 24-24 Federal Interstate Water Staff (-181,839 GF)***. The reversal of this item limits Colorado’s ability to protect its water rights. Threats, such as critical water shortages in the Colorado River basin, require extensive negotiations and potential litigation. Without these additional resources, Colorado risks losing its apportionments and faces significant economic challenges. These positions are filled.
- ***Reverse FY 23-24 Patterns and Practices Staff (-120,184 GF)***. The reversal of this item limits the Department’s ability to investigate patterns or practices that violate constitutional rights by governmental authorities. Requests for investigations and reports of rights violations far outnumber the available staffing levels assigned to this statutory duty. Absent this funding, the Department will be less situated to meet the demands of future investigations, risking delays, reduced effectiveness, and strain on other statutory responsibilities. This position is filled.

Question 11. Provide an update on the funding supporting prosecution of organized retail crime. How many cases have been prosecuted, what other metrics are tracked that can be a gauge of performance for the program?

Response: The Organized Retail Crime Task Force (“Task Force”) is presently underway and has had multiple meetings in 2024. The number of multi-jurisdictional, multi-target investigative referrals received by the Department currently stands at four. There are four investigations formally underway by the Department with multiple individual targets in 2024. Eighteen cases have been filed or are pending in trial courts (all indicted in late 2023 and are still pending in 2024). Presently there are four filed cases that are closed with convictions in Larimer and Adams Counties.

EXECUTIVE SESSION FOR DISCUSSION OF PENDING LITIGATION

Question 12. Discuss the status of pending litigation against the State focusing on those that may pose the most risk and may require future budget considerations. Also include a discussion about the Severance Tax Distribution lawsuit and the challenge to S.B. 24-260.

Response: The Department asks that discussion on active litigation be conducted in executive session pursuant to the Colorado Open Meetings Law, §§ 24-6-401, 402, C.R.S.

Question 13. Please discuss the status of the lawsuit filed by Family Members of Sex Offenders Against Colorado’s Indeterminate Sentences and Advocates for Change.

Response: The Department asks that discussion on active litigation be conducted in executive session pursuant to the Colorado Open Meetings Law, §§ 24-6-401, 402, C.R.S.

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Office of the Attorney General

December 3, 2024

The Honorable Jeff Bridges
Chair
Joint Budget Committee
Colorado General Assembly
State Capitol
Denver, CO 80203

RE: Executive Session on December 5, 2024

Dear Senator Bridges:

The Joint Budget Committee has requested a briefing regarding the status of various litigation as well as the potential for making the Legal Services to State Agencies section of the Department an enterprise.

Because this discussion pertains to pending litigation and legal risk related to legislation, this discussion may be held in executive session pursuant to §§ 24-6-401, 402, C.R.S. upon motion of the Committee.

Sincerely,

PHILIP J. WEISER
ATTORNEY GENERAL