

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



FY 2010-11 STAFF FIGURE SETTING

DEPARTMENT OF LAW

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

**Prepared By:
Stephen Allen, JBC Staff
March 18, 2010**

For Further Information Contact:

Joint Budget Committee Staff
200 E. 14th Avenue, 3rd Floor
Denver, Colorado 80203
Telephone: (303) 866-2061
TDD: (303) 866-3472

**FY 2010-11 FIGURE SETTING
STAFF PRESENTATION TO THE JOINT BUDGET COMMITTEE**

DEPARTMENT OF LAW

TABLE OF CONTENTS

Numbers Pages	1
Narrative	15
(1) Administration	15
(2) Legal Services to State Agencies	20
(3) Criminal Justice and Appellate	26
(4) Water and Natural Resources	40
(5) Consumer Protection	48
(6) Special Purpose	54
Footnotes and Information Requests	58

	FY 2007-08 Actual	FY 2008-09 Actual	FY 2009-10 Appropriation	FY 2010-11 Request	FY 2010-11 Staff Recommend	Change Request
--	----------------------	----------------------	-----------------------------	-----------------------	-------------------------------	-------------------

DEPARTMENT OF LAW John W. Suthers, Attorney General
--

(1) ADMINISTRATION

This Division includes the Office of the Attorney General, Human Resources, Fiscal and Accounting, Information Technology Services, and Legal Support Services. It also includes the department's central appropriations or "Pots", such as Health, Life and Dental, and Short Term Disability, which are allocated among divisions and are financed by virtually all of the department's various fund sources. Much of the division's other activity is supported by reappropriated funds that derive from indirect cost recoveries.

Personal Services	2,523,002	2,792,460	2,755,059	\$ 2,947,855	2,947,855	
FTE	<u>38.2</u>	<u>39.6</u>	<u>42.2</u>	<u>42.2</u>	<u>42.2</u>	
General Fund	1	(9)	0	0	0	
Cash Funds	5,000	0	0	0	0	
Cash Funds Exempt/RF	2,518,001	2,792,469	2,755,059	2,947,855	2,947,855	
Health, Life and Dental	<u>1,423,679</u>	<u>1,774,106</u>	<u>1,940,668</u>	<u>2,010,209</u>	<u>Pending</u>	NP #1
General Fund	461,603	522,880	534,414	520,771		
Cash Funds	90,556	141,137	152,611	174,019		
Cash Funds Exempt/RF	847,378	1,063,960	1,194,594	1,265,799		
Federal Funds	24,142	46,129	59,049	49,620		

	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11		Change
	Actual	Actual	Appropriation	Request	Staff Recommend	Request
Short-term Disability	<u>31,935</u>	<u>36,340</u>	<u>36,556</u>	<u>42,124</u>	<u>42,246</u>	NP #1
General Fund	9,571	10,672	11,079	12,177	12,299	
Cash Funds	1,832	2,874	2,962	2,939	2,939	
Cash Funds Exempt/RF	19,631	21,660	21,527	25,755	25,755	
Federal Funds	901	1,134	988	1,253	1,253	
S.B. 04-257 Amortization Equalization Disbursement	<u>303,805</u>	<u>440,589</u>	<u>560,823</u>	<u>652,247</u>	<u>654,314</u>	NP #1
General Fund	92,272	124,687	159,454	188,550	190,617	
Cash Funds	17,229	35,889	40,983	45,512	45,512	
Cash Funds Exempt/RF	185,792	266,062	344,034	398,784	398,784	
Federal Funds	8,512	13,951	16,352	19,401	19,401	
S.B. 06-235 Supplemental Amortization Equalization Disbursement	<u>62,558</u>	<u>204,308</u>	<u>348,890</u>	<u>475,597</u>	<u>477,318</u>	NP #1
General Fund	17,229	56,229	98,034	137,485	139,206	
Cash Funds	3,692	16,578	25,614	33,186	33,186	
Cash Funds Exempt/RF	39,813	124,962	215,022	290,780	290,780	
Federal Funds	1,824	6,539	10,220	14,146	14,146	
Salary Survey for Classified Employees	<u>278,941</u>	<u>251,113</u>	<u>0</u>	<u>0</u>	<u>0</u>	
General Fund	114,731	48,237	0	0	0	
Cash Funds	37,397	55,068	0	0	0	
Cash Funds Exempt/RF	108,862	128,644	0	0	0	
Federal Funds	17,951	19,164	0	0	0	

	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Request
				Staff Recommend	
Salary Survey for Exempt Employees	<u>759,834</u>	<u>649,316</u>	<u>0</u>	<u>0</u>	<u>0</u>
General Fund	196,085	155,259	0	0	0
Cash Funds	12,305	27,694	0	0	0
Cash Funds Exempt/RF	541,856	461,582	0	0	0
Federal Funds	9,588	4,781	0	0	0
Performance-based Pay Awards for Classified Employees	<u>122,210</u>	<u>109,976</u>	<u>0</u>	<u>0</u>	<u>0</u>
General Fund	25,543	30,751	0	0	0
Cash Funds	17,488	20,811	0	0	0
Cash Funds Exempt/RF	71,444	49,054	0	0	0
Federal Funds	7,735	9,360	0	0	0
Performance-based Pay Awards for Exempt Employees	<u>256,353</u>	<u>278,881</u>	<u>0</u>	<u>0</u>	<u>0</u>
General Fund	66,582	64,830	0	0	0
Cash Funds	4,133	11,485	0	0	0
Cash Funds Exempt/RF	182,369	200,188	0	0	0
Federal Funds	3,269	2,378	0	0	0
Workers' Compensation	<u>51,406</u>	<u>64,888</u>	<u>50,893</u> S	<u>55,440</u>	<u>Pending</u> NP #1
General Fund	16,115	19,236	15,272	16,830	
Cash Funds	3,704	5,833	4,136	4,628	
Cash Funds Exempt/RF	30,119	37,990	30,125	32,509	
Federal Funds	1,468	1,829	1,360	1,473	

	FY 2007-08	FY 2008-09	FY 2009-10		FY 2010-11	Change
	Actual	Actual	Appropriation		Request	Request
					Staff Recommend	
Attorney Registration and Continuing Legal Education	<u>0</u>	<u>92,626</u>	<u>92,626</u>		<u>92,626</u>	<u>92,626</u>
General Fund	0	22,238	22,238		22,238	22,238
Cash Funds	0	3,750	3,750		3,750	3,750
Cash Funds Exempt/RF	0	66,075	66,075		66,075	66,075
Federal Funds	0	563	563		563	563
Operating Expenses	<u>179,039</u>	<u>192,297</u>	<u>173,823</u>	S	<u>194,679</u>	<u>194,679</u>
General Fund	(11,604)	0	0		0	0
Cash Funds Exempt/RF	190,643	192,297	173,823		194,679	194,679
Administrative Law Judges	<u>0</u>	<u>0</u>	<u>0</u>		<u>0</u>	<u>0</u>
Cash Funds	0	0	0		0	0
Cash Funds Exempt/RF	0	0	0		0	0
Purchase of Services from Computer Center	<u>48,499</u>	<u>60,456</u>	<u>68,003</u>	S	<u>71,185</u>	<u>Pending</u>
General Fund	0	0	68,003		71,185	
Cash Funds Exempt/RF	48,499	60,456	0		0	
Payment to Risk Management and Property Funds	<u>71,197</u>	<u>86,286</u>	<u>92,968</u>	S	<u>44,496</u>	<u>Pending</u> NP #1
General Fund	0	0	0		0	
Cash Funds Exempt/RF	71,197	86,286	92,968		44,496	
Vehicle Lease Payments	<u>48,175</u>	<u>65,125</u>	<u>73,969</u>		<u>73,054</u>	<u>Pending</u> NP #1
General Fund	10,724	12,446	23,891		21,455	
Cash Funds	10,737	11,362	14,773		15,697	
Cash Funds Exempt/RF	18,133	31,571	30,621		31,218	
Federal Funds	8,581	9,746	4,684		4,684	

	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Request
				Staff Recommend	
ADP Capital Outlay	<u>91,325</u>	<u>15,138</u>	<u>13,764</u>	<u>0</u>	<u>0</u>
General Fund	35,844	6,881	9,176	0	0
Cash Funds	0	0	0	0	0
Cash Funds Exempt/RF	40,350	8,257	4,588	0	0
Federal Funds	15,131	0	0	0	0
IT Asset Maintenance	<u>358,296</u>	<u>432,348</u>	<u>407,667</u>	<u>407,667</u>	<u>407,667</u>
General Fund	0	22,935	15,291	15,291	15,291
Cash Funds	37,699	53,722	47,298	47,298	47,298
Cash Funds Exempt/RF	320,597	353,620	343,697	343,697	343,697
Federal Funds	0	2,071	1,381	1,381	1,381
Leased Space	<u>29,686</u>	<u>30,001</u>	<u>32,502</u>	<u>26,220</u>	<u>26,220</u>
General Fund	4,961	4,945	5,357	4,321	4,321
Cash Funds	3,657	3,295	3,570	2,880	2,880
Cash Funds Exempt/RF	20,901	21,576	23,374	18,857	18,857
Federal Funds	167	185	201	162	162
Capitol Complex Leased Space	<u>1,165,178</u>	<u>1,149,527</u>	<u>1,276,139</u> S	<u>1,229,375</u>	<u>Pending</u>
General Fund	367,436	245,252	382,931	377,661	
Cash Funds	83,723	103,172	103,874	105,288	
Cash Funds Exempt/RF	680,846	768,765	755,229	713,979	
Federal Funds	33,173	32,338	34,105	32,447	
Security for State Services Building	<u>0</u>	<u>257,633</u>	<u>196,693</u>	<u>196,693</u>	<u>120,918</u>
General Fund	0	79,153	73,989	73,989	45,485
Cash Funds	0	21,161	15,512	15,512	9,536
Reappropriated Funds	0	150,093	101,938	101,938	62,667
Federal Funds	0	7,226	5,254	5,254	3,230

BR #1

NP #1

	FY 2007-08 Actual	FY 2008-09 Actual	FY 2009-10 Appropriation	FY 2010-11 Request	FY 2010-11 Staff Recommend	Change Request
Communications Services Payments	<u>5,944</u>	<u>6,208</u>	<u>6,208</u>	<u>6,208</u>	<u>Pending</u>	
General Fund	2,435	2,308	2,308	2,308		
Cash Funds	372	575	575	575		
Cash Funds Exempt/RF	1,465	1,773	1,773	1,773		
Federal Funds	1,672	1,552	1,552	1,552		
Attorney General Discretionary Fund - GF	5,000	5,000	5,000	5,000	5,000	
SUBTOTAL - Administration	7,816,062	8,994,622	8,132,251	8,530,675	4,968,843	
FTE	<u>38.2</u>	<u>39.6</u>	<u>42.2</u>	<u>42.2</u>	<u>42.2</u>	
General Fund	1,414,528	1,433,930	1,426,437	1,469,261	434,457	
Cash Funds	329,524	514,406	415,658	451,284	145,101	
Cash Funds Exempt/RF	5,937,896	6,887,340	6,154,447	6,478,194	4,349,149	
Federal Funds	134,114	158,946	135,709	131,936	40,136	

(2) LEGAL SERVICES TO STATE AGENCIES (LSSA)

This Division provides legal services to other agencies of state government, earning its appropriations of Cash Funds, Cash Funds Exempt and Reappropriated Funds from the legal fees paid by those state agencies.

Personal Services	15,831,413	17,138,755	18,615,721	S 18,698,197	18,331,351	BA
FTE	<u>195.3</u>	<u>203.5</u>	<u>220.4</u>	<u>224.6</u>	<u>220.6</u>	
General Fund	0	0	0	0	0	
Cash Funds	1,000,000	1,582,342	1,700,540	1,582,342	1,582,388	
Cash Funds Exempt/RF	14,831,413	15,556,413	16,915,181	17,115,855	16,748,963	
Operating and Litigation - CFE/RF	1,070,389	880,632	1,397,011	S 1,445,692	1,405,514	
Indirect Cost Assessment - CFE/RF	2,454,469	2,676,131	2,697,806	2,697,806	<u>Pending</u>	

	FY 2007-08 Actual	FY 2008-09 Actual	FY 2009-10 Appropriation	FY 2010-11 Request	FY 2010-11 Staff Recommend	Change Request
SUBTOTAL - Legal Services to State Agencies	19,356,271	20,695,518	22,710,538	22,841,695	19,736,865	
FTE	<u>195.3</u>	<u>203.5</u>	<u>220.4</u>	<u>224.6</u>	<u>220.6</u>	
General Fund	0	0	0	0	0	
Cash Funds	1,000,000	1,582,342	1,700,540	1,582,342	1,582,388	
Cash Funds Exempt/RF	18,356,271	19,113,176	21,009,998	21,259,353	18,154,477	

(3) CRIMINAL JUSTICE AND APPELLATE

This Division prosecutes fraud involving insurance, securities, Medicaid, and workers' compensation. It also handles foreign prosecutions, certifies peace officers, provides support to district attorneys in capital murder cases, and represents the state in criminal appeals. When the Department is involved in criminal appeals or in trial court criminal prosecution, the division is responsible for keeping crime victims informed about the proceedings.

Reappropriated funds are transferred from the Department of Regulatory Agencies and the Department of Public Safety. Cash funds derive from Pinnacol Assurance and the P.O.S.T. Board Cash Fund. Federal Funds derive from the U.S. Department of Health and Human Services' Medicaid Fraud Control Program.

Special Prosecutions Unit	2,504,368	2,579,914	2,774,416	S 2,844,966	2,844,966	
FTE	<u>28.6</u>	<u>29.1</u>	<u>31.0</u>	<u>31.0</u>	<u>31.0</u>	
General Fund	1,418,762	1,429,370	1,481,059	1,578,099	1,578,099	
Cash Funds	164,678	213,484	221,805	217,159	217,159	
Cash Funds Exempt/RF	920,928	937,060	1,071,552	1,049,708	1,049,708	
Auto Theft Prevention Grant	0	0	72,083	# 246,976	246,976	BA
FTE	<u>0.0</u>	<u>0.0</u>	<u>0.5</u>	2.0	2.0	
Cash Funds	0	0	72,083	246,976	246,976	
Cash Funds Exempt/RF	0	0	0		0	

	FY 2007-08	FY 2008-09	FY 2009-10		FY 2010-11	Change
	Actual	Actual	Appropriation		Request	Request
					Staff Recommend	
Appellate Unit	2,133,564	2,288,824	2,583,755	S	2,574,535	2,574,307
FTE	<u>26.4</u>	<u>28.3</u>	<u>31.0</u>		<u>31.0</u>	<u>31.0</u>
General Fund	2,133,564	2,288,824	2,302,221		2,574,535	2,574,307
Cash Funds Exempt/RF	0	0	281,534		0	0
Medicaid Fraud Grant	1,117,461	1,232,421	1,329,586	S	1,341,607	1,341,607
FTE	<u>12.4</u>	<u>13.7</u>	<u>14.0</u>		<u>14.0</u>	<u>14.0</u>
General Fund	275,870	302,876	332,456		335,401	335,402
Federal Funds	841,591	929,545	997,130		1,006,206	1,006,205
Peace Officers Standards and Training Board Support	1,165,322	1,053,301	2,691,603	S	2,681,744	2,681,744
FTE	<u>6.0</u>	<u>4.6</u>	<u>7.0</u>		<u>7.0</u>	<u>7.0</u>
General Fund	44,638	57,107	0		0	0
Cash Funds	1,120,684	996,194	2,691,603		2,681,744	2,681,744
Cash Funds Exempt/RF	0	0	0		0	0
Victims Assistance	69,146	72,148	76,086		74,380	74,380
FTE	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>		<u>1.0</u>	<u>1.0</u>
General Fund	(45)	(1)	330		0	0
Cash Funds Exempt/RF	69,191	72,149	75,756		74,380	74,380
FTE	1.0	1.0	1.0		1.0	1.0
Federal Funds	0	0	0		0	0
Safe2Tell - GF	0	0	0		98,306	98,351
FTE	0.0	0.0	0.0		1.0	1.0

BR #1

BA

	FY 2007-08 Actual	FY 2008-09 Actual	FY 2009-10 Appropriation		FY 2010-11 Request	FY 2010-11 Staff Recommend	Change Request
Indirect Cost Assessment	<u>223,273</u>	<u>247,395</u>	<u>374,591</u>		<u>374,591</u>	<u>Pending</u>	
Cash Funds	85,875	106,744	105,431		105,431		
Cash Funds Exempt/RF	137,398	140,651	138,921		138,921		
Federal Funds	0	0	130,239		130,239		
SUBTOTAL - Criminal Justice and Appellate	7,213,134	7,474,003	9,902,120	#	10,237,105	9,862,331	
FTE	<u>74.4</u>	<u>76.7</u>	<u>84.5</u>	#	<u>86.0</u>	<u>86.0</u>	
General Fund	3,872,789	4,078,176	4,116,066	#	4,586,341	4,586,159	
Cash Funds	1,371,237	1,316,422	3,090,922	#	3,251,310	3,145,879	
Cash Funds Exempt/RF	1,127,517	1,149,860	1,567,763	#	1,263,009	1,124,088	
Federal Funds	841,591	929,545	1,127,369	#	1,136,445	1,006,205	

(4) WATER AND NATURAL RESOURCES

This Division represents the state in legal cases involving water and natural resources, such as oil, gas, mining and minerals. It is also involved in legal cases involving wildlife, pollution, hazardous waste, and protection of the state's air and water. Reappropriated funds include the Colorado Water Conservation Board's Litigation Fund and the Hazardous Substance Response Fund.

Federal and Interstate Water Unit	436,360	470,910	500,032	S	516,519	516,519	
FTE	<u>4.6</u>	<u>5.5</u>	<u>5.5</u>		<u>5.5</u>	<u>5.5</u>	
General Fund	436,360	470,910	500,032		516,519	516,519	
FTE	4.6	5.5	5.5		5.5	5.5	
Cash Funds	0	0	0		0	0	
FTE	0.0	0.0	0.0		0.0	0.0	

	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11		Change
	Actual	Actual	Appropriation	Request	Staff Recommend	Request
Defense of the Colorado River Basin Compact	333,452	412,928	473,329	333,017	333,017	
FTE	<u>3.8</u>	<u>4.0</u>	<u>4.0</u>	<u>3.0</u>	<u>3.0</u>	
General Fund	(42,664)	(11,698)	0	0	0	
Cash Funds	0	424,626	473,329	333,017	333,017	
Cash Funds Exempt/RF	376,116	0	0	0	0	
Defense of the Republican River Compact	23,500	141,218	110,000	110,000	110,000	
FTE	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	
Cash Funds	0	141,218	110,000	110,000	110,000	
Cash Funds Exempt/RF	23,500	0	0	0	0	
Defense of the Arkansas River Compact	0	0	0	0	0	
FTE	0.0	0.0	0.0	0.0	0.0	
General Fund	0	0	0	0	0	
Cash Funds	0	0	0	0	0	
Cash Funds Exempt/RF	0	0	0	0	0	
Consultant Expenses	36,733	92,589	100,000 S	50,000	50,000	
Cash Funds	0	92,589	100,000	50,000	50,000	
Cash Funds Exempt/RF	36,733	0	0	0	0	
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)	422,380	397,637	314,024 S	382,962	382,962	
FTE	<u>4.8</u>	<u>3.9</u>	<u>3.5</u>	<u>3.5</u>	<u>3.5</u>	
General Fund	377,713	380,905	288,146	357,084	357,084	
Cash Funds Exempt/RF	44,667	16,732	25,878	25,878	25,878	

	FY 2007-08 Actual	FY 2008-09 Actual	FY 2009-10 Appropriation	FY 2010-11 Request	FY 2010-11 Staff Recommend	Change Request
CERCLA Contracts	<u>542,307</u>	<u>526,861</u>	<u>520,000</u> S	<u>500,000</u>	<u>500,000</u>	
General Fund	117,307	76,861	0	75,000	75,000	
Cash Funds Exempt/RF	425,000	450,000	520,000	425,000	425,000	
Natural Resource Damage Claims at Rocky Mountain Arsenal	902,347	75,600	195,000	195,000	150,000	
FTE	<u>1.9</u>	<u>0.3</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	
General Fund	(25,960)	(356)	0	0	0	
FTE	0.0	0.0	0.0	0.0	0.0	
Cash Funds	928,307	75,956	195,000	195,000	150,000	
FTE	1.9	0.3	0.0	0.0	0.0	
Indirect Cost Assessment - CFE/RF	0	0	0	0	0	
SUBTOTAL - Water and Natural Resources	2,697,079	2,117,743	2,212,385	2,087,498	2,042,498	
FTE	<u>15.1</u>	<u>13.7</u>	<u>13.0</u>	<u>12.0</u>	<u>12.0</u>	
General Fund	862,756	916,622	788,178	948,603	948,603	
Cash Funds	928,307	734,389	878,329	688,017	643,017	
Cash Funds Exempt/RF	906,016	466,732	545,878	450,878	450,878	

(5) CONSUMER PROTECTION

This Division protects Colorado consumers and business against fraud and maintains a competitive business environment. Cash funds derive from fees paid by regulated businesses. Reappropriated funds come from the Department of Regulatory Agencies.

	FY 2007-08	FY 2008-09	FY 2009-10		FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Staff Recommend	Request
Consumer Protection and Anti-Trust	1,511,502	1,667,444	1,701,987	S	1,814,069	1,814,069
FTE	<u>0.0</u>	<u>19.1</u>	<u>21.0</u>		<u>21.0</u>	<u>21.0</u>
General Fund	824,385	720,977	795,549		907,056	907,056
FTE	0.0	11.5	12.5		12.5	12.5
Cash Funds	65,833	717,531	663,695		664,957	664,957
FTE	0.0	0.8	1.5		1.5	1.5
Cash Funds Exempt/RF	621,284	228,936	242,743		242,056	242,056
FTE	0.0	6.8	7.0		7.0	7.0
Collection Agency Board	270,396	296,884	313,859	S	338,611	338,045
FTE	<u>5.0</u>	<u>5.2</u>	<u>5.2</u>		<u>5.5</u>	<u>5.5</u>
Cash Funds	265,453	296,884	313,859		338,611	338,045
Cash Funds Exempt/RF	4,943	0	0		0	0
Uniform Consumer Credit Code (UCCC)	925,391	971,571	1,013,409	S	1,013,286	1,012,662
FTE	<u>11.1</u>	<u>12.3</u>	<u>12.3</u>		<u>12.5</u>	<u>12.5</u>
Cash Funds	825,285	971,571	1,013,409		1,013,286	1,012,662
Cash Funds Exempt/RF	100,106	0	0		0	0
Indirect Cost Assessment	<u>263,756</u>	<u>313,952</u>	<u>328,698</u>		<u>328,698</u>	<u>Pending</u>
Cash Funds	214,685	276,278	291,487		291,487	
Cash Funds Exempt/RF	49,071	37,674	37,211		37,211	
SUBTOTAL - Consumer Protection	2,971,045	3,249,851	3,357,953		3,494,664	3,164,776
FTE	<u>16.1</u>	<u>36.6</u>	<u>38.5</u>		<u>39.0</u>	<u>39.0</u>
General Fund	824,385	720,977	795,549		907,056	907,056
Cash Funds	1,371,256	2,262,264	2,282,450		2,308,341	2,015,664
Cash Funds Exempt/RF	775,404	266,610	279,954		279,267	242,056

	FY 2007-08 Actual	FY 2008-09 Actual	FY 2009-10 Appropriation	FY 2010-11 Request	FY 2010-11 Staff Recommend	Change Request
(6) SPECIAL PURPOSE						
<i>This division contains special purpose appropriations and programs that do not fit within the Department's other divisions. Over the years it has also included appropriations for a number of large, one-time lawsuits.</i>						
District Attorneys' Salaries - GF	1,315,985	1,654,605	2,096,078	2,313,828	2,313,828	
Litigation Management and Technology Fund	<u>308,828</u>	<u>327,006</u>	<u>325,000</u>	<u>325,000</u>	<u>325,000</u>	
Cash Funds	0	327,006	325,000	325,000	325,000	
Cash Funds Exempt/RF	308,828	0	0	0	0	
Statewide HIPAA Legal Services - GF	18,578	17,490	3,538 S	0	0	BR #1
Tobacco Litigation	<u>126,245</u>	<u>372,226</u>	<u>600,000</u> S	<u>750,000</u>	<u>750,000</u>	BA
General Fund	0	0	0	0	0	
Cash Funds	0	372,226	600,000	750,000	750,000	
Cash Funds Exempt/RF	126,245	0	0	0	0	
Referendum K - GF	10,732	0	0	0	0	
FTE	0.0	0.0	0.0	0.0	0.0	
Lobato Litigation Expenses - RF				432,500	432,500	BA

	FY 2007-08 Actual	FY 2008-09 Actual	FY 2009-10 Appropriation	FY 2010-11 Request	FY 2010-11 Staff Recommend	Change Request
SUBTOTAL - Special Purpose	1,780,368	2,371,327	3,024,616	3,821,328	3,821,328	
FTE	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	
General Fund	1,345,295	1,672,095	2,099,616	2,313,828	2,313,828	
FTE	0.0	0.0	0.0	0.0	0.0	
Cash Funds	0	699,232	925,000	1,075,000	1,075,000	
FTE	0.0	0.0	0.0	0.0	0.0	
Cash Funds Exempt/RF	435,073	0	0	432,500	432,500	
FTE	0.0	0.0	0.0	0.0	0.0	
Federal Funds	0	0	0	0	0	
FTE	0.0	0.0	0.0	0.0	0.0	
DEPARTMENT OF LAW						
TOTAL FUNDS	41,833,959	44,903,064	49,339,863	51,012,965	43,596,641	
FTE	<u>339.1</u>	<u>370.1</u>	<u>398.6</u>	<u>403.8</u>	<u>399.8</u>	
General Fund	8,319,753	8,821,800	9,225,846	10,225,089	9,190,103	
Cash Funds	5,000,324	7,109,055	9,292,899	9,356,294	8,607,049	
Cash Funds Exempt/RF	27,538,177	27,883,718	29,558,040	30,163,201	24,753,148	
Federal Funds	975,705	1,088,491	1,263,078	1,268,381	1,046,341	

S = Appropriation was amended by a supplemental bill.

B = The request was changed by a budget amendment.

DI = Decision Item

BA = Budget Amendment

NP = Non Prioritized

**FY 2010-11 FIGURE SETTING
DEPARTMENT OF LAW**

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

The Department of Law is comprised of the following division, which will be considered in order:

- (1) Administration
- (2) Legal Services to State Agencies
- (3) Criminal Justice and Appellate
- (4) Water and Natural Resources
- (5) Consumer Protection
- (6) Special Purpose

(1) ADMINISTRATION

The Administration Division includes the following sections:

- *Office of the Attorney General*, which includes the Attorney General, Chief Deputy Attorney General, Solicitor General, Director of Legal Policy and Federal-State Issues, and associated administrative staff;
- *Human Resources*, which hires new employees, manages employee benefits, and consults with employees and managers regarding applicable state and federal personnel laws and regulations;
- *Fiscal and Accounting*, which includes accounting, financial reporting, payroll, and budgeting;
- *Information Technology Services*, which handles the Department's computer needs including maintenance, computer training, and operation of the Attorney General's website;
- *Legal Support Services*, which produces about 75 percent of the Department's documents including legal briefs and other court-related manuscripts, distributes mail, oversees the Department's vehicle fleet, files materials with courts, and manages general office documents.
- *Special Projects & Facilities Management* - coordinates building security, construction projects, capital complex, the legal library and other matters.

Administration Division appropriations fall into two categories:

- Appropriations that pay the actual cost of running the Division, such as salaries for the Attorney General and Division personnel, and
- Central appropriations or "Pots", such as Health, Life and Dental, that the Department allocates among its divisions.

The Administration Division pays most of its actual costs with indirect cost assessments that are collected from the Department's various divisions and transferred as reappropriated funds to the Administration Division. The most important source of indirect cost recoveries is the assessment in the Department's largest division, Legal Services to State Agencies. Any part of the actual cost of running the Administration Division that cannot be covered by indirect cost assessments must be covered by the General Fund.

The central appropriations are paid directly by the divisions that use the pots. As a consequence, the "potted" appropriations are a mixture of General Fund, cash funds, reappropriated funds, and federal funds, reflecting the funding sources of the divisions to which the central appropriations will be distributed.

Classified and Exempt Employees. The Department of Law's employees fall into two broad categories: classified employees, and non-classified or "exempt" employees. Classified employees are governed by state personnel rules and procedures; exempt employees are not. All of the Department's attorneys, who collectively make up approximately 60 percent of the Department's workers, are exempt employees, the remaining 40 percent of the Department's workers are classified employees. Salary Survey and Performance-based Pay for classified employees are set by Common Policy; the corresponding appropriations for exempt positions are set during figure setting for the Department of Law.

Personal Services. This line item finances personal services expenditures in the Administration Division. Like all subsequent personal services appropriations in this document, this appropriation funds salaries of regular employees, as well as the associated state contribution to the Public Employees Retirement Association (PERA) and the state share of federal Medicare taxes. Also included are wages of temporary employees, payments to contractors for their services, and termination/retirement payouts for accumulated vacation and sick leave. The following table summarizes staffing levels within the division.

Staffing Summary	FY 08-09 Actual	FY 09-10 Approp.	FY 10-11 Request	FY 10-11 Recommend.
Office of the Attorney General	8.0	9.0	9.0	9.0
Human Resources	2.5	2.5	2.5	2.5
Fiscal and Accounting	7.5	7.5	7.5	7.5
Information Technology Services	14.2	15.2	15.2	15.2
Legal Support Services	7.4	8.0	8.0	8.0

Staffing Summary	FY 08-09 Actual	FY 09-10 Approp.	FY 10-11 Request	FY 10-11 Recommend.
Total	39.6	42.2	42.2	42.2

The corresponding Option 8 calculation and the resulting staff recommendation, along with the Department's request, are as follows:

Administration Personal Services	Total	GF	CF	RF	FF	FTE
FY 2009-10 Appropriation	2,755,059	0	0	2,755,059	0	42.2
Reverse FY 2009-10 1.82% base reduction	53,209	0	0	53,209	0	0.0
Reverse Furlough Supplemental	205,000	0	0	205,000	0	0.0
PERA Adjustment	(65,413)	0	0	(65,413)	0	0.0
FY 2010-11 Recommendation	2,947,855	0	0	2,947,855	0	42.2
FY 2010-11 Request	2,947,855	0	0	2,947,855	0	42.2

The reappropriated funds derive from indirect cost recoveries.

Health, Life and Dental. The Department requests a total appropriation of \$2,010,209, comprised of \$520,771 General Fund, \$174,019 cash funds, \$1,265,799 reappropriated funds, and \$49,620 federal funds. **The staff recommendation is pending** the approval of a common policy.

Health, Life and Dental is the first of several pending common policy items. **Staff requests permission to apply Committee common policy for pending items that are approved later and include the resulting appropriations in the Long Bill.**

Short-term Disability. Staff recommends a total appropriation of \$42,246, comprised of \$12,299 General Fund, \$2,939 cash funds, \$25,755 reappropriated funds, and \$1,253 federal funds, which accords with Committee common policy.

Amortization Equalization Disbursement. Pursuant to Committee common policy, Staff recommends a total appropriation of \$654,314, comprised of \$190,617 General Fund, \$45,512 cash funds, \$398,784 reappropriated funds, and \$19,401 federal funds.

Supplemental Amortization Equalization Disbursement. Pursuant to Committee common policy, Staff recommends a total appropriation of \$477,318, comprised of \$139,206 General Fund, \$33,186 cash funds, \$290,780 reappropriated funds, and \$14,146 federal funds

Salary Survey for Classified Employees. In accord with Committee-approved common policy, staff recommends no appropriation for this line item.

Salary Survey for Exempt Employees. In accord with Committee-approved common policy, **staff recommends no appropriation for this line item.**

Performance-based Pay for Classified Employees. In accord with Committee-approved common policy, **staff recommends no appropriation for this line item.**

Performance-based Pay for Exempt Employees. In accord with Committee-approved common policy, **staff recommends no appropriation for this line item.**

Attorney Registration and Continuing Legal Education. **The Department requests and Staff recommends a continuation appropriation of \$92,626,** comprised of \$22,238 General Fund, \$3,750 cash funds, \$66,075 reappropriated funds, and \$563 federal funds.

Workers' Compensation. Staff recommendation is **pending Committee approval of a common policy for Workers' Compensation.**

Operating Expenses. The following table shows the staff recommendation and the request:

Administration Operating Expenses	Total	GF	CF	RF	FF	FTE
FY 2009-10 Appropriation	173,823	0	0	173,823	0	0.0
Reverse January Supplemental	20,856	0	0	20,856	0	0.0
FY 2010-11 Recommendation	194,679	0	0	194,679	0	0.0
FY 2010-11 Request	194,679	0	0	194,679	0	0.0

Purchase of Services from Computer Center. Staff recommendation is **pending the approval of a common policy by the Committee** related to Purchase of Services from Computer Center.

Payment to Risk Management and Property Funds. Staff recommendation is **pending the approval of a common policy by the Committee** regarding Payment to Risk Management and Property Funds.

Vehicle Lease Payments. The Department leases 29 vehicles from state fleet. Thirteen are used by the Criminal Justice and Appellate Division, nine by the Legal Services for State Agencies Division, six by the Consumer Protection Division, and one by the Attorney General. None of these vehicles is scheduled for replacement during FY 2010-11. The adjustment to this appropriation is due to some of these vehicles moving to different points in their lease cycles.

The staff recommendation is pending Committee approval of a common policy for vehicle lease payments.

ADP Capital Outlay. The ADP Capital Outlay line item funds one-time expenditures for personal computers, office equipment, and other items that are needed by the new FTE who are added by

Long Bill decision items and by special bills. The appropriations on this line are one-year expenditures that will not continue the next year, hence the appropriation for this line is not built from the prior-year Long Bill. Since none of this year's decision items require ADP capital outlay, **the Department requests and Staff recommends no appropriation for this line item.**

IT Asset Maintenance. This appropriation funds the maintenance and replacement of computer equipment as well as software maintenance and licensing agreements. The requested amount provides for the replacement of the Department's information technology according to a regular schedule in accord with OIT guidelines. New computer purchases are included on the ADP Capital Outlay line. Note that there is relatively little General Fund on this line; the Department pays much of its General Fund IT asset maintenance costs out of the Litigation Management and Technology Fund appropriation, which will be discussed later. Staff recommends a continuation appropriation for this line item.

IT Asset Maintenance	Total	GF	CF	RF	FF
FY 2009-10 Appropriation	407,667	15,291	47,298	343,697	1,381
Recommendation	407,667	15,291	47,298	343,697	1,381
Department Request	407,667	15,291	47,298	343,697	1,381

Leased Space. This appropriation pays for 3,286 square feet of off-site document storage space at a location that the Department prefers not to disclose for security reasons. The cost of this lease has declined as a consequence of H.B. 08-1395, Property Tax Exemption for Government Leases, which extends a property tax exemption to any real property that is leased or rented by state and local governments for at least a one-year term. As a consequence of this bill, the Department was able to reduce its lease expense by \$6,282, the amount of property tax that was saved. **The department requests a \$6,282 reduction of the appropriation for this line item, which leads to the following request, which Staff recommends.**

Leased Space	Total	GF	CF	RF	FF
FY 2009-10 Appropriation	32,502	5,357	3,570	23,374	201
BR#1, leased space reduction	(6,282)	(1,036)	(690)	(4,517)	(39)
Recommendation	26,220	4,321	2,880	18,857	162
Department Request	26,220	4,321	2,880	18,857	162

Capitol Complex Leased Space. The Department leases 101,685 square feet of capital complex space in the State Services Building at 1525 Sherman St. The Committee has not yet set the rate for capital complex space so **the corresponding appropriation is pending Committee approval of a common policy for capitol complex leased space.**

Security for State Services Building. This appropriation, which resulted from a 2008 Decision Item, pays for security at the State Services Building, the Capital Complex building that houses the Department of Law. A rotating group of uniformed State Patrol troopers provide in-building security from 8 a.m. to 5 p.m. daily.

The following table shows the original implementation plan for the 2008 decision item:

Security for State Services Building Implementation Plan	FY 2008-09	FY 2009-10	FY 2010-11
1.5 FTE of uniformed State Patrol troopers to provide in-building security from 8 a.m. to 5 p.m. daily. (The cost is higher in the first year because of training and equipment costs.)	\$147,807	\$128,693	\$128,693
Enhanced card/keypad access control	111,225	68,000	0
Total	\$259,032	\$196,693	\$128,693

Recently staff learned that the State Patrol expects to provide security services for \$120,918 in FY 2010-11, which lead's to the following recommendation:

Security for State Services Building	Total	GF	CF	RF	FF	FTE
FY 2009-10 Appropriation	196,693	73,989	15,512	101,938	5,254	0.0
3 rd year impact of 2008 DI #1a, Security for the Attorney General's Office, adjusted for reduced State Patrol costs.	(75,775)	(28,504)	(5,976)	(39,271)	(2,024)	0.0
FY 2010-11 Recommendation	120,918	45,485	9,536	62,667	3,230	0.0
FY 2010-11 Request	196,693	60,775	16,461	113,970	5,487	0.0

Though there is no FTE appropriation to the Department of Law, 1.5 FTE of state troopers are assigned to the building. The fund split calculations underlying the above recommendation are approximate. Staff requests permission to consult with the Department and adjustment the fund split as necessary.

Communications Services Payments. Staff recommendation is **pending the approval of a common policy** for this line item.

Attorney General Discretionary Fund. Staff recommends **\$5,000 General Fund for this line item.** Section 24-9-105 (1) (c), C.R.S., authorizes the General Assembly to appropriate \$5,000 of discretionary funds to the Attorney General to use for official business purposes.

(2) LEGAL SERVICES TO STATE AGENCIES (LSSA)

The Legal Services to State Agencies (LSSA) division provides legal services to other state agencies as authorized by Section 24-31-203, C.R.S. The Attorney General's office operates under the

"Oregon" plan; state agencies purchase legal services from the Department much as they would purchase legal services from a private-sector law firm. These client agencies receive legal-services appropriations in their section of the Long Bill. The Department of Law collects payments from these agencies when it provides legal services. In order to spend the money it receives to pay salaries and related expenses the Department of Law also requires an appropriation. Thus, whenever the General Assembly makes an appropriation to a state agency for legal services, an equal appropriation must be made to the Department of Law so it can spend the money it receives. In most cases, the appropriation to the Department of Law is classified as reappropriated funds. In some instances, the Department receives payments from other parts of state government that have not been appropriated, such as legal work for the State Fair or for a university. When received, such payments are classified as cash funds. For Fiscal Year 2009-10, appropriations for the Legal Services to State Agencies division represent 52 percent of the Department's total budget and 55 percent of its total FTE. About 93 percent of the Division's funding is reappropriated funds, the remainder is cash funds.

Personal Services. The appropriation in the Long Bill for personal services in the Legal Services to State Agencies division is a reflection of the state's need for legal services. These services derive from legal-services appropriations in the Long Bill and special bills and from "non-appropriated" legal-services needs of such entities as PERA and state institutions of higher education.

The LSSA division has two classes of employees who bill client agencies: attorneys and paralegals, who are also called legal assistants. Each "billing" attorney and paralegal provides 1800 hours of legal services annually. Attorneys bill at a uniform hourly attorney rate, no matter how experienced they may be and all paralegals bill at a uniform hourly paralegal rate that is also independent of experience. The blended legal rate, presented later, is a weighted average of these two rates; it is used to compute the Long Bill appropriations for legal services for the various agencies of state government as well as the legal services appropriations in special bills.

The following table summarizes the legal services change between FY 2009-10 and FY 2010-11.

	Legal Hours	FTE Equivalent
Legal services appropriations in the FY 2009-10 Long Bill	337,850	187.7
Legal services appropriations in 2009 session bills for FY 2009-10 and in the Department of Law's supplemental bill for FY 2009-10	5,518	3.1
Estimate of non-appropriated legal service supplied to state entities for FY 2009-10	11,418	6.3
Total legal services for FY 2009-10	354,786	197.1
Legal services appropriations approved by the JBC for the FY 2010-11 Long Bill	345,892	192.2
Estimate of non-appropriated legal service to be supplied to state entities in FY 10-11	11,418	6.3
Total legal services for FY 2010-11, ignoring this session's special bills	357,310	198.5
Change from FY 2009-10 to FY 2010-11	2,524	1.4

Note that this table only shows the attorneys and paralegals in the LSSA division who bill; there are additional non-billing FTE in the division: 4.0 FTE are supervisor attorneys who typically do not bill and 23.4 FTE are support staff who never bill.

Also note that the legal services appropriations approved by the JBC for the FY 2010-11 Long Bill reflect 2010 session decision items and base reduction items as well as the second year impact of 2009 session special bills, 2009 session decision items, and supplemental requests. Also note that FTE appropriations in special bills, decision items and supplementals are rounded to the nearest tenth so the sum of the corresponding FTE appropriations often deviates from the FTE that are needed to supply the necessary hours. The calculations in the table above are performed at the appropriated hours level and converted to FTE at the final step to avoid the cumulative effect of such rounding errors.

Based on a review of the current staffing of the LSSA division, including the ratio of billing attorneys to paralegals and the level of support staff, the Department requests that these extra FTE be added as assistant Attorneys General, the Department's entry-level attorney position. The Department states that the current support staff is sufficient to support these added attorneys. This leads to the following staffing levels and the associated staff recommendation:

Staffing Summary	FY 08-09 Actual	FY 09-10 Approp.	FY 10-11 Request	FY 10-11 Recommend.
Attorneys	150.3	162.8	161.0	161.0
Paralegals and Administrative Staff	53.1	57.6	59.6	59.6
Total	203.4	220.4	220.6	220.6

The corresponding Option 8 calculation and the staff recommendation are as follows:

LSSA Personal Services	Total	GF	CF	RF	FF	FTE
FY 2009-10 Appropriation (including special bills and this session's supplementals)	18,615,721	0	1,700,540	16,915,181	0	220.4
2 nd year impact of prior year bills and decision items	(103,224)	0	0	(103,224)	0	(0.8)
Legal Services for Decision Items and Base Reduction Items in other Departments	233,725	0	0	233,725	0	1.4
FTE adjustment to reflect changed mix of billing and non-billing FTE	0	0	0	0	0	(0.4)
Fund split adjustment to reflect expected need for cash-funded vs reappropriated-funded legal services	0	0	(118,152)	118,152	0	0.0
PERA Adjustment	(414,871)	0	0	(414,871)	0	0.0
FY 2009-10 Recommendation	18,331,351	0	1,582,388	16,748,963	0	220.6

Operating and Litigation. The Department of Law's operating and litigation expenses have been consolidated in a single line item since the FY 2003-04 Long Bill. The following table presents the staff calculation of the appropriation.

LSSA Operating and Litigation	Total	GF	CF	RF	FF
FY 2009-10 Appropriation (including special bills and this session's supplemental)	1,397,011	0	0	1,397,011	0
Legal Services for Decision Items and Base Reduction Items in other Departments	8,503	0	0	8,503	0
FY 2009-10 Recommendation	1,405,514	0	0	1,405,514	0

CALCULATION OF THE LEGAL SERVICES RATES

Once the cost of operating the LSSA division has been determined, this cost must be translated into billing rates that will cover these costs. As indicated above, attorneys bill at a uniform rate and paralegals bill at a different, uniform rate. These rates can be calculated by decomposing them into elements:

1. An "attorney" component that covers the salaries, PERA, and Medicare of the attorneys who supply the legal services;
2. A "paralegal" component that pays the salaries, PERA and Medicare of the paralegals who supply the legal services; and
3. A "common" component, that covers the LSSA division's other costs, such as support staff, supervisory staff, operating expenses, leased space, etc. – i.e. a component that covers the costs that are common to attorneys and paralegals.

The following tables compute these components:

Attorney and Paralegal Components of the Legal Services Rates			
	a) Salary and related costs	b) Hours billed	a/b = attorney or paralegal component of legal rate
Attorneys	\$14,539,548	282,600	\$51.45
Paralegals	\$2,225,597	63,360	\$35.13

Common Component of the Legal Services Rates	
Total cost of running the LSSA division	\$25,426,617
– Salary and related costs of attorneys	(14,539,548)

Common Component of the Legal Services Rates	
– Salary and related costs of paralegals	(2,225,597)
a) = Common Costs	8,661,472
b) Total hours billed by attorneys and paralegals	345,960
a/b = common costs per billed hour	
= common component of legal rate	\$25.04

Note that the total cost of running the LSSA division includes allocations of centrally appropriated items ("Pots") and indirect cost recoveries from the LSSA division.

The legal rates are then computed as follows:

$$\begin{aligned}
 \text{Attorney billing rate} &= \text{Attorney component} + \text{Common component} \\
 &= \$51.45 + \$25.04 \\
 &= \$76.49 \text{ per hour}
 \end{aligned}$$

$$\begin{aligned}
 \text{Paralegal billing rate} &= \text{Paralegal component} + \text{Common component} \\
 &= \$35.13 + \$25.04 \\
 &= \$60.16 \text{ per hour}
 \end{aligned}$$

The blended legal rate, which is used to convert appropriations of hours into an equivalent dollar appropriation for the Long Bill, is then a weighted average of the attorney and paralegal rates:

$$\begin{aligned}
 &\text{Attorney hourly billing rate} * \text{Proportion of total hours billed by attorneys} \\
 + &\text{Paralegal hourly billing rate} * \text{Proportion of total hours billed by paralegals} \\
 = &\text{Blended legal rate} \\
 = &\$73.50 \text{ per hour}
 \end{aligned}$$

As compared with last year, the attorney rate has decreased from \$75.38 to \$73.50.

Staff calculated the blended legal rate before the Committee approved appropriations for all the numbers that go into the computation. For example, in several cases Staff used the requests that OSPB and the departments submitted. **Staff requests permission to modify the blended legal rate, using the technique described above, to take into account any changes that the Committee may approve.**

Requested Change in Legal Services Billing Policy

The Department requests that the blended legal rate be increased enough to pay for legislative and fiscal bill review by the Department. There would be no reduction in the number of hours that

Department of Law attorneys work, they would simply stop billing client agencies for these reviews and would charge correspondingly more for billed work. Staff estimates that this change would increase the blended legal rate by about 50 cents per hour.

Background: During the course of a session of the General Assembly, attorneys at the Department of Law review most of the bills that are introduced. Some of these reviews are "fiscal" reviews, which are performed in response to requests from the Legislative Council to determine the cost to the Department of Law of implementing the proposed legislation. Others are "legislative" reviews that are conducted in accord with the Attorney General's obligation to serve as "the legal counsel and advisor of each department, division, board, bureau, and agency of the state government other than the legislative branch." (Section 24-31-101 (1) (a), C.R.S.) When the Department of Law conducts these reviews for legislation that affects one of its client agencies, the Department bills the client for the attorney time spent performing the review. Recently, these review charges have caused tension with clients.

Analysis. JBC staff has spoken with attorneys in several parts of state government about the merits of the Department's legislative review practices. Among the more interesting arguments and counter arguments are the following:

- Though the Attorney General has no explicit statutory duty to review bills, he is charged with defending the constitutionality of every bill that becomes law and has a pre-enactment obligation to make sure that bills pass constitutional and statutory muster. Others note, however, that if the Attorney General publicly questions the constitutionality of a bill that later becomes law, he would have to recuse himself from a lawsuit challenging the law and the state would have to turn to outside counsel.
- Reviews by the Department of Law are delegated to one of the Department's over 200 attorneys. These attorneys have specialized knowledge of their assigned departments and of related statute. They work with the relevant law on a day to day basis, which gives them a perspective that other attorneys in state government lack. As a consequence they may see problems that others miss. However, in response to Staff inquiries, no one has been able to cite a specific example of a case in which a Department of Law review uncovered a significant problem that would not have otherwise have come to light.
- Bill review helps the Department of Law's attorneys keep abreast of changes in the law and thus helps them serve their clients better. This is no doubt true, but one attorney noted that when a client agency pays for a bill review, the client should have control of the work product. The Department of Law should not be free to use the results of the review without the client's permission.

Staff concludes that the case for legislative review is not strong enough to warrant paying for the practice through an appropriation, which is basically what the Department requests with this decision item.

Staff believes the case for funding fiscal note review is stronger because fiscal review, unlike legislative review, is usually mandatory. In addition, Staff knows of a case in which a client agency's reluctance to pay the Department of Law for fiscal note work made it very hard for the fiscal note analyst to gather the information he needed to write a fiscal note. However, Staff does not believe that these considerations are enough to tip the balance in favor of the Decision Item.

Indirect Cost Assessment. Indirect cost assessments are the means by which the Department charges its cash and federally funded programs for the services provided by its Administration Division. The indirect assessments are based upon the number of cash and federally funded FTE who work in each division. The source of these funds is revenue collected from other State agencies for legal services provided by the Department of Law.

The indirect cost assessment will be computed after the Committee makes its final decisions on all pending common policy items. Staff requests permission to insert the resulting appropriation in the Long Bill.

(3) CRIMINAL JUSTICE AND APPELLATE

This division is comprised of the following units:

- Special Prosecutions Unit
- Appellate Unit
- Medicaid Fraud Control Unit
- Peace Officers Standards and Training (POST) Board Support
- Victims Assistance

Each of these subdivisions is a program, meaning that it receives a single appropriation that the Department allocates between personal services and operating expenses.

Special Prosecutions Unit. This unit, which operates under the general authorization of Section 24-31-105, C.R.S., investigates and prosecutes crimes in the following areas:

Programs supported by the General Fund:

- *Complex Crimes*, which deals with a wide variety of criminal activity including methamphetamine rings, auto theft rings, white collar crime, and tax fraud.
- *Gang Prosecutions*, which deals with criminal activity by gangs. The group often works collaboratively with local law enforcement and often prosecutes cases under the Colorado Organized Crime Control Act, which is similar to federal racketeering laws. The unit also conducts training and outreach programs that combat gang activity.

- *Environmental Crimes*, which investigates and prosecutes illegal discharge and disposal of hazardous waste.
- *Foreign Prosecutions*, which pursues foreign nationals who commit murder and other crimes in Colorado and subsequently flee to Mexico. Typically these individuals are prosecuted, convicted, and sentenced to prison in Mexico, even though the crimes were committed in Colorado. These prosecutions require specialized knowledge and resources that are usually lacking at the local level.
- *Homicide Assistance Team (HAT)*, which provides investigative and prosecutorial support to local district attorneys for active, cold-case, and death-penalty-eligible homicides. A local district attorney must request the assistance and the Attorney General must approve. Requests for assistance generally exceed available resources. The team also handles appeals of death penalty convictions in both state and federal appellate courts.

Program supported exclusively by cash funds:

- *Workers' Compensation Fraud*, which investigates and prosecutes employees who fraudulently claim workers' compensation payments from Pinnacol Assurance and employers who fail to pay required workers' compensation insurance premiums. The program's cash funds come from payments made by Pinnacol Assurance.

Programs supported by a combination of cash funds and General Fund:

- *Securities Fraud*, which investigates and prosecutes violations of state securities laws. About a third of the securities cases that the Division pursues are referrals from the Division of Securities in the Department of Regulatory Agencies; the remaining cases result from complaints that the Unit receives directly from victims, victims' attorneys, and District Attorneys. The program is funded by a General Fund appropriation plus reappropriated funds that are initially appropriated from the Division of Securities Cash Fund to the Division of Securities in the Department of Regulatory Agencies on the *Securities Fraud Prosecution* line and are then transferred to the Department of Law pursuant to Section 11-51-603.5, C.R.S. Most of this transfer is directly allocated to the Special Prosecutions unit; the remainder pays for indirect costs and central appropriations. The cash fund transfer from DORA for securities fraud equaled \$501,028 in 2009-10 while the General Fund appropriation for securities fraud totaled \$143,553.
- *Insurance Fraud*, which investigates and prosecutes insurance fraud, including insurance agent fraud and claimant fraud, and violations by bail bonding agents. About 90 percent of the Unit's cases result from referrals from the Division of Insurance in the Department of Regulatory Agencies. Over the last two years, cases have broken down as follows:

17% bail bonding agents,
22% producers/insurance industry employees,
61% individuals or businesses with fraudulent claims.

Funding for the Insurance Fraud program comes from two sources:

- A \$425 annual fee paid by each insurance entity regulated by the Division of Insurance as required by Section 10-3-207 (1) (e), C.R.S. This fee raised \$705,500 during FY 2008-09, which was deposited in the Division of Insurance Cash Fund. These moneys are appropriated on the *Insurance Fraud Prosecution* line within the Division of Insurance and then reappropriated to the Department of Law.
- Expenses of the Insurance Fraud program in excess of this amount come from a two-step appropriation to the Department of Law from the Division of Insurance Cash Fund, but are in reality financed by the General Fund because of the way that the Division of Insurance Cash Fund works. Section 10-3-209, C.R.S., imposes a 1 percent to 2 percent tax on many insurance premiums paid by Coloradans and the revenues from these taxes are transferred to the General Fund, but not until an amount, not to exceed 5 percent of premium tax revenue, is transferred to the Division of Insurance Cash Fund to make up for any shortfalls that the fund may experience in meeting its other obligations, such as the shortfalls involving funding for the Department of Law's insurance fraud investigations and prosecutions. In effect, the General Fund pays for any insurance-fraud shortfall. Staff estimates that in FY 2010-11 the program will receive \$170,000 of hidden support from the General Fund.

The Special Prosecutions Unit often focuses on multi-jurisdictional cases that would be difficult or impossible for local law enforcement personnel to pursue because local units lack the authority to investigate and prosecute crimes outside of their jurisdictions.

Recommended Insurance Fraud Legislation: Staff recommends that the Committee sponsor legislation that:

1. Increase the \$425 fee imposed by Section 10-3-207 (1) (e), C.R.S., to a level that will produce enough revenue to fully cash fund Department of Law's insurance fraud program. Staff estimates that this would decrease the FY 2010-11 General Fund appropriation to the Special Prosecutions Unit by \$170,000 and increase the cash funds appropriation by an exactly offsetting amount.
2. Establish a separate Insurance Fraud Cash Fund into which revenues from the fee will be deposited and appropriate directly from this cash fund to the Department of Law for insurance fraud investigations and prosecutions. This will remove the Division of Insurance Cash Fund and the

General Fund from the picture and will assure that the Department of Law's insurance fraud program runs exclusively off of the revenue received from the fee with no hidden General Fund subsidy.

3. Establish an automatic mechanism by which the fee will be adjusted so that it brings in just enough revenue to cover the appropriation that the General Assembly makes to the insurance fraud program, plus a three months reserve in case revenues decline unexpectedly. Thus during figure setting for the Department of Law, the Committee's appropriation decisions would implicitly set the fee just as the Committee's appropriation decisions for the Legal Services to State Agencies program set the blended legal rate – i.e. set the fee for legal services. If the fee is fixed in statute, a deficit would probably reappear within a few years.

4. The Department of Law has indicated that the insurance industry is supportive of the fee increase.

If this bill is enacted and the Department builds up the reserve over a 3 year period, Staff estimates that the annual fee would rise from the \$425 to \$571 for FY 2010-11. Of this increase, \$44 is reserve building, so the underlying increase in fees after the reserve is established would be \$102 annually.

Appropriation for the Special Prosecutions Unit: The following table summarizes staffing levels within the division:

Staffing Summary	FY 08-09 Actual	FY 09-10 Approp.	FY 2010-11 Request	FY 2010-11 Recommend.
Attorneys	11.6	12.0	12.0	12.0
Investigators	11.6	13.0	13.0	13.0
Administrative Staff	5.9	6.0	6.0	6.0
Total	29.1	31.0	31.0	31.0

The corresponding Option 8 calculation and the resulting staff recommendation, along with the Department's request, follow:

Special Prosecutions Unit	Total	GF	CF	RF	FF	FTE
FY 2009-10 Appropriation	2,774,416	1,481,059	221,805	1,071,552	0	31.0
Reverse General Fund reduction supplemental	131,198	131,198	0	0	0	0.0
PERA Adjustment	(60,648)	(34,158)	(4,646)	(21,844)	0	0.0
FY 2010-11 Recommendation	2,844,966	1,578,099	217,159	1,049,708	0	31.0
FY 2010-11 Request	2,844,966	1,578,099	217,159	1,049,708	0	31.0

If the recommended insurance fraud legislation is introduced, Staff recommends that it be included in the Long Bill package and that the bill include an appropriations clause that refinances \$170,000 of the Unit's General Fund appropriation with cash funds.

Auto Theft Prevention Grant. This appropriation, which was added to the Long Bill during January 2010 supplementals, gives the Department the authority to spend the auto theft prevention grant that it recently received from the Colorado Automobile Theft Prevention Authority. These grants are funded by the \$1 annual fee that S.B. 08-060 placed on auto insurance policies in Colorado. The Department's grant, which can potentially be renewed for four years, will fund a specialized multi-jurisdictional auto theft prosecution team comprised of a full time prosecutor and an investigator. The team will be able to investigate and prosecute large multi-jurisdictional auto theft rings, particularly those involving organized criminal activity. The team will also help increase public awareness of auto theft, and provide training and assistance to local law enforcement investigators and deputy district attorneys in working complex cases. The lack of access to the statewide grand jury, and the inability of local prosecutors to act outside of their own jurisdictions makes multi-jurisdictional criminal activity difficult or impossible to handle effectively at the local level. The Department of Law has the ability to obtain state-wide jurisdiction and can utilize the statewide Grand Jury, pursuant to the State Grand Jury Act of Section 13-73-101, C.R.S., to investigate crime without regard to county or judicial district boundaries.

During supplementals the Department received a \$72,083 cash funds 0.5 FTE appropriation for FY 2009-10 to get this program going. The Department requests authority to spend the remainder of the grant, which runs from April 2010 to April 2011.

The following table presents staffing for the program.

Staffing Summary	FY 08-09 Actual	FY 09-10 Approp.	FY 10-11 Request	FY 10-11 Recommend.
Attorneys	0.0	0.3	1.0	1.0
Administrative Staff	0.0	0.2	1.0	1.0
Total	0.0	0.5	2.0	2.0

The corresponding Option 8 calculation and the resulting staff recommendation, along with the Department's request, are presented in the following table:

Auto Theft Prevention Grant	Total	GF	CF	RF	FF	FTE
FY 2009-10 Appropriation	72,083	0	72,083	0	0	0.5
Authority to spend remainder of grant	174,893	0	174,893	0	0	1.5
PERA Reduction (not applicable)	0	0	0	0	0	0.0
FY 2010-11 Recommendation	246,976	0	246,976	0	0	2.0
FY 2010-11 Request	246,976	0	246,976	0	0	2.0

Staff recommends that the appropriation continue to appear on a separate Long Bill line so it will be clear that this program has no support from other funding sources once the grant ends.

Appellate Unit. This unit represents the State of Colorado in criminal cases that are appealed to state and federal appellate courts. The cases include homicides, assaults, sexual assaults, kidnaping, theft, burglary, drug related crimes, and crimes against children. The vast majority of the cases are appeals of convictions obtained by the State's 22 District Attorneys. The unit is funded exclusively by the General Fund.

Deferred implementation of H.B. 07-1054. Pursuant to H.B. 07-1054, which increased the number of Colorado judges, the Appellate Unit increased in size in FY 2008-09 by \$160,334 General Fund and 2.0 FTE and was scheduled to increase in size by \$259,545 General Fund and 3.0 FTE in FY 2009-10. These increases, which were identified in the bill's Legislative Council Staff Fiscal Note, are a consequence of the accelerated pace at which cases are reaching the appellate courts as a consequence of the increased number of judges.

Last year, in response to the economic downturn, the Department requested a slowed phase-in of H.B. 07-1054; it requested that 1.0 additional FTE be added in each of Fiscal Years 2009-10, 2010-11 and 2011-12. The Committee approved the additional 1.0 FTE for FY 2009-10 at a cost of \$86,515 General Fund. For FY 2010-11, the Department has again deferred this request. The Department believes that it still needs these positions and plans to request them when the state's fiscal situation has recovered enough to support an appropriation.

The following table presents staffing for the program.

Staffing Summary	FY 08-09 Actual	FY 09-10 Approp.	FY 10-11 Request	FY 10-11 Recommend.
Attorneys	25.3	28.0	28.0	28.0
Administrative Staff	3.0	3.0	3.0	3.0
Total	28.3	31.0	31.0	31.0

The corresponding Option 8 calculation and the resulting staff recommendation, along with the Department's request, are presented in the following table:

Appellate Unit	Total	GF	CF	RF	FF	FTE
FY 2009-10 Appropriation	2,583,755	2,302,221	0	281,534	0	31.0
Reverse 1.82% FY 2009-10 base reduction	45,320	45,320	0	0	0	0.0
Reverse one-time GF refinancing	0	281,534	0	(281,534)	0	0.0
PERA Reduction	(54,768)	(54,768)	0	0	0	0.0
FY 2010-11 Recommendation	2,574,307	2,574,307	0	0	0	31.0

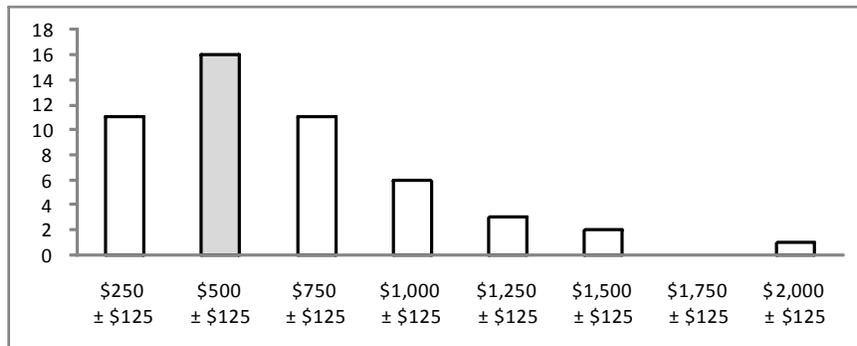
Appellate Unit	Total	GF	CF	RF	FF	FTE
FY 2010-11 Request	2,574,307	2,574,307	0	0	0	31.0

Medicaid Fraud Grant. This line item funds the Medicaid Fraud Unit, which is mandated by federal law. The unit investigates and prosecutes criminal fraud against the Medicaid program by individuals or companies who provide services as well as misconduct against patients at Medicaid funded facilities, including actual and threatened physical and sexual abuse, and criminal neglect. In addition to recovering improperly received Medicaid funds, administrative remedies include suspension, sometimes permanently, from the Medicaid program. Fraud against Medicaid by recipients is investigated by each county through the local office of the Department of Human Services. The Medicaid fraud program qualifies for an enhanced Medicaid matching rate, which means that the federal government pays 75 percent of the unit's total costs, while the State provides the remaining 25 percent. Federal law requires that the unit be independent of the Department of Health Care Policy and Financing, the "single state agency" that administers Colorado's Medicaid program. Federal rules also mandate that this unit be kept separate from all other units at the Department of Law.

Though the federal government pays 75 percent of the cost of operating the Medicaid Fraud Unit, the State keeps at least 50 percent of the recovered funds, in some cases more. Recovered funds are used to reduce the amount of General Fund that is appropriated for support of the Medicaid program in HCPF's Medical Services Premiums Division.

Colorado spends \$406 on its Medicaid Fraud Control program per \$1 million dollars spent on its Medicaid program. The following table compares this spending level with that of other states. Colorado is in the shaded column.

Spending for Medicaid Fraud Control Per \$1 Million Spent on Medicaid



*The number of states is on the vertical axis, spending is on the horizontal axis.

The following table presents staffing for the program.

Staffing Summary	FY 08-09 Actual	FY 09-10 Approp.	FY 10-11 Request	FY 10-11 Recommend.
Attorneys	2.0	2.0	2.0	2.0
Investigators	10.0	10.0	10.0	10.0
Administrative Staff	1.7	2.0	2.0	2.0
Total	13.7	14.0	14.0	14.0

The corresponding Option 8 calculation and the resulting staff recommendation, along with the Department's request, follow:

Medicaid Fraud Grant	Total	GF	CF	RF	FF	FTE
FY 2009-10 Appropriation	1,329,586	332,456	0	0	997,130	14.0
Reverse General Fund reduction supplemental	39,280	9,820	0	0	29,460	0.0
PERA Reduction	(27,259)	(6,815)	0	0	(20,444)	0.0
Fund mix adjustment to achieve a 75% FF and 25% GF funding split	0	(59)	0	0	59	0.0
FY 2010-11 Recommendation	1,341,607	335,402	0	0	1,006,205	14.0
FY 2010-11 Request	1,341,607	335,401	0	0	1,006,206	14.0

Recommended line item name change: Staff recommends that this line be renamed "Medicaid Fraud Control Unit." This is the name that the Department uses to refer to the unit on its web site, as well as internally, and it is the name that most other states give to their units.

Peace Officers Standards and Training (P.O.S.T.) Board. Pursuant to Sections 24-31-301, C.R.S., and following sections, the P.O.S.T. Board certifies peace officers appointed by state and local law enforcement agencies and regulates peace officer training academies. Among other things, the Board ensures that all peace officers demonstrate proficiency in the use of firearms, arrest control tactics, law enforcement driving, and the collection of DNA evidence.

Staffing Summary	FY 08-09 Actual	FY 09-10 Approp.	FY 10-11 Request	FY 10-11 Recommend.
Program Director	1.0	1.0	1.0	1.0
Investigator	2.1	3.0	3.0	3.0
Administrative Staff	1.5	2.0	2.0	2.0
Total	4.6	6.0	6.0	6.0

The corresponding Option 8 calculation, the resulting staff recommendation, and the Department's request are as follows:

P.O.S.T. Board	Total	GF	CF	RF	FF	FTE
FY 2009-10 Appropriation	2,691,603	0	2,691,603	0	0	7.0
Reverse January Supplemental	367	0	367	0	0	0.0
PERA Adjustment	(10,226)	0	(10,226)	0	0	0.0
FY 2010-11 Recommendation	2,681,744	0	2,681,744	0	0	7.0
FY 2010-11 Request	2,681,744	0	2,681,744	0	0	7.0

Note that the FY 2010-11 appropriation for this line item continues the \$50,000 General Fund reduction that was contained in the Department's supplemental bill. The cash fund source is the P.O.S.T. Board Cash Fund created in Section 24-31-303 (2) (b), C.R.S.

Victims Assistance. The Victim Rights Amendment in Article 2, Section 16a of the Colorado Constitution, which voters approved in 1992, states that crime victims have the "right to be heard when relevant, informed, and present at all critical stages of the criminal justice process." The Victims' Services Coordinator carries out the related duties when the Department handles criminal appeals and when it prosecutes individuals in a trial court. The Coordinator, appointed under the authority of Section 24-31-106, C.R.S., helps over 1200 victims annually, telling them what is going on with their cases, explaining time lines, possible outcomes, and generally helping them understand the legal process. Sometimes the Coordinator even accompanies victims to court. Section 24-33.5-506, C.R.S., establishes the Victims Assistance and Law Enforcement (VALE) Fund, which is administered by the VALE Advisory Board, and mandates that a portion of the moneys in the fund be allocated to the Department to pay for the Coordinator. The VALE Fund receives revenues from offender surcharges ordered by Colorado courts. A percentage of each local fund at the District Court level is remitted to the State VALE fund.

Staffing Summary	FY 08-09 Actual	FY 09-10 Approp.	FY 10-11 Request	FY 10-11 Recommend.
General Professional	1.0	1.0	1.0	1.0
Total	1.0	1.0	1.0	1.0

The Option 8 calculation is as follows:

Victims Assistance	Total	GF	CF	RF	FF	FTE
FY 2009-10 Appropriation	76,086	330	0	75,756	0	1.0
PERA Adjustment	(1,706)	(330)	0	(1,376)	0	0.0
FY 2010-11 Recommendation	74,380	0	0	74,380	0	1.0
FY 2010-11 Request	74,380	0	0	74,380	0	1.0

Recommended Long Bill Reorganization: Staff recommends that the Victims Assistance line item be combined into the Appellate Unit and that the combined unit retain the name Appellate

Unit. Staff further recommends that the FTE for the combined unit be appropriated by fund source rather than being combined.

Background: About 80 percent of the Victims Assistance Coordinator's work involves appellate cases. The Victims Assistance line item is relatively small, containing a single FTE, while the much larger Appellate unit has 31 FTE. Because the Appellate Unit is supported by the General Fund and Victims Assistance is cash funded there would be no loss of funding detail in the Long Bill: funding for the Victims Assistance program would be clearly identified in the letter notes. The change would give the Department a modest amount of extra flexibility, for example, it could use some of the Appellate Unit's General Fund operating expense appropriation to pay operating expenses of the Victim's Assistance program if it needed to do so, though it could not use appropriations from the VALE Fund to support appellate work because that would be contrary to the purpose of the Department's grant from the VALE fund.

The Department did not request this consolidation.

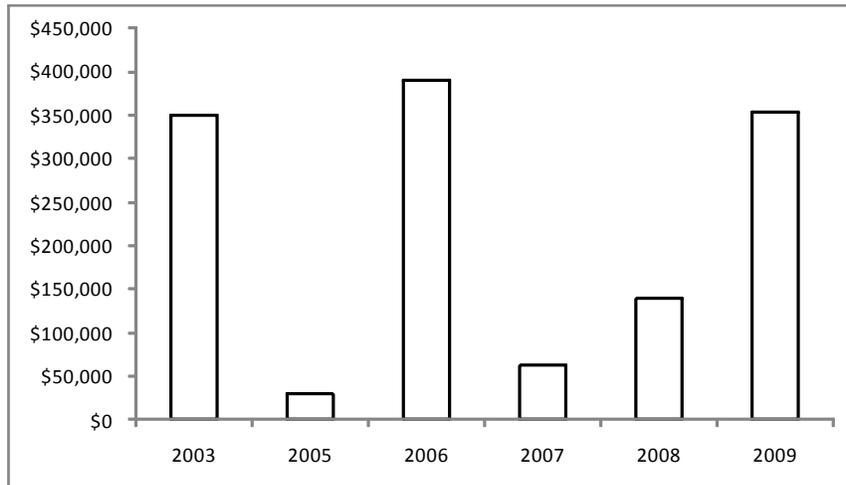
The Department of Law requests that the Safe-2 Tell program be transferred from the Department of Public Safety to the Department of Law. This requires that the appropriation to the Department of Law be increased by \$98,351 General Fund for personal services and operating expenses and 1.0 FTE plus associated central appropriations (\$70 for Health, Life, and Dental, \$122 for Short Term Disability, \$2,067 for AED, and \$1,721 for SAED, all General Fund). The General Fund appropriation to the Department of Public Safety, Office of Preparedness, Security, and Fire Safety, Office of Anti-Terrorism Planning and Training, Personal Services and Operating Expenses would be decreased by the same amount, as would the central appropriations to the Department of Public Safety.

The Safe2Tell program operates a toll-free hotline and a web site for students and others to anonymously provide information on potential safety issues involving schools and other locations. The hotline, which is operated by the Department of Public Safety out of its Denver Call Center, receives about 700 calls per year. When the Call Center receives a tip, it relays it to the appropriate authority via fax or e-mail. The Department of Public Safety receives no appropriation for the hotline; it would continue to operate the line at no charge if the program was moved.

Since its inception the program has made presentations to over 60,000 children and others around the state. The program emphasizes that these presentations are an important part of its mission; among other things, the presentations educate audiences about the dangers of the "Code of Silence." According to Safe2Tell's literature, it has been asked on a number of occasions to help restore a sense of safety following a school or community tragedy. Staff spoke with a security officer at an inner city Colorado Springs high school and a police sergeant in Jefferson county, who both work with the program. Each indicated that the program provides actionable tips. The high school security officer spoke of a suicide that she believed was prevented by a tip.

Safe2Tell is a 501 (c) (3) non-profit organization. It was exclusively supported by private grants prior to FY 2008-09 when the Department of Public Safety, through a decision item, requested and received a \$97,186 General Fund appropriation along with 1.0 FTE. This appropriation was used to make the program director, who originally worked for the Colorado Springs Police Department, into a full time state employee. The director is the program's manager and is responsible for raising public awareness of the program through publications and presentations. The program, which is based in Colorado Springs, has at two other employees who do not work for the state. Though Safe2Tell's original funder, the Colorado Trust, made its last grant in 2006 and has stepped out of the picture, the program has been able to continue attracting grants and donations. The following graph shows donations over the last six years.

Government Grants and Private Contributions to the Safe2Tell Program



The program operates under the provisions of Section 16-15.8-102, C.R.S., which defines the duties of a Safe2Tell program, but it is not a state-run program. To further confuse matters, Section 22-1-126, C.R.S., which is in the education title of statute, establishes a safe-2-tell electronic hotline but not a program. Staff does not know what it means to establish a hotline. Safe2Tell's structure is also unusual because it is a 501 (c) (3) with an independent board of directors and an Executive Director who is a state employee. As a state employee, the Executive Director is under the supervision of the Department of Public Safety but as Executive Director, she must also deal with the Safe2Tell board. Overlapping lines of authority can be a potential source of difficulty within an organization.

There is no specific statutory authority for a Safe2Tell program within the Department of Public Safety or the Department of Law. Section 24-31-105, C.R.S., provides the following general authority under which the transferred executive director would operate [*italics added*]:

There is hereby established, within the department of law and under the control of the attorney general, a criminal enforcement section. *The criminal enforcement section* or any attorney in the

department of law authorized by the attorney general shall prosecute all criminal cases for the attorney general and *shall perform other functions as may be required by the attorney general.*

The Executive Director is a peace officer, a requirement for an investigator within the criminal enforcement section.

For the first five years of its existence, Safe2Tell operated in conjunction with the Colorado Attorney General's Office, which publicized the program and provided support. As a consequence of recently concluded negotiations between the Department of Law and the Department of Public Safety, the two departments decided that the program would benefit if it was relocated in the Department of Law. Both Departments have said that the Department of Law would provide a more nurturing environment for the program. The Department of Law notes that the program would complement its Safe Surfing Initiative. The decision to request a move for the program came too late for OSPB review, thus the Department of Public Safety did not submit a decision item. Staff understands that OSPB does not oppose the move.

Staff Recommends that the Committee approve the transfer and move the Safe2Tell program to the Department of Law. Staff recommends that it be appropriated on a separate line titled Safe2Tell Program, rather than combining the appropriation with the Special Prosecutions section, which appears to be the likely alternative.

Indirect Cost Assessment. The indirect cost assessment will be calculated after the Committee makes its final decisions on all pending common policy items.

(4) WATER AND NATURAL RESOURCES

The Natural Resources and Environment Division protects and defends Colorado and its citizens in matters relating to natural resource and water law, including the use of surface and groundwater, oil and gas development, mining and minerals, wildlife, the clean-up of contaminated sites, the proper storage or disposal of hazardous wastes, and protection of the state's air and water.

Federal and Interstate Water Unit. This unit specializes in matters that involve Colorado's water compacts and interstate decrees, defending Colorado's interests against water rights claims made by the federal government and other states and claims involving endangered species issues. The unit provides legal counsel and representation for the Colorado Water Conservation Board, the State Engineer, the Department of Natural Resources, and the State of Colorado in matters involving federal water rights claims (such as U.S. Forest Service reserved water rights cases), compliance with federal regulatory programs (such as the federal endangered species act), and interstate water allocations.

Staffing Summary	FY 08-09 Actual	FY 09-10 Approp.	FY 10-11 Request	FY 10-11 Recommend.
Attorneys	4.5	4.5	4.5	4.5
Legal Assistants	1.0	1.0	1.0	1.0
Total	5.5	5.5	5.5	5.5

The Option 8 calculation, the Department request, and the staff recommendation are as follows:

Federal and Interstate Water Unit	Total	GF	CF	RF	FF	FTE
FY 2009-10 Appropriation	500,032	500,032	0	0	0	5.5
Reverse Supplemental	26,840	26,840	0	0	0	0.0
PERA Adjustment	(10,353)	(10,353)	0	0	0	0.0
FY 2010-11 Recommendation	516,519	516,519	0	0	0	5.5
FY 2010-11 Request	516,519	516,519	0	0	0	5.5

Background on the Colorado Water Conservation Board and the Colorado Water Conservation Board's Litigation Fund: The next two appropriations, Defense of the Colorado River Basin Compact and Defense of the Republican River Compact, are funded from the Colorado Water Conservation Board's Litigation Fund. Staff has included the following information in case the Committee needs to know more about this funding source.

The Colorado Water Conservation Board is established in Section 37-60-102, C.R.S. The board's budget is located in the Department of Natural Resources. The Colorado Water Conservation Board's Litigation Fund, which is established in Section 37-60-121 (2.5) (a) (III), C.R.S., was created to support the State in water-related litigation involving the federal government or other states. The fund's balance, which currently equals approximately \$2.2 million, derives from periodic appropriations and transfers that the General Assembly makes into the Fund. The most recent transfer into the fund occurred in 2009 when H.B. 09-125 (Water Conservation Board Construction Fund), transferred moneys from Colorado Water Conservation Board Construction Fund to the Litigation Fund. Moneys in the Litigation Fund are continuously appropriated to the Colorado Water Conservation Board and all expenditures from the fund must be approved by the Board. By statute, the Attorney General may request moneys from the Litigation Fund to defend and protect Colorado's allocations of water in interstate streams and rivers with respect to specifically identified lawsuits.

Appropriations to the Department of Law from the Litigation Fund require two steps. The first step occurs when the Colorado Water Conservation Board uses its continuous spending authority to allocate funds to the Department of Law. Often these allocations cover the entire life of a project; for example, in November 2007 the Board approved \$240,000 for the Defense of the Republican River with no specification as to fiscal year. The second step occurs when the General Assembly gives the Department the authority to expend the moneys allocated by the Colorado Water

Conservation Board. The Joint Budget Committee could approve an appropriation that is less than the amount approved by the Water Conservation Board. If the Committee approves an appropriation that exceeds the amount approved by the Board, the Board would probably revisit its allocation decision.

Defense of the Colorado River Basin Compact. The Department uses this appropriation to defend Colorado's interests in the 1922 Colorado River Compact (found in Section 37-61-101, C.R.S.), which apportioned Colorado River water between Upper and Lower Basin states, and the 1948 Upper Colorado River Basin Compact (Section 37-62-101, C.R.S.), which apportioned upper basin water among Colorado, Utah, Wyoming and New Mexico. Water from the Colorado River and its tributaries constitutes more than 75% of the state's total water supply.

This line item was created by the Department's FY 2005-06 supplemental in response to concerns that major legal action concerning the Colorado River Compacts was imminent. The appropriation was designed to prepare the state for and represent the state in Colorado-river litigation.

Though the anticipated legal battles did not materialize, the Department now believes that the State has entered a period in which the Colorado River requires continuous monitoring and legal work, with the ever-present prospect that of a large legal battle, especially if a drought develops. During the five years since this line item was added to the Long Bill, the Department has used the appropriation to:

- Develop a litigation-support database that will cover the entire historical record of the river compacts. The database makes it much easier to identify and retrieve relevant documents when disputes arise. The database will probably be finished by the end of FY 2010-11, at which time it will enter a maintenance phase.
- Monitor and when necessary join legal cases involving the river. Participate in relevant talks and negotiations.
- Research legal questions that have a significant probability of arising in the future.
- Help the State Engineer develop a set of rules that specify how Colorado would deal with in-state curtailment of water rights resulting from a Colorado River Compact call.
- Monitor operation of the river, river storage facilities, water projects, and plans affecting the river, participating in these matters when necessary to protect Colorado's rights.

Thanks to the lack of major litigation, expenditures from the line have been consistently less than appropriations.

Since its inception, this line item has been supported with a series of grants from the Colorado Water Conservation Board's litigation fund. The following table show the grants that have been received:

Date	Grant
2005	\$250,000
3/2006	758,880
9/2007	615,452
11/2008	191,000
11/2009	265,000
Totals	\$2,080,332

The Department and the Water Conservation Board have warned that this support will not continue indefinitely. At some point in the future the Department believes it will be necessary to give this program General Fund support. Due to the reduction in funding, staff is recommending a 1.0 FTE, \$133,329 reduction for the program.

The following table summarizes program staffing:

Staffing Summary	FY 08-09 Actual	FY 09-10 Approp.	FY 10-11 Request	FY 10-11 Recommend.
Attorneys	3.0	3.0	3.0	2.0
Legal Assistants	1.0	1.0	1.0	1.0
Total	4.0	4.0	4.0	3.0

The Option 8 calculation, the Department request, and the staff recommendation follow.

Defense of the Colorado River Basin Compact	Total	GF	CF	RF	FF	FTE
FY 2009-10 Appropriation	473,329	0	473,329	0	0	4.0
Funding Reduction	(133,329)	0	(133,329)	0	0	(1.0)
PERA Reduction	(6,983)	0	(6,983)	0	0	0.0
FY 2010-11 Recommendation	333,017	0	333,017	0	0	3.0
FY 2010-11 Request	333,017	0	333,017	0	0	3.0

The fund source is the Colorado Water Conservation Board's Litigation Fund.

Defense of the Republican River Compact. The Republican River Compact between Colorado, Kansas, and Nebraska, which can be found in Section 37-67-101, C.R.S., governs the use of water in the Republican River Basin, which lies in northeastern Colorado, southwestern Nebraska and northwestern Kansas. In 1998, Kansas sued Nebraska and Colorado, alleging overuse of river water. In 2003, the three states entered into a settlement decree to resolve the dispute, but in 2007 Kansas began legal action against Nebraska, claiming that state was not doing enough to comply. Note that

Colorado is in compliance with the Compact, or close to being in compliance, while Nebraska is far from compliance. The three states are now involved in a mandatory but non-binding arbitration process, which must be completed before the states can go to the U. S. Supreme Court, which has original jurisdiction. Pursuant to the arbitration, moneys are now being spent on engineering and modeling experts.

Staff recommends that the Committee approve an appropriation of \$110,000 cash funds for the Defense of the Republican River Compact. The funding source is the Colorado Water Conservation Board litigation fund.

Consultant Expenses. This line item is being used to make payments to the private counsel that has represented Colorado during its 25-year legal fight with Kansas over the Arkansas River Compact.

Background: In 1985 Kansas filed a complaint with the U.S. Supreme Court, which had original jurisdiction, asserting that Colorado was violating the 1948 Arkansas River Compact. A court-appointed Special Master subsequently concluded that Colorado had indeed violated the Compact by pumping too much water from wells near the river. The Supreme Court basically agreed with the Special Master's findings, and ordered Colorado to pay Kansas approximately \$34 million in damages, including interest. In January 2008, the Special Master issued a final recommendation that included complex rules designed to assure Colorado's compliance with the Compact. Once finalized, Colorado will have to comply with these rules for the indefinite future, which will require continuing legal work. In March 2009, the U.S. Supreme Court upheld the Special Master's ruling that fees for expert witnesses should be \$162,927 (\$40 per day, based on an old law), not the \$9.2 million extra sought by Kansas.

Since the beginning of this dispute, Colorado has relied on the same outside counsel for legal work. The case appears at long last to be winding down. The Department is gradually reducing reliance on outside counsel and shifting the legal work in-house, a rapid transition being impossible because of the case's complexity.

Staff recommends a \$50,000 cash funds appropriation for this line item, which is a \$50,000 reduction from the prior year. The fund source is the Attorney Fees and Costs Cash Fund.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This line item provides funding for the Department's CERCLA Litigation Unit, which uses the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to direct and finance clean up and restoration of sites that have been contaminated by hazardous substances.

Most CERCLA cases can be divided into two phases that are handled in separate legal proceedings. The first phase focuses on remediation -- the disposal and treatment of hazardous substances at a pollution site. The second phase focuses on compensation for the environmental degradation that remains after remediation.

During the first phase of a CERCLA case, the CERCLA Litigation Unit works closely with the Department of Public Health and Environment (CDPHE), providing legal advice and, where possible, helping CDPHE to induce the responsible party, via negotiation or litigation, to undertake appropriate cleanup measures. In some cases the Unit is also able to recover costs that the state incurred while dealing with the polluted site and the polluter; since its inception in FY 1984-85, the CERCLA Litigation Unit has recovered more than \$28 million for the General Fund and \$10 million for the Hazardous Substance Response Fund. The Unit is involved with 10 CERCLA sites in the state, including Rocky Mountain Arsenal and California Gulch, which are rapidly winding down, and Summitville Mine.

During the second phase of a CERCLA case, the Department tries to win compensation from the polluter for "Natural Resource Damages" – the environmental degradation that remains after remediation. Under CERCLA's rules, any recovery that the state receives must be spent on the restoration, replacement or acquisition of equivalent natural resources; the state could not, for example, use a recovery to support the General Fund.

Staffing for the CERCLA Litigation Unit is as follows:

Staffing Summary	FY 08-09 Actual	FY 09-10 Approp.	FY 10-11 Request	FY 10-11 Recommend.
Attorneys	2.5	2.9	2.9	2.9
Legal Assistants	1.4	0.6	0.6	0.6
Total	3.9	3.5	3.5	3.5

Note that the CERCLA Litigation Unit shrunk more than 75 percent in the last decade; in 1994, the Unit had 19.0 FTE. The reduction in CERCLA work reflects the following factors:

1. Colorado has worked through the backlog of big cases that existed when CERCLA became federal law in 1980. Concerned that the statute of limitations might expire, the Department filed lots of cases in the early years. It took years to work through them.
2. Colorado now detects polluters more quickly, before the pollution grows large and requires more extensive legal work.
3. Companies that own older industrial sites sometimes avoid doing things at those sites that could uncover hazardous waste and thus produce a CERCLA case – ignorance can be bliss when potential CERCLA liabilities are involved.
4. As cases mature, the work is transitioning to Natural Resources Damages claims and away from cleanup, which often requires quick, intense legal action. Natural Resources Damages can be pursued more leisurely, with fewer attorneys, since they involve no imminent risk to health.

CERCLA portion of Budget Amendment-Base Reduction Item #2: For the reasons outlined above, the Department requests and **Staff recommends that the General Fund appropriation for the CERCLA line be reduced by \$30,606 General Fund**, i.e. by 10 percent, and by 0.8 FTE, which continues reductions approved during supplementals.

The next table presents the corresponding Option 8 calculation and the resulting staff recommendation:

CERCLA	Total	GF	CF	RF	FF	FTE
FY 2009-10 Appropriation	314,024	288,146	0	25,878	0	3.5
Reverse January Supplemental	77,154	77,154	0	0	0	0.0
PERA reduction	(8,216)	(8,216)	0	0	0	0.0
FY 2010-11 Recommendation	382,962	357,084	0	25,878	0	3.5
FY 2010-11 Request	382,962	357,084	0	25,878	0	3.5

The reappropriated funds portion of this appropriation comes from the Hazardous Substance Response Fund, which is administered by the Department of Public Health and Environment. The corresponding appropriation is in the Department of Public Health and Environment's Hazardous Materials Division.

CERCLA Contracts. This line item provides funding for contractors who support the work of the CERCLA litigation unit. These contractors include expert witnesses, scientists knowledgeable about hazardous waste, hydrologists knowledgeable about the movement of polluted ground water, and economists knowledgeable about the value to be placed on natural resource damages.

As with the previous line item, the reappropriated funds portion of this appropriation comes from an appropriation in the Department of Public Health and Environment's Hazardous Materials Division.

CERCLA Contracts	Total	GF	CF	RF	FF	FTE
FY 2009-10 Appropriation before supplementals	520,000	0	0	520,000	0	0.0
Reverse January Supplemental	(20,000)	75,000	0	(95,000)	0	0.0
FY 2010-11 Recommendation	500,000	75,000	0	425,000	0	0.0
FY 2010-11 Request	500,000	75,000	0	425,000	0	0.0

The Department indicates that the \$25,000 of reappropriated funds obtained from CDPHE during supplementals, which allowed \$25,000 of General Fund to be refinanced as shown in the table above, was a one time transfer that it was not expected to continue.

Long Bill Package Recommendation: House Bill 10-1329 (Peniston/Boyd), which was scheduled to be heard by the Senate Health and Human Services Committee on March 17, imposes a per-cubic-yard "tipping" fee on hazardous waste haulers. Up to 3.5 cents per cubic yard of this fee can go to the Department of Law for CERCLA work. Staff has requested that this bill be referred to the Senate Appropriations Committee. **Staff recommends that the Appropriations Committee add an appropriations clause to the bill that refinances the General Fund in the CERCLA and CERCLA Contracts lines of the 2010-11 Long Bill with cash funds from the tipping fee.** When POTS are included, the General savings is likely to be about 500,000. **Staff further recommends that this bill be included in the Long Bill package.**

Natural Resource Damage Claims at Rocky Mountain Arsenal. Having won its natural resource damage case against Shell Oil Company and the U.S. Army over pollution at the Rocky Mountain Arsenal, the department is now contracting with Stratus Consulting of Boulder in order to identify grantees to whom the award can be distributed. Having learned that work is continuing to wind down on this job, staff recommends a reduction of \$45,000.

Natural Resource Damage Claims at RMA	Total	GF	CF	RF	FF	FTE
FY 2009-10 Appropriation	195,000	0	195,000	0	0	0.0
Reduced support for Natural Resource Damages Claims at Rocky Mountain Arsenal	(45,000)	0	(45,000)	0	0	0.0
FY 2010-11 Recommendation	150,000	0	150,000	0	0	0.0
FY 2010-11 Request	195,000	0	195,000	0	0	0.0

The source for this appropriation is the Hazardous Substance Response Fund.

Indirect Cost Assessment.

There are two sources of cash funds within the Water and Natural Resources Division: (1) The Colorado Water Conservation Board's Litigation Fund, which supports the appropriations for the Defense of the Republican River Compact and the Defense of the Colorado River Compact, and (2) The Hazardous Substance Response Fund, which either directly or indirectly supports the Division's CERCLA line items. **The Department has never charged indirect costs to these fund sources and staff recommends that this practice continue.** Almost all of the Hazardous Substance Response Fund appropriations are going directly to contractors, which means that these appropriations impose little overhead on the Department. Appropriations from the Colorado Water Conservation Board's Litigation Fund should not be charged overhead for two reasons: (1) the Water Conservation Board allocated these moneys believing that they would not be charged overhead, (2) the Department of Law has never charged overhead to special litigation line items.

(5) CONSUMER PROTECTION

The Consumer Protection Division protects Colorado consumers and business against fraud and maintains a competitive business environment. It does this by enforcing state and federal laws regarding consumer protection, antitrust, consumer lending, mortgage fraud, predatory lending, debt collection, rent-to-own, and credit repair.

Consumer Protection and Anti-Trust. The Anti-trust and Consumer Fraud Unit investigates and prosecutes fraudulent trade and advertising practices in a variety of areas, such as telephone solicitation (including Colorado's "no-call" list), automobile repossession, health clubs, and manufactured homes. Much of the statutory authority for its fraud-enforcement activities stems from the Colorado Consumer Protection Act of Article 1, Title 6, C.R.S., which enumerates a wide variety of deceptive trade practices. Three mortgage-broker bills enacted during the 2007 session, H.B. 07-1322, S.B. 07-203 and S.B. 07-216, expanded the Consumer Protection Act and added to the Unit's funding. As a consequence of these bills, unconscionable actions by a mortgage broker or a mortgage broker's failure to act in good faith and deal fairly with clients constitute deceptive trade practices under the Act.

The Unit's anti-trust responsibilities stem from the Colorado Antitrust Act in Article 4 of Title 6, C.R.S. and from federal anti-trust laws, such as the Sherman Act. The Unit uses this authority to investigate and prosecute price fixing, bid rigging, and illegal attempts to monopolize industries.

As authorized by Section 24-31-402, C.R.S., the Anti-trust and Consumer Fraud Unit also works with the Department of Revenue to enforce the laws that govern "non-participating" tobacco manufacturers, i.e. manufacturers who have not joined the tobacco Master Settlement Agreement. (Section 39-28-201, C.R.S., and following sections.)

Staffing Summary	FY 08-09 Actual	FY 09-10 Approp.	FY 10-11 Request	FY 10-11 Recommend.
Attorneys	9.5	10.0	10.0	10.0
Legal Assistants	2.0	2.0	2.0	2.0
Investigators	4.0	4.0	4.0	4.0
Administrative Staff	3.6	5.0	5.0	5.0
Total	19.1	21.0	21.0	21.0

The Option 8 calculation, the Department's request, and staff's recommendation follow:

Consumer Protection and Anti-Trust	Total	GF	CF	RF	FF	FTE
FY 2009-10 Appropriation	1,701,987	795,549	663,695	242,743	0	21.0
Reverse FY 2009-10 1.82% base reduction	30,502	15,222	11,193	4,087	0	0.0
Reverse Furlough Supplemental	117,333	117,333	0	0	0	0.0

Consumer Protection and Anti-Trust	Total	GF	CF	RF	FF	FTE
PERA Adjustment	(35,753)	(21,048)	(9,931)	(4,774)	0	0.0
FY 2010-11 Recommendation	1,814,069	907,056	664,957	242,056	0	21.0
FY 2010-11 Request	1,814,069	907,056	664,957	242,056	0	21.0

The cash funds in this recommendation derive from:

- The Public Utilities Commission for work supporting Colorado's no call list
- The Building Regulation Fund for consumer protection work on mobile homes
- The Defense Account of the Tobacco Litigation Settlement Cash Fund for non-participating-tobacco manufacturer enforcement work, and
- Various court awarded settlements that the Department has received.

The reappropriated funds come from an appropriation in the Department of Regulatory Agencies' Division of Real Estate from the Mortgage Brokers Cash Fund that is transferred to the Department of Law to support the Unit's consumer protection activities related to mortgage brokers. The authority for this appropriation and the related transfer are found in Section 12-61-904.5, C.R.S.

Collection Agency Board (CAB). This line item supports the Collection Agency Board Unit, which enforces the Fair Debt Collection Practices Act (Article 14 of Title 12, C.R.S.) and the related Colorado Child Support Collection Consumer Protection Act (Article 14.1 of Title 12, C.R.S.). These two Acts protect (1) creditor firms and parents who engage collection agencies to collect debts on their behalf, and (2) the debtor consumers and parents who are the subject of the collection efforts of those agencies. The two acts forbid a number of abusive debt collection practices and require collection agencies to obtain bonds that are designed to increase the likelihood that creditor firms and parents will receive funds recovered on their behalf. The Collection Agency Board Unit licenses over 600 collection agencies, investigates complaints of unlawful activity, takes disciplinary action against agencies that violate the law, and provides consumers with self-help information about the law. Collection agency license fees, which are deposited in the Collection Agency Cash Fund, pay the costs of operating the Unit. These fees are set by the Department and are adjusted annually to cover the Unit's costs, pursuant to Section 12-14-119 (5), C.R.S. Thus the General Assembly's appropriations for this line item drive the licensing fees. Penalties assessed against licensees are typically split between the General Fund and the Collection Agency Board Custodial Fund.

Uniform Consumer Credit Code (UCCC). This line item supports the Consumer Credit Unit, which derives the majority of its duties from the Consumer Credit Code in Title 5 of the Colorado Revised Statutes. The unit's name derives from the Uniform Consumer Credit Code ("UCCC"), upon which substantial parts of Title 5 are based. Among the more important components of the Consumer Credit Code are:

1. The Consumer Equity Protection Act in Article 3.5, which governs certain high cost mortgages, i.e. mortgages with interest rates and/or fees that exceed triggers that are tied to

other interest rates in the economy. This Act applies to high rate or high fee home equity loans and high rate or high fee mortgage refinancing, but does not apply to mortgages that are used to initially acquire a home.

2. The Deferred Deposit Loan Act in Article 3.1, which applies to payday lenders; and
3. The Rental Purchase Agreement Act in Article 10, which governs rent-to-own agreements.

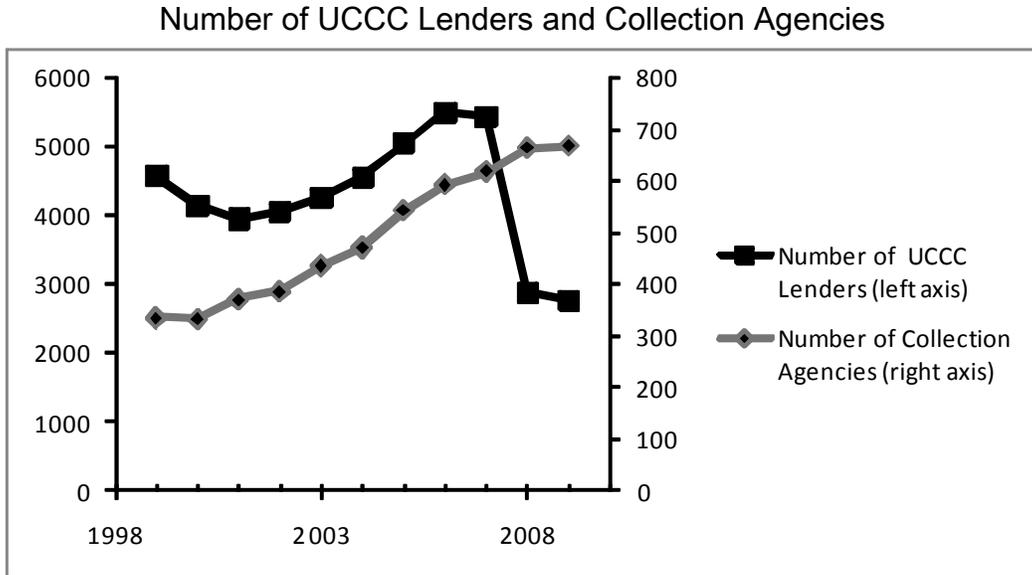
Lenders who are subject to the Consumer Credit Code are licensed by the Department and are known as "supervised lenders." Approximately 38 percent of these supervised lenders are high rate or high fee mortgage lenders and 47 percent are payday lenders. License fees, which are set under authority of Section 5-2-302, C.R.S., and are deposited in the Uniform Consumer Credit Code Cash Fund established in Section 5-6-204, C.R.S., cover the cost of operating the program. These fees are adjusted annually by the Department pursuant to Section 5-6-203 (5), C.R.S., and are set at levels that cover the cost of running the Unit. H.B. 09-1141, which awaits the Governor's signature, simplified the fee structure, removed statutory caps on program fees and set a reserve limit equal to one third of annual program expenditures.

The Consumer Credit Unit protects borrowers from abusive practices by these lenders, such as interest rates that exceed legal limits, prepayment penalties, inadequate disclosure of the cost of credit, fraudulent rent-to-own schemes, abusive repossessions, and unreasonable collection costs. The Consumer Credit Unit also enforces the Credit Services Organization Act contained in Part 1, Article 14.5 of Title 12, which substantially limits "credit repair" services. As a consequence of the restrictive rules, very few companies offer such services. Appropriations from the Uniform Consumer Credit Code Cash Fund pay the cost of operating the program. In 2008, the Unit began enforcing the Uniform Debt Management Services Act contained in Part 2 of Article 14.5 of Title 12, which was added to statute by S.B. 08-57. The Act regulated debt management services, which attempt to negotiate reduced interest rates and balance reductions on behalf of financially stressed creditors.

Decision Item 2: Combine the Collection Agency Board and the Uniform Consumer Credit Code units into a new Consumer Credit Unit. The Department requests that the currently separate Long Bill appropriations for its two consumer-credit units, the Uniform Consumer Credit Code Unit and the Collection Agency Board Unit, be consolidated into a single appropriation called the Consumer Credit Unit. The Department believes that the additional flexibility resulting from consolidation will allow it to allocate resources more efficiently and effectively and better respond to changes in the mix of UCCC and CAB complaints. The change would not alter appropriations.

The Department points to the economic cycle as one of the reasons for this request: During the boom that preceded the current economic downturn, there was a surge in lending. As a result, an increasing numbers of lenders applied for UCCC licenses, which resulted in a surge of UCCC licensing revenues, increased UCCC violations, and increased Department of Law oversight duties. UCCC revenues also rose because the Department usually recovers its costs as part of UCCC settlements. As the economy sagged following the boom, borrowers, who in many cases have borrowed from UCCC lenders, are finding it increasingly difficult to pay their debts, which translates

into an increased number of collection agencies, increased Collection Agency Board revenue from licensing, increased violations and increased oversight duties for the Department of Law. CAB revenues also are rising because the Department usually recovers its costs as part of CAB settlements. When the economy recovers, UCCC work will go up again and CAB work will go down. During periods of prosperity, UCCC work typically constitutes about 75 percent of the total workload. During an economic downturn, CAB work might surge to as much as 50 percent of the total. The following chart shows the number of supervised UCCC lenders and collection agencies since 1999.



The Department also notes that consolidation will lead to increased efficiency because investigations, complaints, and lawsuits often overlap and involve violations of both the credit and collection laws. Lending violations that start as UCCC investigations can turn into CAB investigations. For example, a lender might charge fees that violate UCCC rules. If the lender subsequently turns the debt over to a collection agency, some of the debt that the collection agency is trying to collect will be from the illegal fees. It would be most efficient if the investigator and the attorney who dealt with the UCCC violation kept working on it as it became a CAB violation, but under the currently separate appropriations, the UCCC staff members would hand the case over to CAB staff members, who must now get up to speed on the case, which increases costs.

If this change is approved, there would be a need for cross training; UCCC staff would need to learn the CAB laws and visa versa, but these areas are closely related, so cross training would not be particularly difficult.

Staff recommends that the JBC approve consolidation of the UCCC and CAB units into a new Consumer Credit Unit. The efficiencies that will result from combination make sense and more than offset the modest decrease in General Assembly control of the appropriation that will result from such consolidation.

Decision Item 1: Additional \$51,404 cash funds and 0.5 FTE for the (combined) Consumer Credit Unit. The Department requests:

1. That the 0.5 Legal Assistant I FTE currently assigned to the Department's two consumer credit units be increased to 1.0 Legal Assistant II FTE at a cost of \$31,404 cash funds, and
2. That the appropriation to the two consumer credit units be increased by \$20,000 cash funds.

The fund source is the Collection Agency Cash Fund and the Uniform Consumer Credit Code Cash Fund.

This request is a consequence of increased work load in two areas:

1. Unlicensed internet "payday" lending, and
2. Debt management services.

The increase in unlicensed internet payday lending has not followed the pattern that typically characterizes violations of consumer protection laws. Usually, when the Department learns of increased violations of a consumer protection statute, which it almost always discovers via consumer complaints, it will take action against a few offenders, perhaps threatening license revocation or suspension, and those offenders will fairly quickly agree to pay a penalty and obey the law. Other companies in the same line of business, hearing of the settlement, usually fall in line and subsequently abide by the law. Few cases go to court; one consumer credit case might proceed to trial every few years.

Internet payday lenders are different. An internet search will reveal many payday lenders who are willing to make loans to Coloradans over the internet. Less obvious is the fact that many of these lenders are not licensed as required by Colorado law. The Department has discovered that action against one unlicensed internet lender is ineffective in getting other internet lenders to start complying with Colorado law. In addition, internet lenders have proved to be more willing to litigate and less willing to settle. They frequently argue that they are subject to the laws of the state in which they are located, not to Colorado law, even though Colorado law is clear on the need to be licensed. The Department suspects that there are hundreds, perhaps thousands of internet payday lenders who make loans in Colorado but are not licensed in the state. The Department does not know how many lenders there are, because one lender may have multiple online sites under different names.

Regulation of debt management services was added to statute by S.B. 07-57. The appropriation for this bill provided the Department with an extra \$99,000 cash funds and 1.5 FTE for implementation, comprised of 1.0 FTE financial examiner and 0.5 IT FTE to establish an application registration system, manage the registration data, and make provider information publicly accessible.

It now appears that debt management service companies are much more internet-based than was expected when S.B. 07-57 was enacted and these companies, like their internet payday loan counterparts, have been slow to get licenses. In fact, only two internet debt management companies have so far obtained Colorado licenses. However, unlike internet payday loan companies, internet debt management companies seem more willing to settle once discovered, though they do not settle as quickly as the Department would expect, based on its prior enforcement experience.

An extra 0.5 FTE legal assistant, combined with the upgrade to legal assistant II and the extra \$20,000 of spending authority for litigation expenses will make it possible for the Department to take on an internet lender who is unwilling to settle or a recalcitrant internet debt management services company, something that is difficult for it to do now given the current size of the appropriation and of the current level of legal assistant support. It is difficult to forecast the effect that this appropriation will have on licensing fees; the increase amounts to 4.0 percent of the appropriation of the combined unit and it is possible that the additional enforcement activity that it enables will increase the number of licensees by more than 4.0 percent, which would decrease fees.

Staff recommends that the JBC approve this request and appropriate an extra \$51,404 cash funds and 0.5 FTE for the combined consumer credit unit.

Staffing for the combined Consumer Credit Unit is as follows:

Staffing Summary	FY 08-09 Actual	FY 09-10 Approp.	FY 10-11 Request	FY 10-11 Recommend.
Attorneys	4.0	4.0	4.0	4.0
Investigators and Examiners	10.0	10.0	10.0	10.0
Administrative Staff	3.5	3.5	4.0	4.0
Total	17.5	17.5	18.0	18.0

The corresponding Option 8 calculation, the Department request, and the staff recommendation follow:

Consumer Credit Unit	Total	GF	CF	RF	FF	FTE
FY 2009-10 Appropriation	1,327,268	0	1,327,268	0	0	17.5
Decision Item 1	51,404	0	51,404	0	0	0.5
PERA Adjustment	(27,965)	0	(27,965)	0	0	0.0
FY 2010-11 Recommendation	1,350,707	0	1,350,707	0	0	18.0
FY 2010-11 Request	1,350,707	0	1,350,707	0	0	18.0

The fund source is the Collection Agency Cash Fund and the Uniform Consumer Credit Code Cash Fund.

The numbers pages present the recommended appropriations for the UCCC and CAB units if the Committee does not approve the consolidation decision item.

Indirect Cost Assessment. The indirect cost assessment will be calculated after the Committee makes its final decisions on all pending common policy items.

(6) SPECIAL PURPOSE

This division contains appropriations and programs that do not fit within the Department's other divisions. In the past it has often included appropriations for large one-time lawsuits.

District Attorneys' Salaries. Pursuant to Section 20-1-306, C.R.S., which was amended by H.B. 07-1170, the state pays 80 percent of the base salary established in Section 20-1-301, C.R.S. for the State's 22 district attorneys. The state only subsidizes the salary of the district attorney; it does not contribute to assistant district attorney salaries. The state also pays 80 percent of the PERA, AED and SAED (but not the Medicare) on each district attorney's base salary, though statute is silent concerning these extra payments. A district attorney's actual salary is set by the commissioners of the county or counties that make up the district attorney's judicial district, subject to the requirement in Section 20-1-301, C.R.S., that the salary equal or exceed the following base amounts:

- \$100,000 beginning January 1, 2009;
- \$110,000 beginning January 1, 2010;
- \$120,000 beginning January 1, 2011; and
- \$130,000 beginning January 1, 2012.

If a judicial district sets the salary higher than the base, the district's county or counties must pay all of the extra cost.

Section 11 of Article 12 of the Colorado Constitution states that the salary of an elected public official cannot be increased or decreased during the term of office for which the official was elected. Since a district attorney is an elected public official with a four year term of office, this might seem to preclude the salary increases on the above schedule. However, according to Legislative Legal Services, an elected official's salary can be changed while in office according a schedule of changes that has been approved before the term of office begins. Since all Colorado district attorneys stood for election in November 2008 and the above schedule of changes was in place prior to the election, the above schedule does not conflict with the Constitution.

This constitutional constraint means that the next opportunity to change the schedule of district attorney salaries will arise during the 2012 session, prior to the 2012 elections. Anticipating such opportunities, statute requires that the House and Senate Judiciary Committees, beginning with the 2012 legislative session and every fourth session thereafter, recommend a base salary schedule to the General Assembly that covers the next four years.

District Attorneys' Salaries	Total	GF	CF	RF	FF	FTE
FY 2009-10 Appropriation	2,096,078	2,096,078	0	0	0	0.0
Base salary increase paid by state as required by Section 20-1-301, C.R.S. (= .8 * \$10,000 * 22 - \$44 adjustment for \$2 per DA prior year rounding)	175,956	175,956	0	0	0	0.0
PERA and Medicaid on salary increase paid by state	17,860	17,860	0	0	0	0.0
AED and SAED increase	23,934	23,934	0	0	0	0.0
FY 2010-11 Recommendation with OIT Transfer	2,313,828	2,313,828	0	0	0	0.0
FY 2010-11 Request	2,313,828	2,313,828	0	0	0	0.0

Litigation Management and Technology Fund. This line item, which despite its name does not involve a cash fund, was added to the Department's portion of the Long Bill in FY 1994-95 to pay for unanticipated legal costs that arise over the course of the fiscal year, especially when the General Assembly is out of session, and to pay for technology costs that would otherwise require General Fund appropriations. In FY 2001-02, during the last economic downturn, the line was temporarily eliminated in order to increase revenues to the General Fund, but was subsequently restored. This appropriation has reduced the need for legal services supplementals related to the Legal Services to State Agencies program and other unanticipated litigation.

Moneys for this appropriation come from two sources:

1. Excess earnings of the Legal Services to State Agencies (LSSA) program during the previous fiscal year. Excess LSSA earnings arise when the revenues earned by the LSSA program exceed the costs of operating the program. Without the Litigation Management and Technology Fund appropriation and the related footnote, or other appropriations from excess earnings of the LSSA program, this excess would revert to the General Fund. The Litigation Management and Technology Fund appropriation allows the Department to keep some of this excess and use it in the next year. Note that excess earnings fluctuate substantially from year to year and the amount is not known with certainty until after the close of the fiscal year. The excess earnings for FY 2009-10, for example, will not be known with certainty until July 2010, the first month of the fiscal year in which those earnings can be expended. In recent years, excess earnings have been as high as \$470,000 and as low as \$260,000. Hence aggressive appropriations from this funding source before the actual amount is known could result in a partially funded line item. Note, however, that the amount of excess earnings for FY 2009-10 will be known with certainty during FY 2010-11 supplementals next January, meaning that it will be a reliable funding source for supplementals.
2. Various court awards that are deposited into the Attorneys Fees and Costs Account, which is established in Section 24-31-108 (2), C.R.S., and is a cash funds source of expenditure. The Attorneys Fees and Costs Account serves as a backup, filling in the remainder of the appropriation to the Litigation Management and Technology Fund appropriation when excess

LSSA earnings come up short. For example, if the Litigation Management and Technology Fund appropriation equals \$325,000 and LSSA excess earnings exceed \$325,000, then no money will be taken from the Attorney Fees and Cost Account. If LSSA excess earnings equal \$290,000, then \$35,000 will be taken from the Attorney Fees and Cost Account.

Staff recommends the Department's request of \$325,000 cash funds for this line item, which is a continuation appropriation.

Statewide HIPAA Legal Services. This line item was created in FY 2004-05 to fund statewide General Fund legal expenses related to the Health Insurance Portability and Accountability Act (HIPAA). If a General Fund agency or program in the state needs HIPAA legal work, the legal work will be done by a Department of Law attorney and the hourly cost of the work will be paid from this appropriation. This line was created because HIPAA legal work done for one agency often can be applied to other agencies and thus benefits multiple departments of state government. Cash funded programs that need HIPAA legal work must still pay an hourly rate for that work, just as they pay for other legal work.

Base Reduction Item #1. Due to a reduction in inquiries, the **Department requests and Staff recommends elimination of this line item.**

Statewide HIPAA Legal Services	Total	GF	CF	RF	FF	FTE
FY 2009-10 Appropriation	3,538	3,538	0	0	0	0.0
HIPAA portion of Budget Amendment-Base Reduction Item #2.	(3,538)	(3,538)	0	0	0	0.0
FY 2010-11 Recommendation	0	0	0	0	0	0.0
FY 2010-11 Request	0	0	0	0	0	0.0

Staff believes that there were valid reasons for creating a Statewide HIPAA Legal Services appropriation and is concerned that potential savings may be lost by eliminating the appropriation. For this reason Staff recommends that the Committee approve the following request for information, which will address this concern.

Tobacco Litigation. For four years, Colorado has been involved in a legal dispute with the manufacturers who participate in the Master Settlement Agreement. The disagreement concerns Colorado's enforcement of its statutes pertaining to "non-participating manufacturers" -- tobacco manufacturers that are not parties to the agreement. Colorado was required to enact these laws when it signed the Master Settlement Agreement. Due to this dispute, some tobacco companies have withheld a portion of their settlement payments in each of the last three years, placing them in escrow.

When a diligent-enforcement question arises, it is settled by a panel of arbitrators who, according to the Master Settlement Agreement, must decide the issue in a unified national proceeding in which a separate decision will be made on the diligent-enforcement efforts of each participating state. Thus

the arbitrators might decide that one state should receive a reduced payment because it failed to diligently enforce while another state, which diligently enforced, is entitled to its full payment.

It now appears likely that arbitration will begin sometime during 2010. The proceeding is likely to take at least a year, which means that resolution of the dispute is unlikely before mid 2011 at the earliest. The Department of Law has engaged outside counsel (Hale Friesen, LLP) for this proceeding because it cannot represent itself in this matter; attorneys at the Department of Law helped develop, and continue to monitor and assist the non-participating-manufacturer enforcement program in the Department of Revenue and are likely to be called upon to provide testimony during the arbitration proceeding. These efforts by the Department of Law will be on "trial" before the arbitrators.

The Department requests and Staff recommends an appropriation of \$750,000 cash funds for this line item, a \$150,000 increase over the FY 2009-10 appropriation. Staff recommends that the Committee approve this supplemental because tens of millions of dollars, possibly much more, rest on the outcome of this case.

This appropriation will be paid from the Defense Account of the Tobacco Litigation Settlement Cash Fund. The Defense Account was established out of Master Settlement Agreement moneys received in compensation for attorney fees, and other costs that Colorado incurred in its legal action against tobacco manufacturers. The Defense Account is expected to have a balance of \$3.2 million at the start of FY 2010-11.

Lobato Litigation Expenses

During figure setting for the Governor's office, the Committee approved two appropriations for the Lobato case, which claims that Colorado's current school funding system fails to provide a thorough and uniform system of free public education as required by the Colorado Constitution. The first of these appropriations was for 7,200 hours of legal services by attorneys at the Department of Law. The second appropriation was for \$432,500 of other litigation expenses, such as expert witnesses, transcripts, and the supplemental use of contract attorneys. These moneys will be transmitted to the Department of Law, which requires an appropriation in order to spend the funds it receives. The appropriation for legal services hours was included in the recommendation for personal services for Legal Services to State Agencies, which was presented earlier. The appropriation for other litigation expenses also requires an appropriation.

Staff recommends that the Committee approve an appropriation of \$432,500 reappropriated funds to the Department of Law so that it can expend these funds when it receives them. Staff recommends that this appropriation be titled "Lobato Litigation Expenses" and that it be presented in the Special Purpose portion of the Department of Law's Long Bill.

Though this appropriation has already been approved by the Committee, concern over the size of the appropriation led Staff to contact the Attorneys General of two other states that have been involved in their own lawsuits concerning the adequacy of school funding. Staff asked whether \$432,500 for

Lobato litigation expenses is reasonable and was told that it is; the available pool of qualified experts is small and funding-adequacy studies are expensive. A Kansas attorney said, with some regret, that eight years ago his state spent only \$150,000 on experts in a funding-adequacy case and lost, which cost the state \$750 million, may cost more because Kansas plaintiffs are now trying to reopen the lawsuit.

Long Bill Footnotes and Requests for Information

Staff recommends that the following request for information be **continued and amended**:

Medicaid Fraud Request for Information

- 98 Department of Law, Criminal Justice and Appellate, Medicaid Fraud Grant --** The General Assembly requests that the Department of Law's Medicaid Fraud Control Unit produce a progress report on the Department's efforts to reduce Medicaid fraud and abuse in Colorado. The report should include: (1) the most recent estimates on the total amount of Medicaid fraud and abuse in Colorado; (2) a summary of total fines, costs, and restitutions recovered, attributable to the Medicaid Fraud Control Unit's efforts; (3) a detailed explanation of the Medicaid Fraud Control Unit's participation in global or national Medicaid fraud settlements, including total awards received due to them; and (4) evidence of the effectiveness of the Medicaid Fraud Control Unit in reducing the amount of Medicaid fraud and abuse in Colorado. The Medicaid Fraud Control Unit is requested to submit the report to the Joint Budget Committee by ~~November 1, 2009~~ NOVEMBER 1, 2010.

Comment: This footnote provides useful information on the effectiveness of the State's participation in the Medicaid Fraud Control Grant program. This information is particularly valuable for monitoring the Department's performance following the approval in 2007 of Decision Item #6, which added 3.0 FTE to this line item. Staff recommends continuing this footnote.

Legal Rate Footnote

- 35 Department of Law, Legal Services to State Agencies --** In making this appropriation, it is the intent of the General Assembly that hourly billing rates charged by the Department for legal services to state agencies not exceed ~~\$77.97~~ \$76.49 per hour for attorneys and not exceed ~~\$63.04~~ \$60.16 per hour for paralegals, which equates to a blended rate of ~~\$75.38~~ \$73.50 per hour.

Comment: The blended legal rate is used to compute the Long Bill appropriations for legal services for the various agencies of state government. The blended rate is also used to compute legal-service appropriations in special bills. This footnote

contains a clear statement of legislative intent regarding the blended legal rate and the rates to be charged for legal and for paralegal services.

Litigation Management and Technology Fund Footnote

36 Department of Law, Special Purpose, Litigation Management and Technology Fund -- It is the intent of the General Assembly to grant the Department of Law additional flexibility by allowing the Department to use funds appropriated in this line item to address unanticipated state legal needs that arise during ~~FY 2009-10~~; FY 2010-11, as well as information technology asset maintenance needs that would otherwise require General Fund appropriations during ~~FY 2009-10~~; FY 2010-11. It is also the intent of the General Assembly that moneys spent from this fund shall not require the appropriation of additional FTE and will not be used for any type of salary increase, promotion, reclassification, or bonus related to any present or future FTE employed by the Department of Law. It is furthermore the intent of the General Assembly that moneys spent from this fund will not be used to offset present or future personal services deficits in any division in the Department. The Department is requested to submit a quarterly report to the Joint Budget Committee detailing the purpose for which moneys from this fund have been expended. Such a report is also requested with any supplemental requests for additional legal services funding within or outside of the Legal Services to State Agencies program.

Comment: This footnote has appeared in the Long Bill since 2003 and it reflects what Staff believes to be the continuing intent of the Committee regarding the use of this appropriation. Since the Litigation Management and Technology Fund is non statutory, this footnote provides the only guidance to the Department concerning the use of these moneys.

Requests for information to be added:

HIPAA legal services

n Department of Law, Legal Services to State Agencies -- The General Assembly requests that the Department of Law submit a report by November 1, 2010 detailing legal hours spent assisting departments in complying with the federal Health Insurance Portability and Accountability Act (HIPAA). Based on an analysis of this data and projected future needs for HIPAA assistance, the report should indicate whether savings or other benefits would be realized by restoring the Statewide HIPAA Legal Services appropriation that existed in the Special Purpose portion of the Department's Long Bill prior to 2010.

Comment: Based on decreasing demand for HIPAA legal services, the Department has recommended and staff has requested that this appropriation be eliminated to reduce General Fund appropriations. Staff is concerned that the savings may be illusory. This report gather the data needed to address that concern.