COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE

FY 2011-12 STAFF BUDGET BRIEFING

DEPARTMENT OF REGULATORY AGENCIES

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

Prepared By:
Megan Davisson, JBC Staff
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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 2011-12 BUDGET BRIEFING
STAFF PRESENTATION TO THE JOINT BUDGET COMMITTEE

DEPARTMENT OF REGULATORY AGENCIES

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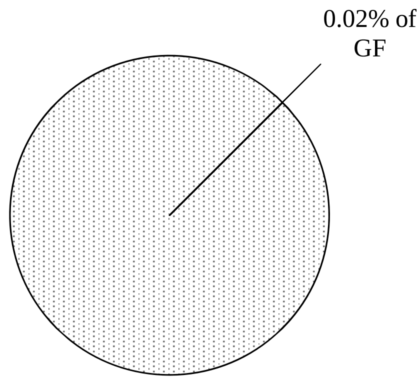
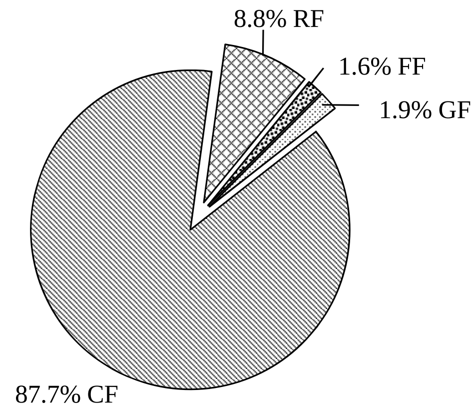
FY 2011-12 Joint Budget Committee Staff Budget Briefing
Department of Regulatory Agencies

GRAPHIC OVERVIEW

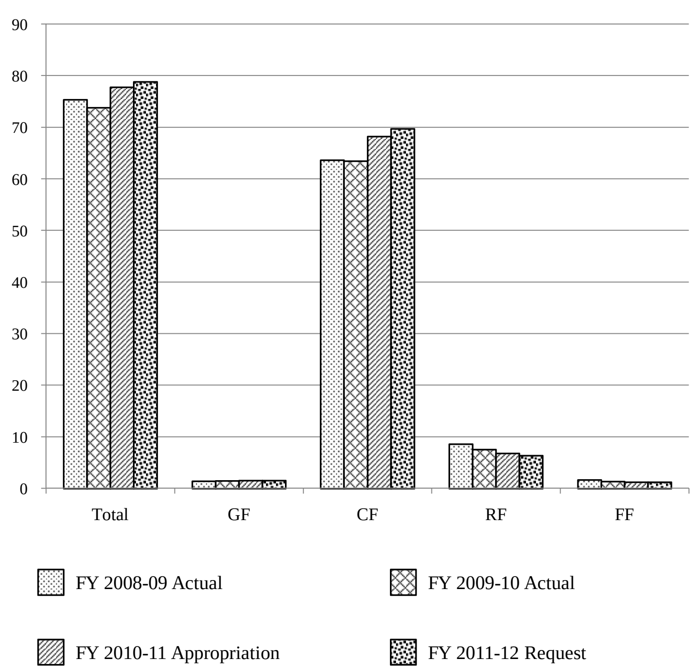
Department's Share of Statewide General Fund



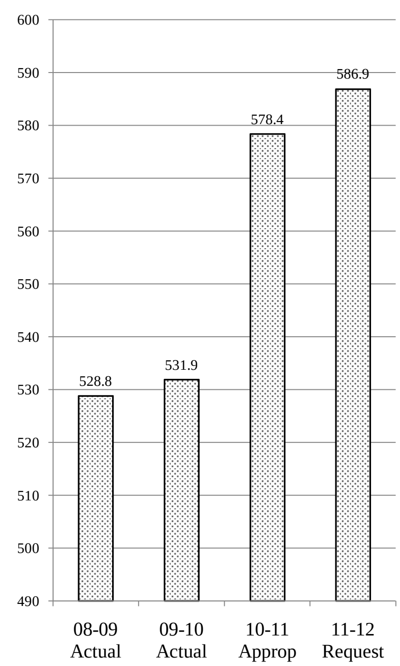
Department Funding Sources



Budget History
(Millions of Dollars)

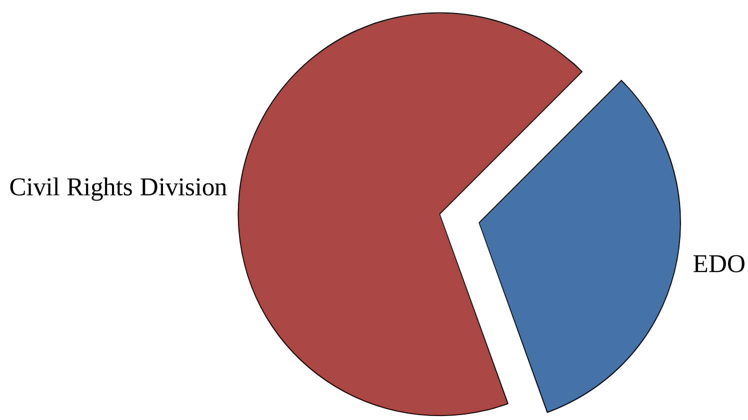


FTE History

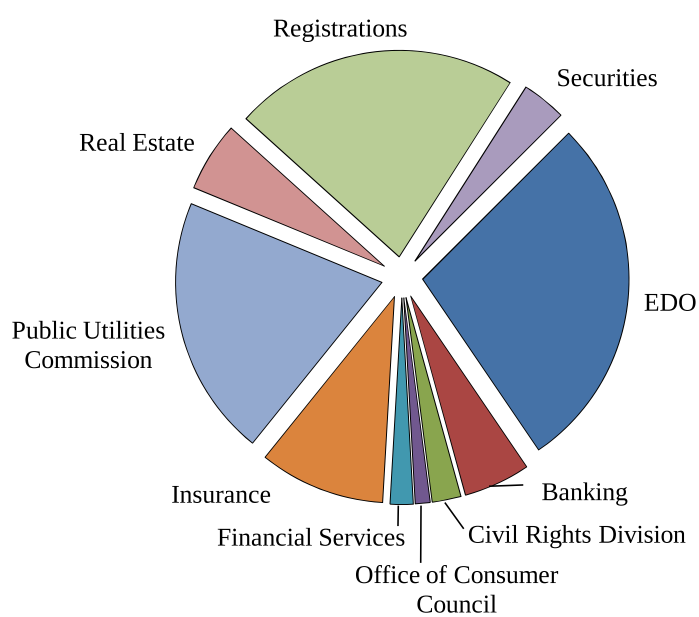


Unless otherwise noted, all charts are based on the FY 2010-11 appropriation.

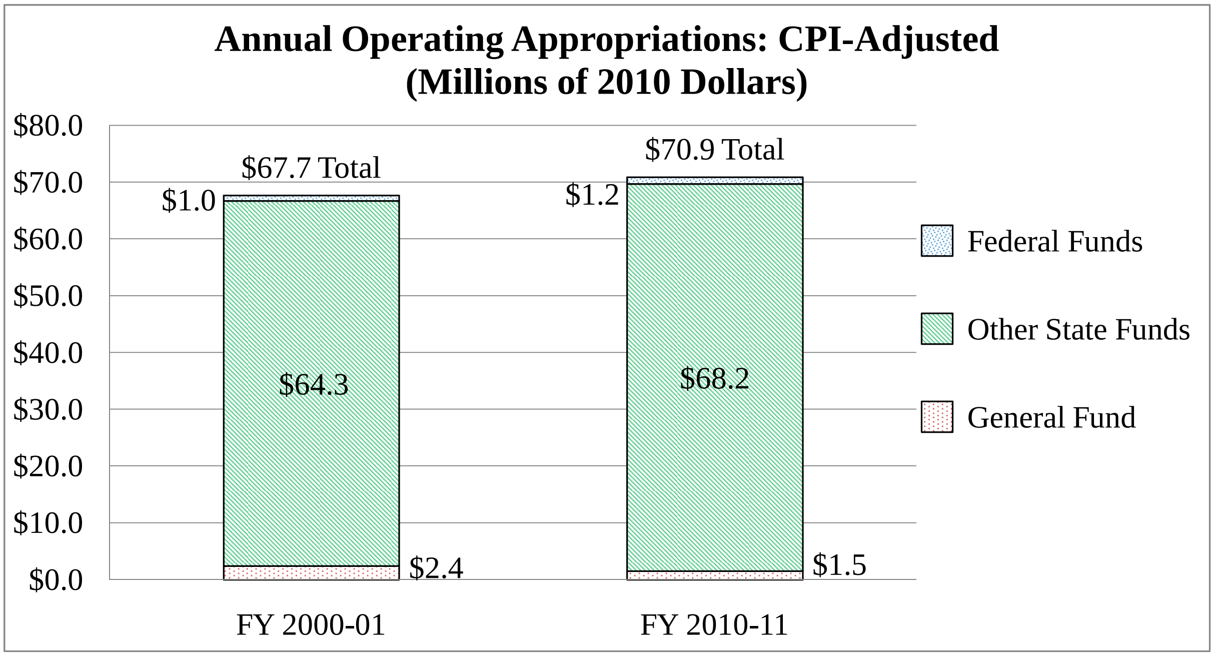
Distribution of General Fund by Division

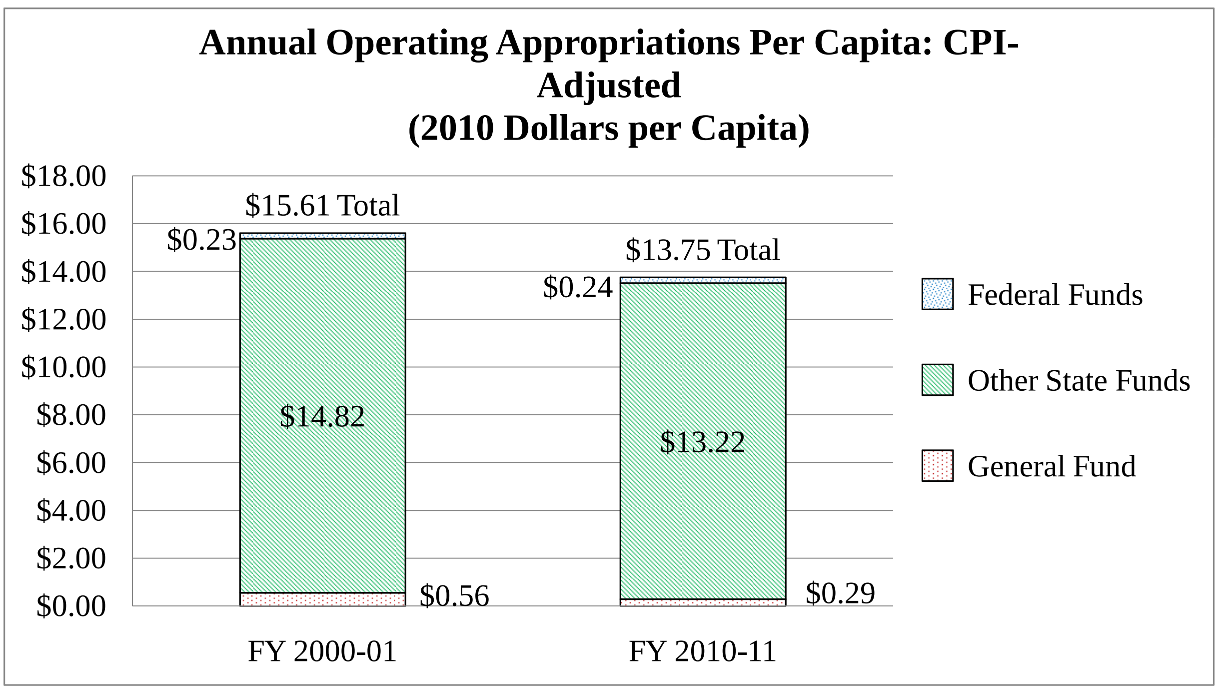


Distribution of Total Funds by Division



COMPARISON OF FY 2000-01 AND FY 2010-11 APPROPRIATIONS





NOTES: (1) All appropriations above *exclude* duplicate appropriations (i.e., these appropriations exclude reappropriated funds for FY 2010-11 and, for FY 2000-01, exclude amounts that would have been classified as reappropriated funds). For this department, these excluded amounts primarily reflect transfers from the Department of Public Health and Environement and the Department of Health Care Policy and Financing and from internal transfers of indirect cost recoveries.

(2) For the purpose of providing comparable figures, FY 2000-01 appropriations are adjusted to reflect changes in the Denver-Boulder-Greeley consumer price index (CPI) from 2000 to 2010. Based on the Legislative Council Staff September 2010 Economic and Revenue Forecast, the CPI is projected to increase 21.9 percent over this period.

(3) In the per capita chart, above, appropriations are divided by the Colorado population (for 2000 and 2010, respectively). Based on the Legislative Council Staff September 2010 Economic and Revenue Forecast, Colorado population is projected to increase by 18.9 percent over this period.

DEPARTMENT OVERVIEW

Key Responsibilities

The Department is comprised of ten divisions, each of which is responsible for the regulation of various industries, professionals and programs.

1. The Office of Policy and Research resides in the Executive Director's Office and provides sunset and sunrise evaluations and policy recommendations on state programs.

2. The Division of Banking is responsible for the enforcement of banking laws on state-chartered commercial banks, trust companies, industrial banks and money transmitters.

3. The Civil Rights Division investigates claims of alleged discrimination and carrying out enforcement activities.

4. The Office of Consumer Counsel represents the interest of businesses and consumers at Public Utilities Commission hearings.

5. The Division of Financial Services administers the Public Deposit Protection Act and regulates state-chartered credit unions, savings and loans, and life care institutions.

6. The Division of Insurance licenses insurance producers and companies, investigates alleged violations of insurance laws and responds to consumer complaints.

7. The Public Utilities Commission regulates the rates and services of utilities in the state.

8. The Division of Real Estate licenses real estate agents, appraisers and mortgage loan originators, registers mortgage companies and homeowners associations, and administers the conservation easement certification programs.

9. The Division of Registrations licenses individuals in forty-nine professions and occupations.

10. The Division of Securities monitors the conduct of securities broker-dealers and sale representatives, and performs examinations of securities institutions.

Factors Driving the Budget

Legal Services

Due to the stakes involved in many of the Department's regulatory decisions, legal services has been and will continue to be a driving factor of the Department's budget. Legal services account for 10.3 percent of the Department's FY 2010-11 total appropriation and 33.8 percent of the state's FY 2010-11 total legal services appropriation in the Department of Law.

Department of Regulatory Agencies Legal Services Expenditures Since FY 2006-07						
	FY 06-07 Actual	**FY 07-08 Actual**	**FY 08-09 Actual**	**FY 09-10 Actual.**	**FY 10-11 Approp.**	**FY 11-12 Request**
Regulatory Agencies	$5,761,082	$6,591,183	$7,472,664	$7,616,109	$8,017,385	$7,575,055
Number of Hours	82,009	91,506	99,503	101,036	109,273	103,245
Percent of Department Approp.	8.2%	8.8%	10.0%	10.3%	10.3%	9.6%
Percent of State Total	28.4%	30.2%	31.2%	31.0%	33.8%	28.2%
Total State Legal Services	**$20,253,769**	**$22,378,413**	**$23,988,431**	**$24,532,997**	**$23,740,102**	**$26,848,113**

Six divisions account for 97.1 percent of the legal services. The following table outlines the number of hours used by these divisions since FY 2006-07.

Number of Legal Services Used by Division					
	FY 2006-07	**FY 2007-08**	**FY 2008-09**	**FY 2009-10**	**Total**
Registrations	41,160	41,169	44,986	46,632	**173,947**
Public Utilities Commission	16,651	17,160	15,713	16,457	**65,981**
Real Estate	6,857	10,504	12,227	12,028	**41,616**
Insurance	5,899	7,035	9,402	8,903	**31,239**
Securities	6,853	5,138	6,483	6,171	**24,645**
OCC	6,001	6,076	6,974	6,000	**25,051**
Other*	1,266	2,142	3,851	3,568	**10,827**
Total	**84,687**	**89,224**	**99,636**	**99,759**	**373,306**
Hourly Rate	**$67.77**	**$72.03**	**$75.10**	**$75.38**	

*Other includes: Executive Director's Office, Division of Banking, Civil Rights Division, and Division of Financial Services.

The Division of Registrations accounts for approximately 47.0 percent of the Department's total legal service hours due to the regulatory nature of the Division. The following table outlines the five boards that utilize the largest number of legal service hours.

Number of Legal Services Used by Division of Registrations Boards					
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	Total
Board of Medical Examiners	11,308	8,920	9,457	11,393	**41,078**
Nursing Board	10,772	10,055	8,465	9,005	**38,297**
Dental Board	3,400	4,956	7,031	6,752	**22,139**
Mental Health Boards	2,329	2,916	4,940	4,517	**14,702**
Accountancy Board	2,470	2,028	2,773	1,919	**9,190**
All Other Boards	10,881	12,294	12,320	13,046	**48,541**
Total	**41,160**	**41,169**	**44,986**	**46,632**	**173,947**

Number of Licenses in the Divisions of Insurance, Real Estate, Registrations, and Securities

The Department is responsible for consumer protection and licenses professionals in various industries as a way of accomplishing this mission. The Divisions of Insurance, Real Estate, Registrations and Securities issue the majority of individual, non-business licenses. The budgets in each of these divisions is driven primarily by the number of individuals requiring licensure. The following table outlines the number of licenses regulated by these divisions.

Number of Licenses Regulated by the Divisions of Insurance, Real Estate, Registrations and Securities					
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
Division of Insurance					
New Licenses	30,272	29,322	29,511	29,070	29,500
Active Licenses	110,911	109,705	115,229	118,783	123,204
Division of Real Estate					
Broker & Salesperson	13,432	14,321	18,292	11,820	12,000
Mortgage Loan Originators	n/a	n/a	n/a	8,729	4,690
Appraisers	5,474	4,884	4,447	4,006	3,597
Division of Registrations					
New Licenses	27,839	28,035	30,890	38,900	33,194
Active Licenses	282,521	295,281	292,584	315,147	324,271
Division of Securities					
Sales Representative License Renewals	125,680	134,053	143,772	145,347	143,800
Investment Advisor License Renewals	6,580	7,468	8,458	8,913	8,500

Each of these divisions are entirely cash funded and directly impacted by a significant change in the number of licenses. When the number of licensees changes, the department must adjust fees (either up or down) to cover their expenses. The Division of Real Estate has seen a significant fee increase due to the significant decrease in the number of licensees, which is outlined in the following table.

Change in the Number of Certain Licenses Regulated by DORA				
	FY 2005-06	FY 2009-10	Change	Percent Change
Division of Insurance				
New Licenses	30,272	29,500	(772)	(2.6)%
Active Licenses	110,911	123,204	12,293	11.1%
Real Estate				
Broker & Salesperson	13,432	12,000	(1,432)	(10.7)%
Mortgage Loan Originators*	8,729	4,690	(4,039)	(46.3)%
Appraisers	5,474	3,597	(1,877)	(34.3)%
Registrations				
New Licenses	27,839	33,194	5,355	19.2%
Active Licenses	282,521	324,271	41,750	14.8%
Securities				
Sales Representative License Renewals	125,680	143,800	18,120	14.4%
Investment Advisor License Renewals	6,580	8,500	1,920	29.2%

<u>Number of Examinations by the Divisions of Banking and Securities</u>

The deterioration of the financial sector has increased the workload of the examination sections of the Divisions of Banking and Securities. Examination workload has increased because institutions are not as financially healthy and require more oversight. The following table outlines the growth in the number of examinations conducted by these three divisions since FY 2006-07.

Number of Examinations Conducted by the Divisions of Banking, Financial Services and Securities						
	FY 2006-07 Actual	**FY 2007-08 Actual**	**FY 2008-09 Actual**	**FY 2009-10 Actual**	**FY 2010-11 Estimated**	**Percent Change**
Banking Examinations	161	196	164	154	223	38.5%
Securities Examination	40	46	50	50	120	200.0%

Legislation

The General Assembly has passed a significant number of bills over the last five sessions that primarily increased the Department's regulatory responsibilities. The 2007 Session was the peak year in terms of dollars appropriated through non-budget bills, and the 2008 Session was the peak year for increasing the number of Department FTE. The following table shows the impact non-budget bills on the Department's budget.

Impact of Legislation on the Department's Budget						
		Dollars Appropriated				
Session	No. of Bills	GF	CF	RF/CFE	Total	Authorized FTE
2006	11	$0	$1,088,461	$194,600	$1,283,061	7.2
2007	22	42,290	2,670,098	66,962	2,779,350	15.3
2008	19	149,205	2,233,416	0	2,382,621	17.3
2009	10	0	947,305	0	947,305	7.5
2010	13	0	507,245	593,333	1,100,578	6.4
Total	**75**	**$191,495**	**$7,446,525**	**$854,895**	**$8,492,915**	**53.7**

The impact of these bills by division is outlined in the following table. The number of bills impacting the Division of Registrations is more than twice the number impacting any other division. These bills are primarily adding regulatory programs for professionals, including massage therapists and athletic trainers.

Divisions Impacted by Bills by Legislative Session						
	2006	2007	2008	2009	2010	Total
Insurance	3	5	6	0	0	**14**
Public Utilities Commission	2	6	1	1	2	**12**
Real Estate	1	4	1	1	2	**9**
Registrations	3	5	7	7	7	**29**
Other*	2	2	4	1	2	**11**
Total	**11**	**22**	**19**	**10**	**13**	**75**

*Other includes: Executive Director's Office, Division of Banking, and Civil Rights Division

DECISION ITEM PRIORITY LIST

Decision Item	GF	CF	RF	FF	Total	FTE
1	0	364,276	0	0	364,276	3.0
Increase Resources for Division of Banking **Division of Banking.** The Department is requesting $364,276 cash funds from the Division of Banking Cash Fund and 3.0 FTE to perform an increased number of banking examinations due to the deterioration of bank ratings. *Statutory authority: Section 11-102-301, C.R.S.*						
2	0	212,155	0	0	212,155	3.0
Increase Funding for the Securities Field Examiners **Division of Securities.** The Department is requesting an increase of $212,155 cash funds from the Division of Securities cash fund and 3.0 FTE to address an increase in the number of investment advisory firms examinations required recent federal legislation and to enable the Division to complete minimum examination cycles. *Statutory authority: 11-59-104, C.R.S.*						
NP-1	46	2,008	76	3	2,133	0.0
Printing of Statewide Warrants and Mainframe Documents **Various Divisions.** The Department is requesting an increase to the operating expenses line item for increases in printing costs of warrants and other mainframe documents incurred by the Department of Personnel and Administration (DPA). This decision item will be addressed during the DPA briefing. *Statutory authority: Sections 24-30-1101 and 24-30-1102 (4), C.R.S.*						
NP - 2	(19,617)	0	(7,039)	0	(26,656)	0.0
2.0% Across the Board Personal Services Reduction **Various Divisions.** The Department requests a 2.0 percent General Fund reduction to personal services line items funded with General Fund. *Statutory authority: Section 24-75-201.1 (1) (a) (II.5), C.R.S.*						
NP - 3	0	(53,858)	0	0	(53,858)	0.0
Annual Fleet Vehicle Replacement **Executive Director's Office.** The Department is requesting a reduction to the vehicle lease payments line item for changes in statewide vehicle costs. This decision item will be addressed during the Department of Personnel and Administration briefing. *Statutory authority: Section 24-30-1104 (2), C.R.S.*						
NP-4	0	(4,261)	0	0	(4,261)	0.0
Pro-Rated Benefits **Executive Director's Office.** The Department request a reduction of $4,261 cash funds to pro-rate benefits for employees who work less than half time. This decision item will be addressed during the Department of Personnel and Administration briefing. *Statutory authority: Section 24-50-104 (1), C.R.S.*						

Decision Item	GF	CF	RF	FF	Total	FTE
NP-5	(24,058)	(725,567)	(86,308)	(4,791)	(840,724)	0.0
Statewide PERA Adjustment **Various Divisions.** The Department requests a continuation of the state's Public Employees Retirement Association (PERA) contribution reduction of 2.5 percent in FY 2011-12. This decision item will be addressed during the Department of Personnel and Administration briefing. *Statutory authority: Section 24-75-401 (1.7) (f) (I), C.R.S.*						
Total	**(43,629)**	**(205,247)**	**(93,271)**	**(4,788)**	**(346,935)**	**6.0**

OVERVIEW OF NUMBERS PAGES

The following table summarizes the total change, in dollars and as a percentage, between the Department's FY 2010-11 appropriation and the FY 2011-12 request.

Total Requested Change, FY 2010-11 to FY 2011-12 (millions of dollars)

Category	GF	CF	RF	FF	Total	FTE
FY 2010-11 Appropriation	1.5	68.2	6.8	1.2	$77.7	578.4
FY 2011-12 Request	1.5	69.7	6.4	1.2	78.8	586.9
Increase / (Decrease)	$0.0	$1.5	($0.4)	$0.0	$1.1	8.5
Percentage Change	0.0%	2.2%	(5.9)%	0.0%	1.4%	1.5%

The following table highlights the individual changes contained in the Department's FY 2011-12 budget request, as compared with the FY 2010-11 appropriation. For additional detail, see the numbers pages in Appendix A.

Requested Changes, FY 2010-11 to FY 2011-12

Category	GF	CF	RF	FF	Total	FTE
Common policy adjustments	23,730	978,813	14,035	(49,563)	967,015	0.0
DI #1 - Division of Banking Resources	0	364,276	0	0	364,276	3.0
DI #2 - Division of Securities Resources	0	212,155	0	0	212,155	3.0
Annualize H.B. 10-124 - Skolnick Medical Transparency Act	0	173,555	0	0	173,555	4.0
Annualize S.B. 10-109 - Medical Marijuana Regulation	0	0	(471,567)	0	(471,567)	(0.7)
Annualize remaining 2010 Session bills*	0	(173,591)	0	0	(173,591)	(0.8)
NP #2 - Personal services General Fund reduction	(19,617)	0	(7,039)	0	(26,656)	0.0
Total Change	**$4,113**	**$1,555,208**	**($464,571)**	**($49,563)**	**$1,045,187**	**8.5**

* Annualized 2010 Session bills are: H.B. 10-1001, H.B. 10-1114, H.B. 10-1128, H.B. 10-1141, H.B. 10-1148, H.B. 10-1197, H.B. 10-1224, H.B. 10-1260, H.B. 10-1278, H.B. 10-1365, H.B, H.B. 10-1415.

BRIEFING ISSUE

ISSUE: Significant Actions Taken from FY 2007-08 to FY 2010-11 to Balance the Budget

Total appropriations to the Department of Regulatory Agencies have increased since FY 2007-08 due to the number of non-budget related bills passed by the General Assembly and increased funding for additional division staff. Since the most recent economic downturn started in 2008, the General Assembly has taken several actions to mitigate the increase in General Fund expenditures in this department. As a result, the General Fund appropriation to the Department of Regulatory Agencies increased by $94,000 (6.6 percent) from FY 2007-08 to FY 2010-11.

SUMMARY:

- ❏ Thirty-nine bills have been passed by the General Assembly since the 2008 Session that have increased the Department's appropriation by a total of $4.4 million ($0.1 million General Fund, $3.7 million cash funds, and $0.6 million reappropriated funds).

- ❏ The General Assembly has increased the Department's cash fund appropriation by a total of $1.1 million since FY 2008-09 for additional staff in four divisions.

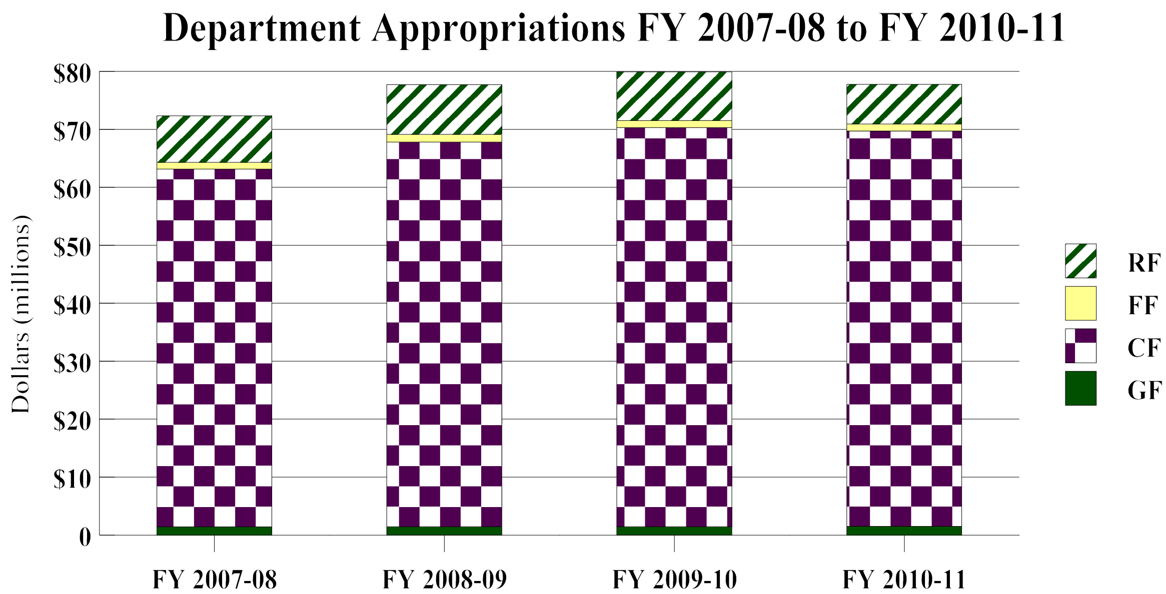
- ❏ The General Assembly reduced the General Fund appropriation to the Civil Rights Division by a total of $144,242 General Fund since FY 2008-09.

- ❏ The General Assembly approved the transfer of $15.0 million from the High Cost Support Mechanism to the General Fund in FY 2009-10.

DISCUSSION:

From FY 2007-08 to FY 2010-11, total appropriations to the Department of Regulatory Agencies increased by 7.5 percent ($5.4 million). Most of this increase was provided through state funds including an increase of $93,604 General Fund and an increase of $6.5 million cash funds. The increase in cash funds was driven by an increase of $1.1 million cash funds for additional division staff and 39 non-budget bills that have appropriated $4.4 million ($0.1 million General Fund, $3.7 million cash funds, and $0.6 million reappropriated funds) to the Department since the 2008 Session.

Appropriations to the Department of Regulatory Agencies for FY 2007-08 through FY 2010-11 are illustrated in the bar chart and detailed in the table below.



Department of Regulatory Agencies Appropriations FY 2007-08 to FY 2010-11					
	Total Funds	General Fund	Cash Funds	Federal Funds	Reappropriated Funds
FY 2007-08 /a	$72,348,057	$1,416,831	$61,718,337	$1,154,822	$8,058,067
FY 2008-09	77,722,749	1,465,862	66,343,403	1,318,334	8,595,150
FY 2009-10	79,893,774	1,457,251	68,839,045	1,214,685	8,382,793
FY 2010-11	77,770,070	1,510,435	68,203,204	1,231,398	6,825,033
Increase/(Decrease) /b	$5,422,013	$93,604	$6,484,867	$76,576	($1,233,034)
Percent Change /b	7.5%	6.6%	10.5%	6.6%	(15.3)%

a/ FY 2007-08 Appropriations have been adjusted to reflect the same "cash funds" and "reappropriated funds" format implemented in FY 2008-09. Source: Page 467 of the FY 2008-09 Appropriations Report.
b/ Increase/(Decrease) and Percent Change compare FY 2007-08 and FY 2010-11.

As illustrated in the bar chart above, appropriations to the Department peaked in FY 2009-10 primarily due to the General Assembly's approval of increased funding for staff due to changes in the market conditions (an increase of $992,958 cash funds from the FY 2008-09 appropriation) and the second year impact of employer benefit contributions totally approximaelty $1.0 million cash funds.

Beginning in January of 2009 and continuing through the 2010 Session, the General Assembly has taken a number of actions that have increased the cash fund appropriation and mitigated the increase in General Fund appropriations to this department. These actions are discussed in more detail below.

Major Budget Balancing Actions from FY 2007-08 to FY 2010-11

Bills Passed by the General Assembly

The Department has seen a significant number of non-budget related bills passed by the General Assembly since the 2008 Session. The majority of these bills increased the Department's regulatory responsibilities, including the creation of the massage therapist and athlete agent registration programs. The following table outlines the impact of non-budget related bills on the Department's appropriation since FY 2008-09.

Impact of Legislation on the Department's Budget						
		Dollars Appropriated				
Session	No. of Bills	GF	CF	RF/CFE	Total	FTE
2008	19	$149,205	$2,233,416	$0	$2,382,621	17.3
2009	10	0	947,305	0	947,305	7.5
2010	10	0	507,245	593,333	1,100,578	6.4
Total	**39**	**$149,205**	**$3,687,966**	**$593,333**	**$4,430,504**	**31.2**

Increased Funding for Additional Division Staff

The General Assembly has approved funding increases for additional division staff to enable the divisions to meet their regulatory requirements. The Divisions of Banking and Securities have receieved the largest increases because of the required increase in examinations as the health of the financial sector deteriorates. Additional detail is provided in the following table about the funding increases approved by the General Assembly.

Department of Regulatory Agencies Funding Increases since FY 2008-09			
Fiscal Year	Division	Amount	Description of Increase
FY 2008-09	Registrations	$72,760	Funding for an additional staff person for the Medical Board.
FY 2009-10			
	Banking	593,262	Funded an additional six banking examiners
	Financial Services	199,874	Funded an additional two financial services examiners
	Registrations	58,340	Funded an additional FTE for the Office of Expedited Settlement
	Securities	141,482	Funded an additional two investment advisory firm examiners
FY 2009-10 Subtotal		992,958	
FY 2010-11	Securities	67,848	Funded an additional securities examiner.
Total - All Years		**$1,133,566**	

Civil Rights Division Reductions

Civil Rights Division Appropriations FY 2007-08 to FY 2010-11					
	Total Funds	General Fund	Cash Funds	Reappropriated Funds	Federal Funds
FY 2007-08 /a	$1,752,685	$973,145	$0	$311,532	$468,008
FY 2008-09	1,732,747	870,177	0	418,653	443,917
FY 2009-10	1,768,154	1,045,723	0	272,752	449,679
FY 2010-11	1,756,872	1,027,030	0	297,629	432,213
Increase/(Decrease) /b	$4,187	$53,885	$0	($13,903)	($35,795)
Percent Change /b	0.2%	5.5%	n/a	(4.5)%	(7.6)%

a/ FY 2007-08 Appropriations have been adjusted to reflect the same "cash funds" and "reappropriated funds" format implemented in FY 2008-09.

b/ Increase/(Decrease) and Percent Change compare FY 2007-08 and FY 2010-11.

The Civil Rights Division receives the bulk of the Department's General Fund appropriation, and is the only division where General Fund has been reduced. In FY 2008-09 and FY 2009-10 the Division's General Fund was reduced by $14,296 and $129,946 respectively. In both fiscal years the reduction was for personal services and related operating expenses. In FY 2010-11 the amount of General Fund appropriated to the Division had reached the point where a futher reduction would jepordized the federal funds the Division receives and was not reduced.

Actions Taken to Increase Available State Revenues

During the 2009 Session the General Assembly transferred $15.0 million to the General Fund from the High Cost Support Mechanism for FY 2009-10.

BRIEFING ISSUE

ISSUE: High Cost Support Mechanism

The High Cost Support Mechanism is funded by a surcharge on customers intrastate communication services and provides a subsidy to telephone service providers who service high cost areas of the state. The Governor has requested a transfer of $20.0 million from the High Cost Support Mechanism to help backfill the project FY 2011-12 General Fund shortfall. The fluid nature of the Mechanism and the current balance of $4.0 million indicates that these funds are not available for transfer to the General Fund.

SUMMARY:

❑ The Public Utilities Commission is the Administator of the High Cost Support Mechanism which provides a subsidy to telephone service providers who provide telephone access to high cost areas of the state.

❑ The High Cost Support Mechanism is funded by a monthly fee on intrastate services purchased by consumers. The fee is a percentage set by the Public Utilities Commission on a quarterly basis and is currently set at 2.2 percent.

❑ The High Cost Support Mechanism is a fluid fund because contributions are deposited monthly and distrubutions go out quarterly. Due to this fluid nature and the $15.0 million transfer to the General Fund in FY 2009-10 there is insufficent funds to make the requested transfer.

DISCUSSION:

The Colorado High Cost Support Mechanism (Mechanism) was established by the General Assembly in 1992 as a mechanism to provide finanical support to telephone providers who service high cost areas of the state. The intent of the Mechanism is to ensure that affordable telephone service is available to consumers in high cost areas.

<u>Legislative History of the High Cost Support Mechanism</u>

The Mechanism was created by S.B. 92-016 (Wattenberg/Moellenberg) as the Colorado High Cost Fund (CHCF). The CHCF was charged with providing financial assistance to certain small local exchange carriers to help make telephone service affordable. During the 1995 Session, the General Assembly passed H.B. 95-1335 (Foster/Norton) which made the following modifications to the CHCF:

- Modified the financial mechanism to ensure that all providers were reimbursed for the difference between the price of providing the service and rates paid by consumers.

- Established a revolving definition of basic service and required the Public Utilities Commission (PUC) to evaluate the definition at least once every three years to ensure that definition includes any new or additional features deemed appropriate by the PUC
- Opened local telephone exchanges to competition

The General Assembly made further modifications to the CHCF via S.B. 98-177 (Lacy/Grampsas) which did the following:

- Changed the name from the Colorad High Cost Fund to the Colorado High Cost Administrative Fund which resides in the state treasury and counted under TABOR;
- Created the Colorado High Cost Support Mechanism (Mechanism) outside of the state treasury and not counted under TABOR;
- Required the Mechanism not exceed a balance of $60.0 million;
- Required the PUC to submit an annual report to the General Assembly regarding the operations of the Mechanism.

House Bill 05-1203 (Riesberg/Veiga) definied the terms "distributed equitably" and "non-discriminatory and competitively neutral basis" in order to eliminate any inequitable treatment in the distribution of Mechanism funds and ensure that the Mechanism is implemented in a nondiscriminatory and competitively neutral basis.

Summary of the Legislative History of the Mechanism	
Bill No.	**Highlights of Legislation**
92-016	Created the High Cost Fund to ensure telephone services were available in high cost areas of the state.
95-1335	opened local telephone service to competition, required the PUC to evaluate the defintion of local exchange once every three years.
98-177	Renamed the High Cost Fund to the High Cost Support Mechanism, and moved the Mechanism outside of TABOR.
05-1203	Clarified definitions to ensure the fair distribution of Mechanism funds.

For additional details regarding the legislative history and subsequent docket history of the Mechanism see the 2010 Annual Report of the Colorado High Cost Support Mechanism.

<u>Role of the PUC</u>

As the administer of the Mechanism, the PUC is responsible for:

- The billing, collection and disbursement functions;
- Collecting information on the contributing entitites and end-user intrastate telecommunications revenues;
- Projecting demand and setting the surcharge;
- Taking enforcement actions via complaint dockets agaisnt delinquent service providers; and,
- Auditing data submited by providers.

Since the Mechanism was designated an enterprise fund in 1998, the state treasurer does not manage the Mechanism funds. From 1998 to 2002 Qwest was the designated as the custodial receiver of funds. On August 6, 2002 the PUC entered into a memorandum of understanding with CenturyTel, Inc. to become the custodial receiver of Mechanism funds and under direction from the PUC is responsible for distribution funds each quarter. An escrow account was established at the Regionas Morgan Keegan Trust (Regions). Regions receives $275,000 per year to manage the account, and these funds are paid from interest earned on the account. As part of the responsibilities of managing the account, Regions provides the following information to the PUC in a monthly report:

- Contribution, date of receipt and amount receieved;
- Disbursement and transfers;
- Current balance.

<u>How the Mechanism Works</u>

The following points provide a basic view of how funds flow into the Mechanism and are distributed out to providers:

- The customer pays the surcharge on applicable services each month via their phone bill to the telephone company;
- The telephone company submits all revenue from the surcharge each month to Regions;
- The PUC determines which providers received funds and how much to distribute to these provides and informs Regions of this information;
- Regions distributes the amounts approved by the PUC to telephone companies each quarter.
- As needed the PUC adjusts the surcharge so that Mechanism contributions match distributions.

<u>Contributions</u>

The HCSM is funded by a surcharge (a percentage) on all applicable intrastate services. The following table outlines some of the services subject to the surcharge and which services are not subject to the surcharge. The following is not an all-inclusive list of services subject to and exempted from the surcharge.

Services Subject and Services Not Subject to the HCSM Surcharge	
Services Subject to HCSM Surcharge*	**Services Not Subject to HCSM Surcharge***
Local Exchange Services	
One-timer service charges, satellite services, construction charges, access lines	Customer equipment - telephones; interestate charges, federal, state, county and local taxes
Listing Services	
Directory listings and directory assistance	Directory advertising
Premium Services - voice conferencing, Caller ID, 3-way calling, call forwarding, call waiting, voice conferencing, video teleconferncing	
Long Distance/Toll Services - intrastate flat rate, toll free service, 900 service	

Services Subject and Services Not Subject to the HCSM Surcharge	
Special Access Services & Data Services	
ATM and Ethernet services with less than 10% interstate use	ATM, Ethernet, DSL, Internet Access (Broadband or Dial-Up, IP-enabled service (VoIP, Video centent, email)
Wireless Services	
Roaming charges, reconnect charges, termination charges	Wireless handsets, accessories - batteries, chargers, etc. Internet access, text messaging, video messaging

*These are not all inclusive lists. Source: Department of Regulatory Agencies, Public Utilities Commission.

The surcharge is set by the PUC each year, and adjusted on a quarterly basis as needed. The history of the surcharge since 2006 is outlined in the following table.

Mechanism Surcharge Level CY 2006-CY 2010						
	2006	**2007**	**2008**	**2009**	**2010***	**2011***
1st. Quarter	2.9%	1.6%	2.7%	2.2%	2.2%	2.2%
2nd. Quarter	2.9%	2.7%	2.7%	2.2%	2.2%	2.9%
3rd Quarter	2.9%	2.7%	2.2%	2.2%	2.2%	2.9%
4th Quarter	1.6%	2.7%	2.2%	2.2%	2.2%	2.9%

*Excluding the the 4th Quarter of 2010 and 2011 the surcharge level is the actual level.
Source: 2010 Annual Report of the Colorado High Cost Support Mechanism, page 28.

The following table provides the amount of revenue generate by the surcharge since 2006.

Contributions to the Mechanism since CY 2006					
	2006 Actual	**2007 Actual**	**2008 Actual**	**2009 Actual**	**2010 Project**
1st. Quarter	$15,633,690	$5,135,111	$17,651,067	$14,131,269	$12,656,753
2nd. Quarter	19,131,912	12,418,529	17,662,447	13,892,486	12,302,656
3rd Quarter	18,905,820	15,937,966	16,883,127	13,193,954	12,302,656
4th Quarter	7,162,563	17,231,201	14,881,831	12,839,486	12,302,656
CY Total	$60,833,985	$50,722,807	$67,078,472	$54,057,195	$49,564,721

Source: 2010 Annual Report of the Colorado High Cost Support Mechanism, page 28.

Distributions

Funds are distributed from the Mechanism on a quarterly basis to qualified companies. The following table provides the history of the total disbursements and administraitve costs of the PUC. Note that the PUC administrative costs are paid by the High Cost Administrative Fund.

HCSM Disbursements and Administrative Expenditures since CY 2006					
	2006 Actual	**2007 Actual**	**2008 Actual**	**2009 Actual**	**2010 Project**
Disbursements	$60,773,727	$60,021,134	$59,771,795	$57,404,347	$57,244,259
PUC Costs	151,800	156,258	101,248	114,809	114,489
Total Costs	**$60,925,527**	**$60,177,392**	**$59,873,043**	**$57,519,156**	**$57,358,748**

Source: Annual Report of the Colorado High Cost Support Mechanism, pg 28.

The following table provides information over the past five years of the number of companies that have received Mechanism funds and the amount each year. Qwest has received an average of 94.6 percent of the funds from the Mechanism, primarily because Qwest serves a majority of the mountain areas which are primarily high cost areas.

Summary of HCSM Distributions by Provider						
	2006 Actual	**2007 Actual**	**2008 Actual**	**2009 Actual**	**2010 Est.**	**Total**
Agate Mutual	$1,305	$1,305	$14,361	$16,941	$16,941	**$50,853**
Delta County	93,447	165,721	165,721	165,721	165,721	**756,331**
Nucla-Naturita	165,483	0	221,852	242,020	242,020	**871,375**
Nunn	0	36,588	22,482	58,540	58,540	**176,150**
Peetz Coop.	9,562	5,464	47,485	26,441	26,441	**115,393**
Phillips County	204	168	168	30,847	30,847	**62,234**
Pine Drive	465,019	450,075	450,075	450,075	716,887	**2,532,131**
Roggen	5,587	4,648	35,345	51,614	53,536	**150,730**
Willard	0	0	0	0	11,366	**11,366**
Northeast Cellular	2,085,706	2,115,605	2,026,785	2,409,718	2,582,693	**11,220,507**
Qwest	57,947,414	57,241,560	56,787,689	53,952,430	53,339,267	**279,268,360**
Total	**$60,773,727**	**$60,021,134**	**$59,771,963**	**$57,404,347**	**$57,244,259**	**$295,215,430**
Qwest as a Percent of the Total	**95.3%**	**95.4%**	**95.0%**	**94.0%**	**93.2%**	**94.6%**

Impact of 2009 Transfer

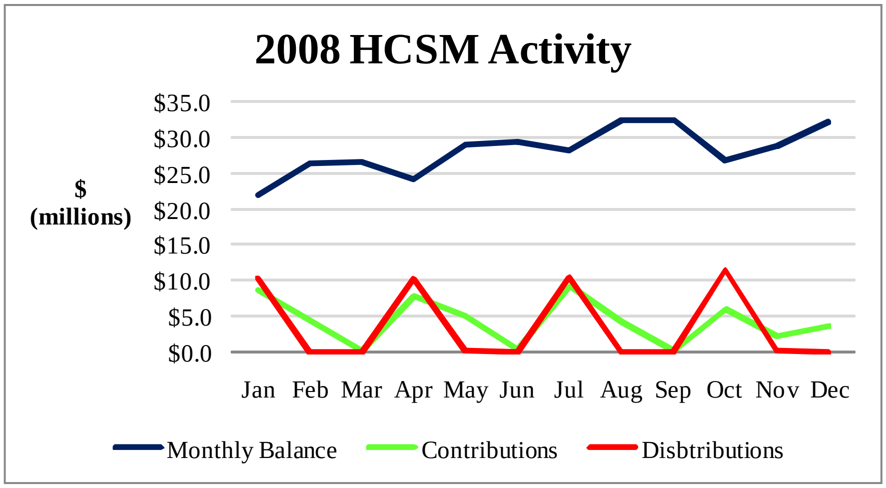
During the 2009 Session the General Assembly passed S.B. 09-272 which transferred $15.0 million out of the HCSM to the General Fund. As illustrated in the surcharge chart on page 19, the surcharge did not increase because of this transfer, but if the transfer had not occurred the surcharge would have decreased.

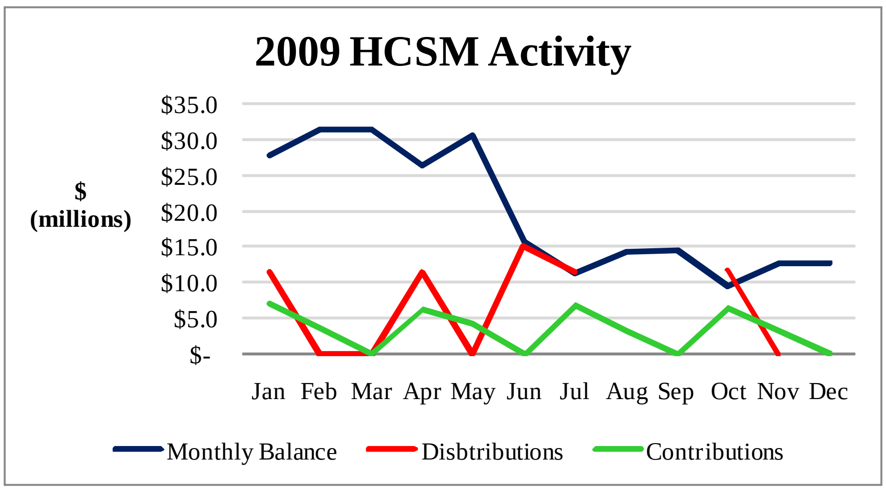
2010 Request

The Governor has requested as part of balancing the FY 2011-12 the transfer $20.0 million from the Mechanism to the General Fund. Staff is concerned that there is not sufficient fund balance in the Mechanism to make this transfer possible because the General Assembly has already transferred the Mechanism's reserve. The fund has a fluid balance due to the nature of contributions and disbursements, and because service providers can apply for Mechanism dollars at any point during the year. The three graphs on the next page illustrate how much the fund balance fluctuates on a monthly basis, as well as the impact of the $15.0 million transfer in FY 2009-10.

If the General Assembly transfers the funds from the Mechanism, the PUC will have to increase the surcharge in order to maintain a balance adequate to support all of the Mechanisms obligations. The current state of the Mechanism causes staff to question, if the General Assembly transfers dollars from the Mechanism is the surcharge really being used to pay for the cost of providing phone service in rural areas, or does the surcharge become a tax because the money is not used for its intended purpose.

During last session an amendment was added to H.B. 10-1388 which would have transferred funds from the Mechanism to the General Fund. Staff noted that the transfer would have caused the surcharge to increase. This request by the Governor's Office is the same action, except on a larger scale.


2008 HCSM Activity
$35.0
$30.0
$25.0
$20.0
$15.0
$10.0
$5.0
$0.0
$ (millions)
Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec
Monthly Balance
Contributions
Disbtributions


2009 HCSM Activity
$35.0
$30.0
$25.0
$20.0
$15.0
$10.0
$5.0
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$ (millions)
Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec
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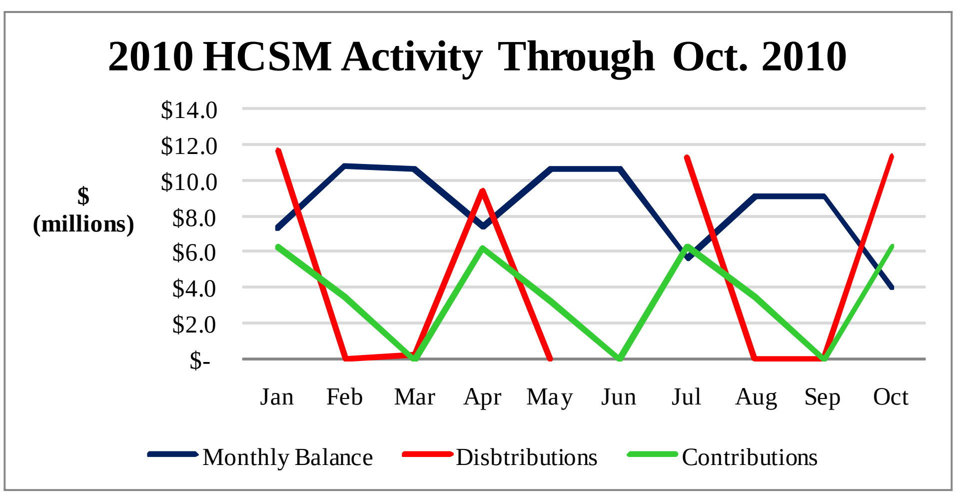
2010 HCSM Activity Through Oct. 2010
$14.0
$12.0
$10.0
$8.0
$6.0
$4.0
$2.0
$-
$ (millions)
Jan Feb Mar Apr May Jun Jul Aug Sep Oct
Monthly Balance
Disbtributions
Contributions

BRIEFING ISSUE

ISSUE: Proposed Changes to Colorado's Insurance Premium Tax

Current statute allows an insurance company with offices in Colorado to qualify as a home office, if the company provides proof to the Division of Insurance that the offices in Colorado perform two-thirds of the functions listed in statute. Home offices qualify for a 1.0 percent insurance premium tax rate credit, and companies not classified as a home office pay a tax rate of 2.0 percent. If changes are made to statute temporary eliminating the insurance premium tax credit, an estimated $55.2 million additional revenue can be generated for the General Fund.

SUMMARY:

- ❑ Currently statute allows an insurance company with an office(s) in Colorado to qualify that office(s) as a home office, if the company provides proof to the Division of Insurance that the offices perform two-thirds of the functions listed in Sections 10-3-209 (1) (b) (II), or 10-3-209 (1) (b) (III), C.R.S.

- ❑ The insurance premium tax rate for a home office is 1.0 percent on written premiums, and 2.0 percent for companies and offices that do not qualifying as a home office.

- ❑ An estimated $55.2 million can be generated for the General Fund if the insurance premium tax credit is temporarily suspend.

RECOMMENDATION: Staff recommends the Committee sponsor legislation temporary eliminating the insurance premium tax credit to generate additional General Fund revenue. Based on staff's understanding the transfer of funds from the High Cost Support Mechanism are insufficient and this option would provide the approximately $20 million need to balance the FY 2011-12 budget based on the Governor's November 1 budget request.

DISCUSSION:

<u>History of Insurance Premium Tax</u>

Senate Bill 13-287 established the standard insurance premium tax (IPT) at 2.0 percent for all companies. Companies that invested at least 50.0 percent of their assets in state or local warrants or bonds only had to pay a 1.0 percent IPT. During the 1959 Session, the General Assembly passed S.B. 59-354, which increased the standard IPT to 2.25 percent, and lowered the require amount of invested assets to 30.0 percent to qualify for the 1.0 percent IPT. What is now Section 10-3-209, C.R.S. was amended during the 1969 session by H.B. 69-1381, which removed the language related to the investments of assets as a qualification for the 1.0 percent IPT, and added the subsections used by the Division of Insurance to establish requirements for a company to be classified as a home office

(HO). Qualifying as a HO enables the company to qualify for a 1.0 percent credit on their IPT and pay a 1.0 percent IPT rate. Senate Bill 92-090 added Section 10-3-209 (4), C.R.S. enabling the Division of Insurance Cash Fund to receive up to 5.0 percent of the IPT. The last change to the IPT statue was made in 1996, by H.B. 96-1261, which established the following IPT schedule.

House Bill 96-1261 IPT Changes	
Year Premium Collected	**Standard IPT**
IPT set by S.B. 59-354 effective through 1995	2.25%
1996	2.20%
1997	2.15%
1998	2.10%
1999	2.05%
2000 and beyond	2.00%

Transfer to Division of Insurance Cash Fund

Senate Bill 92-090 added the provision in statute allowing up to 5.0 percent of IPT revenue to be diverted to the Division of Insurance (DOI) cash fund, in order to backfill the difference between revenue collected from license fees and the Division's annual appropriation. The following table outlines IPT revenue over the last five years, and the amount transferred to the DOI cash fund.

Insurance Premium Tax Revenue			
Fiscal Year	**Premium Tax Net Revenue**	**Transfer to DOI Cash Fund**	**Net Revenue to GF**
FY 2005-06	177,783,341	3,262,222	174,521,119
FY 2006-07	180,581,565	1,158,326	179,423,239
FY 2007-08	190,749,986	2,929,442	187,820,544
FY 2008-09	197,216,803	4,804,063	192,412,740
FY 2009-10	189,599,584	2,677,785	186,921,799
5 Year Total	**$935,931,279**	**$14,831,838**	**$921,099,441**
Annual Average	**$187,186,256**	**$2,966,368**	**$184,219,888**

The amount transferred to the DOI cash fund in FY 2008-09 was approximately $1.9 million greater then the expected transfer of $2.5 million, due primarily to a decline in registrations ($575,000), and increase in legal service costs ($200,000).

Types of Insurance

There are various types of insurance in Colorado, including workers' compensation, home, auto, and health. In this issue brief, there is no distinction between these types of insurance. The only type of insurance that is taxed at a different rate than the 2.0 IPT is surplus lines, which is taxed at 3.0 percent and not discussed in this issue. The Department of Labor and Employment, Division of

Workers' Compensation collects a surcharge on only workers' compensation insurance premiums, and these funds are used to pay for the Division of Workers' Compensation. This surcharge is used solely to pay for the Division of Workers' Compensation appropriation.

Other States Standard Insurance Premium Tax

Staff compared the standard IPT from all fifty states and the District of Columbia, and found that there are fifteen other states that have set the IPT at 2.0 percent, with nineteen states have a higher IPT. Louisiana was not a part of the calculations because of the way the state calculates the IPT owed by companies. The IPT national average was 2.03 percent, which is not significantly different than Colorado's IPT of 2.0 percent.

Insurance Premium Tax Rates Across the Nation	
	IPT Rate
5 Highest States IPT Average - Hawaii, Nevada, West Virginia, New Mexico, Mississippi	3.35%
5 Lowest States IPT Average - Illinois, Wyoming, Iowa, Nebraska, Oregon	0.85%
National Average - excluding Louisiana	2.03%
Colorado's IPT	2.00%

IPT rates from the Insurance Division of the National Conference of State Legislators

Alabama, Colorado, Hawaii, Nevada, Oklahoma, Pennsylvania, and South Dakota provide a tax credit for companies that qualify as a HO. Tax breaks range from a reduction of 0.25 percent in Alabama to 1.75 percent in Nevada.

How Companies and Offices Qualify as a HO

Companies can qualify as a home office if the company performs at least six of the following nine functions listed in Section 10-3-209 (1) (b) (II) (A), C.R.S. in Colorado. The nine functions are: 1)actuarial work, 2) provide medical administrative functions, 3) engage in legal administrative functions, 4) approve or rejection of applications for insurance, 5) issue policies, 6) provide information and services to policy holders, 7) engage in advertising and publications, 8) engage in public relations, 9) conduct hiring, testing, and training of sale and service forces.

If a company does not satisfy the six function requirement, the company can still qualify as a home office under Section 10-3-209 (1) (b) (III), C.R.S., which states that the Commissioner of Insurance can approve a company's application to be a HO, if the company maintains significant direct insurance operations in Colorado. To further clarify what significant direct insurance operations are, Division Rule 2-1-2 Section 6, states that in order to prove the company is maintaining significant direct insurance operations, the company must satisfy two of the following three requirements: 1) maintain a workforce of 150 full time employees not including agents and their staff, 2) own or lease at least 30,000 square feet of space in Colorado, 3) expend, for salaries, administration, operating expenses, etc., not less than $5 million related to performance of foundational operations.

Revenue Generated from 1.0 and 2.0 percent Insurance Premium Tax

There were 1,520 insurance companies licensed by Division of Insurance in CY 2009. Of the 1,520 insurance companies/offices, approximately 94.0 percent (1,433 companies) did not qualify as a HO. These companies paid approximately 70.9 percent of the IPT revenue. Companies are licensed on a calendar year, and pay the IPT based on premiums written in the previous calendar year. For example, FY 2009-10 IPT revenue is collected after January 2010 for premiums written during CY 2009.

Home Office and Standard Company Insurance Premium Tax Revenue						
Fiscal Year	**Total IPT Revenue**	**Total Number Insurance Companies**	**HO**	**Revenue from HO Companies (1%)**	**Standard Companies**	**Revenue from Standard Companies (2%)**
FY 2004-05	$191,940,539	1,473	79	$48,889,286	1,394	$143,051,253
FY 2005-06	177,783,341	1,497	85	$44,590,165	1,412	$133,193,176
FY 2006-07	180,581,565	1,505	86	$42,903,911	1,419	$137,677,654
FY 2007-08	190,749,986	1,497	85	$50,615,930	1,412	$140,134,056
FY 2008-09	197,216,803	1,510	81	$51,485,773	1,429	$145,731,030
FY 2009-10	189,599,584	1,520	87	$55,170,322	1,433	$134,429,262
6 year average	**$187,978,636**	**1,500**	**84**	**$48,942,565**	**1,417**	**$139,036,072**

Policy Options

Option 1 - Temporary Eliminate the Tax Credit

Staff recommends the Committee sponsor legislation temporary eliminating the insurance premium tax credit in order to provide additional revenue for the General Fund. Temporary eliminating the tax credit will increased General Fund revenue by approximately $55.2 million for FY 2011-12. The following table outlines how staff calculated the estimated revenue increase.

Calculation of Estimate General Fund Increase if IPT Credit is Eliminated	
FY 2009-10 Revenue from home offices (1.0 percent rate)	$55,170,322
Estimated FY 2011-12 GF Increase from elimination of tax credit	**$55,170,322**

This Tax Policy Changes Does Not Require A Vote of the People

On November 12, 2009 the Office of Legislative Legal Services published a legal memorandum dictating the test to use to determine if a tax policy change required a vote of the people. Based on the answers to each of the questions, this tax policy change does not require a vote of the people. See Appendix D on page 66 for additional information on the memorandum.

Benefits of Temporary Eliminating the IPT Credit

Since FY 2008-09 Colorado has faced a significant General Fund shortfall, and in order to ensure a balanced budget, the General Assembly has cut appropriations to the Departments of Higher

Education, Corrections and others. This increased revenue, while not enough to fill the projected General Fund shortfall for FY 2011-12, does provide an estimated $55.2 million that can be used to offset other General Fund cuts.

Points to Consider if the IPT is Changed

Impact to Premium Holders

Currently there is not law that would prohibit the insurance company from adjusting their premiums to account for the increase in the IPT. Is the IPT is changed then carriers would have the option to either increase premiums or to change their business practices to absorb the cost of the increased IPT. The Committee does have the option to add language to the recommended bill stating that insurance companies are prohibited from increasing premiums to pay for the increased IPT.

Impact to Colorado's Ability to Attract Business

The argument could be made that if the IPT is increased, then businesses would either leave Colorado or opt to locate in a different state. It is important to note that the 2.0 percent IPT is almost identical to the national average of 2.03 percent. Therefore if the business were to have a choice between say, Colorado at 2.0 percent, Arizona at 2.0 percent, Utah at 2.25 percent, or Nevada at 3.5 percent, there is no advantage to not choosing Colorado because of the IPT.

Insurance Premium Tax Rates Across the Nation	
	IPT Rate
5 Highest States IPT Average - Hawaii, Nevada, West Virginia, New Mexico, Mississippi	3.35%
5 Lowest States IPT Average - Illinois, Wyoming, Iowa, Nebraska, Oregon	0.85%
National Average - excluding Louisiana	2.03%
Colorado's IPT	2.00%

IPT rates from the Insurance Division of the National Conference of State Legislators

BRIEFING ISSUE

ISSUE: Conservation Easement Holder Certification Fee

House Bill 08-1353 created two conservation easement programs, the conservation easement appraisal review program and the conservation easement holders certification program. Two funds were established by the bill to cover the expenses of these two programs, the conservation easement appraisal review fund and the conservation easement holder certification fund. The Conservation Easement Holder Certification Fund has carried a negative balance since FY 2008-09 because of a low fee level and fewer applications by certification holder than initially anticipated.

SUMMARY:

❑ The Conservation Easement Holder Certification Fund has carried a negative balance since it was created in FY 2008-09 due to fewer applications for certification than initially anticipated and a fee level below the actual costs of the program.

❑ The Department has requested through the post-enactment review of H.B. 08-1353 that the two cash funds be combined to provide funding flexibility for the two programs.

❑ Combining the two funds does not address the underlying problem that the fee paid by conservation easement holders for certification is not adequate to cover the expenses of the program.

RECOMMENDATION: Staff recommends the Department address in their hearing how combining the two conservation easement cash funds would provide a more stable funding source without the appraisal fee being used to subsidize the certification holder program. Additionally, the Department should address how to fully fund the conservation easement holder certification program if the two cash funds are not combined.

DISCUSSION:

Conservation Easement Appraisal Review

The review of conservation easement appraisal is funded by a fee paid by an appraiser who submits a conservation easement appraisal for review by the Board of Real Estate Appraisers in the Division of Real Estate. House Bill 08-1353 (Madden/Isgar) capped the fee at $600 per review, but pursuant to H.B. 09-1014 (Judd/Isgar) the fee cap was removed. The appraisal fee is credited to the Conservation Easement Appraisal Review Fund (Review Fund). The following table shows the fee level since FY 2008-09.

Conservation Easement Appraisal Document Fee				
	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Estimated	FY 2011-12 Projected
Per document appraisal fee	$600	$520	$250	$250
Change from Previous Year		($80)	($270)	$0

The following table outlines the revenue and expenditures from the Review Fund. As indicated in the table, the fee level has generated sufficient revenue to cover the costs of the conservation easement appraisal review program.

Conservation Easement Appraisals Cash Fund				
	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Estimated	FY 2011-12 Projected
Beginning Balance	$0	$79,220	$122,761	$72,187
Revenue	157,200	144,200	50,000	50,000
Expenditures	(77,980)	(100,659)	(100,574)	(100,134)
Ending Balance	**$79,220**	**$122,761**	**$72,187**	**$22,053**

<u>Conservation Easement Holders Certification Program</u>

Conservation easement holders, who are either local governments or land trusts, are required to be certified by the Division of Real Estate once every three years. The original fiscal note for H.B. 08-1353 estimated there were 95 holders who would seek certification with the Division and the fee was capped at $5,810 per application. Only 46 holders have applied to be certified by the program. The low number of certification applications caused problems in the first year because there was insufficient revenue to cover the program's expenses. House Bill 09-1014 eliminated the fee cap to enable the program to set the fee at a level adequate to cover the programs expenditures. As illustrated in the following table, the fee level was not changed in FY 2009-10 when the General Assembly removed the fee cap.

Conservation Easement Holders Application Fee				
	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Estimated	FY 2011-12 Projected
Municipalities Application Fee	$4,200	$3,500	$4,667	$4,667
Change from Previous Year		($700)	$1,167	$0
Land Trusts Application Fee	$4,200	$4,200	$4,667	$4,667
Change from Previous Year		$0	$467	$0

Despite the fact the General Assembly removed the fee cap, the Division did not set the fee at a level adequate to cover the programs expenditures, as outlined in the following table.

Conservation Easement Holders Certification Cash Fund				
	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
Beginning Balance	$0	($9,302)	($63,122)	($671)
Revenue	100,800	93,000	210,000	149,552
Expenditures	(110,102)	(146,820)	(147,549)	(148,971)
Ending Balance	**($9,302)**	**($63,122)**	**($671)**	**($90)**

<u>Department Post-Enactment Review Request</u>

Pursuant to Section 2-2-1201, C.R.S., the Division of Real Estate conducted a post-enactment review of H.B. 08-1353, and has requested that the two cash funds be combined to provide a more stable funding source for the conservation easement programs. The Department states in the review:

> "There are two revenue sources established for the Division of Real Estate to implement the requirements of H.B. 08-1353. Currently these sources of revenue fo into two separate funds established by the bill... As such, greater flexibility in funding the program would be achieved if the two funds were combined into one fund in which all aspects of the Program can be accomplished. This would allow a more consistent and stable source of revenue should the state see a drop in the number of certified land trusts and local governments."

While the Department's request to combine cash funds may provide flexibility for funding the two conservation easement programs, it does not address the underlying problem of the fee level for certification holders. Even if the cash funds are combined, staff is concerned that the fee paid by appraisers would be used to subsidize and keep the certification fee artificially low. Based on the projected expenses for the certification program and the proposed fee, the Department is not setting the certification fee at a level to cover the expenses of the program, as outlined in the following table. For the purposes of the table, the following assumptions are made: there are 46 certification holders who are all renewing their application in FY 2011-12.

Fee Level Calculations to Cover Certification Holder Program Expenses					
	Fee	3 Year Revenue	Est. Annual Revenue	Est. Program Cost	Revenue Higher/(Lower) than Costs
Current fee level	$4,667	$214,682	$71,561	$148,971	($77,410)
Actual fee level needed to cover program expenditures	9,716	446,936	148,979	148,971	8
Difference	**$5,049**	**$232,254**	**$77,418**	**$0**	**$77,418**

Based on staff's calculations in the above table, the certification fee would need to be more than double to cover the expenses of the certification program. In the post-enactment review, the Department indicated that the current fee of $4,667 may act as an entry barrier for new organizations and increasing the fee could cause smaller organizations to withdraw from the program.

INFORMATIONAL BRIEFING ISSUE

ISSUE: Patient Protection and Affordable Care Act Update

The Patient Protection and Affordable Care Act contains numerous additions and changes to federal health care laws, some of which impact the Division of Insurance.

SUMMARY:

❏ The Division of Insurance received a $1.0 million grant for the federal FY 2010-11 to expand the Division's health insurance rate reviews.

❏ The Division is also working in an advisory role on the development of Colorado's health insurance exchange.

DISCUSSION:

On September 23, 2010 the following components of the Patient Protection and Affordable Care Act (PPACA) took effect:

- Interim limits on annual and lifetime essential health benefits until CY 2014;
- Prohibition on pre-existing condition limitations on children under age 19;
- Coverage of adult children to age 26; and,
- Prohibition on rescissions, except in the cases of fraud or intentional misrepresentation.

<u>Review of Health Insurance Premiums</u>

PPACA requires states to annually review of health insurance premium rates to protect consumers from excessive and/or unjust rates. The Division of Insurance (Division) currently conducts regular rate reviews, and requires any increase in rates must be approved by the Division prior to taking effect. The Division is expanding rate reviews in the following ways to comply with PPACA:

- Improving the quality of information used in rate reviews;
- Streamlining the amount of time needed to complete rate reviews;
- Enhanced consumer outreach and education; and,
- Increased reporting to the federal Department of Health and Human Services

The Division received a $1.0 million grant for the federal fiscal year to handle the increased workload required by PPACA the Division received a $1.0 million grant and anticipates hiring 5.0 FTE and contractual staff.

<u>Additional Division Involvement with PPACA Requirements</u>

The Division is working in an advisory role in planning for the state insurance exchange and will participate in conferences and training with the National Association of Insurance Commissioners to remain abreast of PPACA developments.

BRIEFING ISSUE

ISSUE: Low Income Telephone Assistance Program Audit

The Low Income Telephone Assistance Program provides a subsidy to eligible individuals to help pay the cost of their monthly telephone land line. This Program is in conjunction with the federal Lifeline Program, and a 2010 state audit found the participation rate in the Low Income Telephone Assistance Program was continually declining and questioned whether the state program was needed.

SUMMARY:

❏ The Low Income Telephone Assistance Program provides a state subsidy, in addition to a federal subsidy, to eligible low-income individuals to help offset the cost of their telephone land line. The current state subsidy of $6.50 per month is $3.50 more than required amount to for Colorado residents to also received the maximum federal subsidy.

❏ The Low Income Telephone Assistance Program is funded by a monthly fee on telephone lines. The Public Utilities Commission sets the monthly fee, which is currently $0.07 per month. The Department of Human Services is required to determine which individuals are eligible for the subsidy.

❏ From calendar year 2006 to calendar year 2009 participation in the program has decreased by 29.8 percent. The calendar year 2009 enrollment was approximately 5.0 percent of the total number of eligible individuals.

RECOMMENDATION: Staff recommends the Committee sponsor legislation to eliminate Low Income Telephone Assistance Program.

DISCUSSION:
The responsibility for the administration of Low Income Telephone Assistance Program (LITAP) lies with two departments: the Department of Human Services (DHS), and the Department of Regulatory Agencies, Public Utilities Commission (PUC). DHS is responsible for determining which individuals are eligible for LITAP and the PUC is responsible for setting the LITAP fee and collecting the revenue from telephone companies

<u>**Legislative History of LITAP**</u>
LITAP was created by the General Assembly in 1986 via H.B. 86-1217 (Paulson/Wattenberg) which did the following:
- Required certain providers of intrastate telecommunications services to provide low income telephone assistance via a discount on telephone bills to eligible individuals;

- Established eligibility requirements to receive the LITAP subsidy;
- Required the PUC to create rules, and impose a charge on business and residential accounts to fund LITAP;
- Limited the applicability of LITAP to providers with more than 500,00 customers.

An appropriation was made to the DHS in H.B. 86-1217. The PUC stated in the fiscal note for H.B. 86-1217 that they could perform the LITAP administration duties within existing appropriations.

LITAP was amended by the General Assembly in 1990 via S.B. 90-069 (Wattenberg/Ratterree) in the following ways:

- Limited the LITAP subsidy to a single line at the principle residence of the subscriber;
- Required the PUC Commissioner to monitor the effectiveness of the program;
- Created the low-income telephone assistance fund;
- Exempted state and local entities from the surcharge;
- Specified the program will end when federal low-income telephone assistance program ends.

The final change to LITAP came during the 2008 session when the General Assembly approved the sunset bill for the PUC. House Bill 08-1227 (Madden/Tapia) set the income eligibility requirement for LITAP at 185.0 percent of the federal poverty level, and required the individual receiving the LITAP subsidy be a citizen or legal resident of the United States and Colorado. The appropriation in H.B. 08-1227 was to the DHS only.

Funding of LITAP

LITAP is funded through a monthly fee (currently $0.07) assessed on each residential and business land line, excluding state and local government lines. Telephone carriers collect the fee and can use the revenue in three ways: 1) credit LITAP participant accounts if the carrier has any, 2) reimburse themselves for LITAP administrative costs, and 3) remit the excess revenue to the PUC. If a carrier does not have any LITAP customer accounts, the carrier is required to remit all revenue to the PUC.

The PUC sets the fee each fiscal year, and can adjust the fee on a quarterly basis if necessary. The following table shows what the fee has been since January 2000. Between April 2006 and May 2009 the fee was set at zero because LITAP was funded with excess funds from a $5.5 million settlement agreement paid by Qwest on an unrelated issue.

LITAP Fee since January 2000 to Present		
Start Month	**End Month**	**Fee**
January 2000	May 2001	$0.03
June 2001	May 2002	$0.04
June 2002	May 2003	$0.06
June 2003	Dec 2003	$0.08
January 2004	June 2004	$0.10
July 2004	June 2005	$0.12

LITAP Fee since January 2000 to Present		
Start Month	**End Month**	**Fee**
July 2005	March 2006	$0.07
April 2006	May 2009	$0.00
June 2009	Present	$0.07

LITAP Participants

Pursuant to Section 40-3.4-105 (1), C.R.S. an individual who satisfies the following criteria is eligible to received the LITAP subsidy:

- An individual who is a subscriber to basic local exchange service;
- Is a citizen/legal resident of the US and resident of Colorado; and,
- Has a monthly household gross at or below 185.0 percent of the federal poverty line.

According to the 2010 state performance audit of LITAP, there are approximately 414,000 households eligible for the LITAP subsidy during CY 2009, but only 21,000, or 5.0 percent are receiving the subsidy. Staff was told by the Department of Human Services that it is not possible to identify the number of eligible households for past years because the number is dependent on the number of participants in certain qualifying programs. The following table illustrates the continuing decline of LITAP participants.

Number of Households Receiving LITAP Subsidy Since CY 2005					
	CY 2005	**CY 2006**	**CY 2007**	**CY 2008**	**CY 2009**
Number Receiving Subsidy	29,900	28,300	27,400	26,000	21,000
Change from Previous Year	n/a	(5.4)%	(3.2)%	(5.1)%	(19.2)%

Audit Findings

The Office of the State Auditor (OSA) conducted a performance audit of LITAP from September 2009 to May 2010. The final audit findings were presented to the Audit Committee during the June 2010 meeting. The following table outlines the eight changed to LITAP recommended in the audit report.

Summary of the 2010 LITAP Audit Recommendations		
	Recommendation	**Department Impacted**
1	Establish an implement a process for routinely monitoring LITAP's effectiveness and make program improvements by (a) establishing program goals and performance measures and (b) developing mechanisms to collect sufficient and reliable data to monitor program effectiveness.	PUC -all DHS - part (b) only
2	Evaluate the LITAP statutory subsidy amount to determine whether it is still appropriate and necessary to provide adequate assistance to ensure access to basic local telephone service and report findings to the General Assembly for consideration.	PUC

Summary of the 2010 LITAP Audit Recommendations		
	Recommendation	Department Impacted
3	Improve LITAP outreach efforts by (a) developing a formal outreach plan, (b) working with the Department of Human Services and telephone carriers to define each entity's role with respect to outreach, and (c) monitoring the implementation of the outreach plan and assessing the effectiveness of outreach efforts.	PUC - all DHS - part (c) only
4	Ensure eligibility is determined in accordance with statute and limits participation to eligible individuals by (a) assessing LITAP eligibility criteria to determine if they are clearly defined, appropriate, and cost-effective and (b) once any statutory changes are made, modifying the eligibility process to ensure applicants' eligibility is assessed against statutory criteria.	DHS
5	Ensure an effective, efficient, and documented recertification process by (a) developing, implementing, and standardizing an eligibility recertification process in accordance with statute, (b) incorporating mechanisms into the recertification process to ensure it is timely, (c) verifying eligibility of the 2,000 questionable LITAP accounts identified during the audit, and (d) verifying Qwest has discontinued the LITAP subsidy for accounts not recertified.	DHS
6	Establish and implement sufficient controls to ensure telephone carriers accurately collect LITAP fees, distribute subsidies, and remit excess fee collections. Controls may include (a) comparing Department of Human Services' data on eligible LITAP participants against carrier quarterly reports and (b) using a risk-based or random approach to select a sample of carriers to review and require them to provide documentation to support their quarterly reports.	PUC
7	Improve management of the access line fee by (a) actively monitoring and evaluating the fee and (b) adjusting the fee in a timely manner.	PUC
8	Provide any necessary information to the Legislative Audit Committee and the General Assembly to assist with determining whether LITAP should continue or be eliminated. If the decision is to eliminate LITAP, seek statutory change. If the decision is to continue LITAP, structure an efficient and effective program.	PUC and DHS

Source: Pages 5 and 6 of the May 2010 Office of the State Auditor's Audit Report on the Low Income Telephone Assistance Program.

As of November 2010, the Audit Committee has approved a bill draft that alines how DHS determines who is eligible for LITAP with current department methods, and requires the LITAP participant to be the same person as the person whose name is on the phone bill. The audit raised the larger question about LITAP which is: Does the General Assembly want to appropriate additional funds to the PUC to continue to run and monitor LITAP or discontinue LITAP.

LITAP Policy Options

Option 1 - Elimination of LITAP

Staff recommends the Committee sponsor legislation to eliminate LITAP for three reasons:

1. Those currently receiving LITAP subsidy and federal subsidy, will continue to receive the federal subsidy of $8.25 per month.
2. A 5.0 percent participation rate is an indication that the program is not needed, and it is anticipated that the number of participants will continue to decline as more households move away from land lines and move to cell phones.
3. The month subsidy of $6.50 is more than twice the state subsidy amount of $3.00 required to pull down the maximum federal subsidy.

Eliminating LITAP does not mean those participating in LITAP will not receive a subsidy. Those that are deemed eligible by the federal Lifeline program will continue to receive a federal subsidy of $8.25 per month. Ten other states do not have a program similar to LITAP, and in these states, the federal Lifeline program works directly with the telephone carriers to determine those who are eligible. The following table outlines the changes in the amount of the monthly subsidy if LITAP is eliminated.

Current LITAP Subsidy and Subsidy Based on Staff's Recommendation			
	LITAP Subsidy	**Federal Subsidy**	**Total**
Current Total Subsidy	$6.5	$10.0	$17.0
Proposed Subsidy	$0.0	($1.8)	($8.3)
Difference	($6.5)	($2.3)	($8.8)

The low participation rate in LITAP may be an indication that LITAP is an unnecessary program in Colorado. Continuing the program would require additional dollars be appropriated to the PUC so the PUC can increase LITAP administration, driving up the monthly phone line fee. The amount required for the federal match of $10 per month is only $3.00 therefore it concerns staff that the subsidy being paid out is more than twice that. Eliminating the program will save consumers anywhere from $0.07 to $0.12 per month on their phone bill.

Option 2

If the Committee decides against eliminating LITAP, staff recommends the Committee sponsor legislation to make the following changes to LITAP:

1 Reduce the state subsidy amount from the current level of $6.50 to $3.00; and,

2 Appropriate money through the FY 2011-12 Long Bill to the Public Utilities Commission to be able to perform the duties recommended in the audit. Staff will work with the Department to determine the appropriate funding levels and make a recommendation during figure setting.

Staff believes that reducing the subsidy is important because the additional $3.50 does not bring down additional federal funds, and the net subsidy of $13.00/month ($3.00 from LITAP and $10.50

from federal Lifeline funds) is more than half of the entire cost of a phone line, which is approximately $16.00 per month. Based on the recommendations from the audit report, the PUC currently does not have the adequate staff and funding to administer the program as recommended by the auditor. Therefore staff is recommending that during figure setting the Committee approve funding for the PUC. Staff will work with the department to determine the appropriate amount of funding and staffing levels to fully implement the recommendations made in the audit report.

Option 3
The Committee could decide to leave the LITAP unchanged. Staff does not recommend this option because of the issues identified with LITAP.

INFORMATIONAL BRIEFING ISSUE

ISSUE: Eliminating the Reappropriated Funds in the Division of Registrations

The costs incurred by the Division of Registrations central office is reflected as a cash funds appropriation to the indirect cost line and reappropriated funds in the personal services and operating expenses line items. This double appropriation inflates the Division's budget and creates additional unnecessary administrative steps.

SUMMARY:

- ❏ The Division of Registrations central office provides central services to the division's thirty five separate boards. The central office is currently funded with divisional indirect cost recoveries.
- ❏ The division indirect cost recoveries are appropriated to the indirect cost line item and reappropriated to the personal services and operating expenses line items within the same division.
- ❏ Removing the divisional indirect costs will eliminate unnecessary administrative steps required to reappropriate the funds and enable the Long Bill to reflect the actual cost of the Division.

RECOMMENDATION: Staff recommends that the divisional indirects charged to the Division of Registrations be eliminated and the central costs incurred by the Division in providing services to all of the Boards be reflected as cash fund appropriation in the personal services and operating expenses line items in that Division.

DISCUSSION:

<u>Statewide and Departmental Indirect Costs</u>

Indirect costs are the overhead costs associated with the operation of general government functions and departmental administrative duties. Indirect costs paid by cash and federal funds are intended to offset overhead costs that otherwise would have been supported by the General Fund. The indirect cost recoveries from cash and federal funds are calculated for statewide and departmental overhead costs and shown on the indirect cost assessment line item in applicable divisions. Statewide indirect costs are those costs associated with services provided by the Department of Personnel and Administration, the Governor's Office, and the Treasury Department. Departmental indirects pay for the costs incurred by the Executive Director's Office for providing central services like accounting, budgeting and human resources.

Division of Registrations Indirect Costs

The Division of Registrations has a unique third indirect cost calculation, the divisional indirect cost, because of the makeup of the division. The Division is comprised of thirty-five sub-programs representing each of the different regulatory boards. The Division's central office provides overhead functions for all of the boards, and the costs incurred by the central office are paid by each board. Currently the Division's budget shows the costs incurred by the central office as a cash funds appropriation to the indirect cost line item, and as reappropriated funds in the personal services and operating expenses line item.

What makes the divisional indirects unnecessary is the fact that these funds are appropriated and spent within the same division inflating the divisions appropriation, and not adding an informational value to the Long Bill.

Conclusion

The following table outlines the impact of removing the divisional indirects from the Division of Registrations appropriation. Staff recommends the divisional indirects be appropriated as straight cash funds to the personal services and operating expenses line items. This will enable the Long Bill to clearly reflect the costs of the Division and eliminate the unnecessary reappropriation of cash funds.

Impact of Removing Divisional Indirects from the Long Bill			
	With Division Indirects	**Without Division Indirects**	**Change**
Personal Services			
CF	$9,564,767	$11,704,121	$2,139,354
RF	2,139,354	0	(2,139,354)
Subtotal - Personal Services	11,704,121	11,704,121	0
Operating Expenses			
CF	1,083,846	1,326,130	242,284
RF	242,284	0	(242,284)
Subtotal - Operating Expenses	1,326,130	1,326,130	0
Indirect Line Item	3,467,647	1,333,491	(2,134,156)
Total	**$16,497,898**	**$14,363,742**	**($2,134,156)**

BRIEFING ISSUE

ISSUE: Assessing the Insurance Premium Tax to Pinnacol Assurance's Premiums

Currently Pinnacol Assurance is exempt from paying the insurance premium tax of 1.0 percent on written premiums. If Pinnacol Assurance had to pay the IPT, the $354 million of written premiums in calendar year 2009 less dividends, would have generated $2.4 million in revenue for the General Fund.

SUMMARY:

- ❑ Pinnacol Assurance is the workers' compensation insurer of last resort for the State of Colorado, and in statute is exempt from paying insurance premium tax.

- ❑ Pinnacol Assurance controls 53.4 percent of the workers' compensation insurance market, and approximately 5.9 percent of Pinnacol's policies could be classified as last resort policies.

- ❑ Over the last five years, Pinnacol wrote an annual average of $507 million in policy premiums, which would have generated $4.3 million annually for the General Fund if Pinnacol Assurance was required to pay the 1.0 percent insurance premium tax.

RECOMMENDATION: Staff recommends the Committee run a bill to require Pinnacol Assurance to pay the insurance premium tax on 94.0 percent of the written premiums. Staff also recommends the Committee provide Pinnacol Assurance with the opportunity, if Pinnacol Assurance disputes the amount of premiums attributable to providing insurance of last resort, to provide the Committee with data and explanations detailing the amount of premiums attributable to being the insurance of last resort.

DISCUSSION:

<u>Distribution of Pinnacol Assurance's Policies</u>
Pinnacol Assurance (Pinnacol) has established six separate ranking tiers for policies. The lowest risk policies are placed in the Superior tier, and the highest risk companies are placed in the non-standard tier. The non-standard tier should represent those companies and employers who would not be able to get insurance with other companies, and thus have to use Pinnacol because they are the insurer of last resort, but there is no data available on exactly how many of Pinnacol's policies are last resort policies. There are a couple of points to consider when looking at the following table outline the distribution of Pinnacol's policies across tiers:

- ▸ There is not an industry definition or standard format for how companies define their policy tiers. Different companies can have tiers that are named the same, but have different requirements, resulting in the same company possibly falling into two different tiers depending on which insurance company the policy was written with.

- Policy holders that apply to Pinnacol for insurance are not required to show proof that they are unable to get insurance with another company before applying to Pinnacol. Because of this no data exists on the exact number of policies Pinnacol insures that would not be able to get insurance with another provider.
- Loss cost multipliers (LCMs) are the expenses the insurance company must expend to insurance the policy holder beyond whatever losses the insurer expects to pay, and is how Pinnacol determines which tier the policy falls into.

Distribution of Pinnacol's Policies As of June 30, 2009			
Tier	Lost Cost Multiplier	Policy Count	Percent of Total Policies
Non-Standard	1.55	3,282	5.9%
Standard	1.21	8,799	15.7%
Standard Plus	1.15	16,538	29.6%
Preferred	1.08	14,275	25.5%
Preferred Plus	0.97	8,346	14.9%
Superior	0.20	4,636	8.3%
Total		**55,876**	**100.0%**

Information provided to Legislative Council Staff for the 2009 Interim Committee.

Pinnacol's Percent of the Workers' Compensation Market

Since CY 2005, Pinnacol has controlled an average of 58.1 percent of the workers' compensation insurance market each year. Pinnacol has had the advantage that they do not pay any state or federal taxes, but they do pay the workers' compensation surcharge to the Department of Labor and Employment. On average there have been 202 other companies making up the remaining 41.9 percent of the workers' compensation market. Pinnacol is the only insurer of last resort in the state for workers' compensation insurance, and must provide insurance to any company who applies for a policy.

Calendar Year	Pinnacol's Share of the Insurance Market	Premiums Written	No. Other Companies in Market
2005	61.4%	562,796,481	193
2006	60.8%	587,714,160	210
2007	57.4%	546,642,471	210
2008	57.4%	484,458,594	211
2009	53.4%	353,823,991	188
5 year average	**58.1%**	**$507,087,139**	**202**

How Other States Handle Insurers of Last Resort

Nine other states have a workers' compensation insurer similar to the structure of Pinnacol. Pinnacol is structured as a competitive state fund, that is able to compete with other public and private companies in the state, but is not a public company. California, Colorado, Kentucky, Montana, New York, North Dakota, Pennsylvania, Texas, Utah, and Washington, are the states with similar workers' compensation insurers. Only Colorado provides an insurance premium tax (IPT) break for the insurer of last resort. The average IPT rate paid by those insurers is 3.12 percent, with a high in Utah of 7.75 percent, and a low in North Dakota of 0.0 percent. North Dakota's workers' compensation IPT is 0.0 percent because workers' compensation insurance is provided by only one state fund, and private companies are not allowed to provide workers' compensation insurance.

State	Worker's Compensation IPT Rate
Colorado	2.00%
California	2.35%
Kentucky	6.50%
Montana	2.75%
New York	1.00%
North Dakota	0.00%
Pennsylvania	2.00%
Texas	4.85%
Utah	7.75%
Washington	2.00%
Average IPT	**3.12%**

Insurance Premium Tax Revenue from Pinnacol

If Pinnacol is required to pay the 1.0 percent IPT, General Fund revenue would increase by an average of $4.3 million annually. Insurance premiums are calculated on a calendar year basis, and the revenue for premiums would be credited to the General Fund sometime after January of the fiscal year. For example for insurance premium tax (IPT) revenue for FY 2010-11 will not be known until after Pinnacol files their 2010 Annual Statement at the beginning of 2011.

Calendar Year	Premiums Written	Dividend	Taxable Premiums	1.0% IPT
2005	562,796,481	62,290,114	500,506,367	5,005,064
2006	587,714,160	65,693,682	522,020,478	5,220,205
2007	546,642,471	68,502,823	478,139,648	4,781,396
2008	484,458,594	78,557,222	405,901,372	4,059,014
2009	353,823,991	116,840,851	236,983,140	2,369,831
5 year average	**$507,087,139**	**78,376,938**	**428,710,201**	**4,287,102**

Value of Being the Provider of Last Resort

Pinnacol provides an important service to the state by being the insurer of last resort for workers' compensation. Companies are required to have workers' compensation insurance to operate in Colorado. The importance of having a company that must provide workers' compensation is a value that staff believes needs to be taken into consider when calculating the IPT Pinnacol should pay.

The problem arises when calculating the benefit of being the insurer of last resort, because no data exists on how many policies and corresponding premiums are attributable to policies of last resort. As stated before companies are not required to show proof they can not get insurance, and the non-standard tier may contain companies that can get insurance with other providers. Staff also believes that the 57.0 percent of the market Pinnacol controls is not all due to last resort policies, and is receiving a tax break for all premiums written not just last resort.

Policy Options

Option 1

Staff believes that Pinnacol should pay the 1.0 percent IPT on written premiums, but also needs to be reimbursed for the cost of being the insurer of last resort, therefore staff is recommending that Pinnacol to pay the IPT on 94.0 percent of the written premiums, and provide the proof required to qualify for the 1.0 percent IPT. If Pinnacol disputes the amount of premiums attributable to providing insurance of last resort, allow Pinnacol to provide the data showing the amount of premiums attributable to being the insurance of last resort.

Option 2

Require Pinnacol to pay the IPT, and provide the proof required to qualify for the 1.0 percent IPT. Require Pinnacol to submit an annual report to the Joint Budget Committee outlining the number of policies, and associated amount of premiums that are last resort policies. Establish a new line item in the Long Bill that represents the state's reimbursement to Pinnacol for the IPT paid on last resort policies.

Option 3

Require Pinnacol to pay the IPT, and provide the proof required to qualify for the 1.0 percent IPT. Allow Pinnacol to deny first time claims, and require the denied company to provide proof of three denials from three different insurance companies to the Commissioner of Insurance, who will then require Pinnacol to insurance the company. The Division will keep a record of the policies and associated premiums Pinnacol does not pay the 1.0 percent IPT based on which companies are referred to Pinnacol after providing proof of denial.

Option 4

Keep statute as it currently is, exempting Pinnacol Assurance from paying the IPT.

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Appropriatio	FY 2011-12 Request	DI/Notes
DEPARTMENT OF REGULATORY AGENCIES					
Barbara Kelley, Executive Director					
(1) EXECUTIVE DIRECTOR'S OFFICE					
The Executive Director's Office performs departmentwide administrative functions including accounting, budgeting, and purchasing. The Office of Policy and Research is to conducts sunrise and sunset evaluations of various programs throughout the state.					
Personal Services	3,926,915	4,022,230	2,239,716	2,241,587	
FTE - RF	50.8	49.0	27.5	27.5	
General Fund	24,914	15,619	8,000	3,340	NP-2
Cash Funds	36,274	25,500	13,000	29,000	
Reappropriated Funds	3,865,727	3,981,111	2,218,716	2,209,247	NP-5
FTE	50.8	49.0	27.5	27.5	
Health, Life, and Dental	2,440,662	2,878,828	2,675,752	2,869,627	
General Fund	78,208	92,248	89,650	92,463	
Cash Funds	1,865,519	2,200,431	2,362,287	2,485,525	NP-4
Reappropriated Funds	460,167	542,780	181,508	264,772	
Federal Funds	36,768	43,369	42,307	26,867	
Short-Term Disability	40,607	48,080	50,447	59,523	
General Fund	1,074	1,113	1,730	1,703	
Cash Funds	31,633	41,117	44,960	51,370	
Reappropriated Funds	7,427	5,401	3,137	6,111	
Federal Funds	473	449	620	339	

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Appropriatio	FY 2011-12 Request	DI/Notes
SB 04-257 Amortization Equalization Disbursement	525,892	623,700	780,730	941,610	
General Fund	12,938	14,244	26,415	26,945	
Cash Funds	421,545	539,181	696,157	812,635	
Reappropriated Funds	91,409	70,275	48,562	96,664	
Federal Funds	0	0	9,596	5,366	
SB 06-235 Supplemental Amortization Equalization Distribution	241,940	389,309	569,089	756,651	
General Fund	5,850	8,719	19,067	21,652	
Cash Funds	193,242	336,721	507,615	653,010	
Reappropriated Funds	42,848	43,869	35,410	77,677	
Federal Funds	0	0	6,997	4,312	
Salary Survey and Senior Executive Service	1,325,901	0	0	0	
General Fund	64,174	0	0	0	
Cash Funds	1,047,658	0	0	0	
Reappropriated Funds	214,069	0	0	0	
Performance-based Pay Awards	530,143	0	0	0	
General Fund	21,972	0	0	0	
Cash Funds	426,446	0	0	0	
Reappropriated Funds	81,725	0	0	0	
Workers' Compensation	95,252	74,629	81,100	85,062	
General Fund	3,667	2,825	2,850	2,989	
Cash Funds	88,149	67,940	72,476	76,017	
Reappropriated Funds	1,671	2,571	4,942	5,184	
Federal Funds	1,765	1,293	832	872	

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Appropriatio	FY 2011-12 Request	DI/Notes
Operating Expenses	206,795	188,850	210,344	210,420	
General Fund	3,689	3,689	3,689	3,689	
Cash Funds	95,427	74,164	95,427	95,427	
Reappropriated Funds	107,679	110,997	111,228	111,304	NP-1
Legal Services	7,472,664	7,616,109	8,017,385	7,575,055	
Hours Equivalent	*99,503*	*101,036*	*109,071*	*100,492*	
General Fund	204,013	152,809	148,721	148,721	
Cash Funds	7,135,164	7,324,753	7,082,997	7,062,795	
Reappropriated Funds	133,487	138,547	647,438	225,310	
Federal Funds	0	0	138,229	138,229	
Administrative Law Judges	239,949	324,818	300,459	465,921	
General Fund	11,054	14,964	13,842	21,465	
Cash Funds	228,895	309,854	286,617	444,456	
Purchase of Services from Computer Center	51,060	48,916	1,583,905	1,696,639	
General Fund	0	0	57,027	62,280	
Cash Funds	0	0	1,371,730	1,634,359	
Reappropriated Funds	51,060	48,916	132,784	0	
Federal Funds	0	0	22,364	0	
Multi-Use Network Payments - RF	n/a	n/a	130,329	148,429	
General Fund			4,692	5,535	
Cash Funds			112,871	142,894	
Reappropriated Funds			10,926	0	
Federal Funds			1,840	0	

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Appropriatio	FY 2011-12 Request	DI/Notes
Management and Administration of OIT	66,500	60,444	272,265	277,971	
General Fund	1,525	1,376	9,803	10,069	
Cash Funds	54,708	49,277	235,794	267,902	
Reappropriated Funds	9,661	9,246	22,824	0	
Federal Funds	606	545	3,844	0	
Payment to Risk Management Fund	83,441	90,734	28,080	133,493	
General Fund	3,148	3,286	987	4,692	
Cash Funds	67,971	73,272	25,094	122,001	
Reappropriated Funds	10,277	12,179	1,711	5,431	
Federal Funds	2,045	1,997	288	1,369	
Vehicle Lease Payments - CF	130,536	191,507	241,797	187,939	NP-3
Information Technology Asset Maintenance	544,564	586,737	671,403	671,403	
Cash Funds	347,547	398,480	480,646	480,646	
Reappropriated Funds	197,017	188,257	190,757	190,757	
Leased Space	2,663,908	2,839,367	2,927,222	3,038,518	
General Fund	91,259	99,836	96,132	106,866	
Cash Funds	2,251,493	2,285,655	2,352,894	2,405,339	
Reappropriated Funds	321,156	453,876	438,756	486,873	
Federal Funds	0	0	39,440	39,440	
Capital Complex Leased Space - CF	1,284	6,325	6,358	6,342	

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Appropriatio	FY 2011-12 Request	DI/Notes
Hardware / Software Maintenance	696,010	872,377	819,361	717,330	
General Fund	800	800	800	800	
Cash Funds	438,817	613,822	559,959	457,928	
Reappropriated Funds	256,393	257,755	258,602	258,602	
Consumer Outreach / Education Program - CF	151,276	193,834	200,000	200,000	
					Request vs. Appropriation
TOTAL - (1) EXECUTIVE DIRECTOR	**21,435,299**	**21,056,794**	**21,805,742**	**22,283,520**	***2.2%***
FTE	**50.8**	**49.0**	**27.5**	**27.5**	***0.0%***
General Fund	528,285	411,528	483,405	513,209	*6.2%*
Cash Funds	15,013,584	14,731,833	16,748,679	17,615,585	*5.2%*
Reappropriated Funds	5,851,773	5,865,780	4,307,301	3,937,932	*(8.6%)*
FTE	50.8	49.0	27.5	27.5	*0.0%*
Federal Funds	41,657	47,653	266,357	216,794	*(18.6%)*

(2) DIVISION OF BANKING

The Division of Banking regulates state-chartered commercial and industrial banks, trust companies, debt adjusters, and money order companies; conduct examinations of institutions and ensure institutions comply with the Public Deposit Proctection Act. The Division is entirely cash funded by the Division of Banking Cash Fund, pursuant to 11-102-403, C.R.S.

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Appropriatio	FY 2011-12 Request	DI/Notes
Personal Services - CF	2,704,691	2,703,233	3,313,571	3,609,655	DI #1, NP-5
FTE - CF	35.6	34.5	44.5	47.5	
Operating Expenses - CF	279,611	411,694	390,313	454,342	DI #1, NP-1
Board Meetings - CF	22,488	21,876	23,500	23,500	
Indirect Cost Assessments - CF	470,557	513,677	321,086	317,701	

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Appropriatio	FY 2011-12 Request	DI/Notes
					Request vs. Appropriation
TOTAL - (2) BANKING - CF	**3,477,347**	**3,650,480**	**4,048,470**	**4,405,198**	***8.8%***
FTE - CF	**35.6**	**34.5**	**44.5**	**47.5**	***6.7%***

(3) CIVIL RIGHTS DIVISION

The Civil Rights Division enforces state laws that prohibit discrimination in employment, housing, and public accommodations on the basis of race, sex (gender), national origin, ancestry, physical or mental disablity, religion, color, marital status, or sexual orientation.

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Appropriatio	FY 2011-12 Request	DI/Notes
Personal Services	1,876,760	1,556,303	1,590,869	1,612,888	
FTE	26.4	23.6	31.4	31.4	
General Fund	786,625	960,212	945,538	929,338	NP-2, NP-5
FTE	14.5	14.5	18.4	18.4	
Reappropriated Funds	418,653	272,752	297,629	302,391	
FTE	2.0	2.0	2.0	2.0	
Federal Funds	671,482	323,339	347,702	381,159	
FTE	9.9	7.1	11.0	11.0	
Operating Expenses	103,178	68,224	100,438	100,487	NP-1
General Fund	61,378	63,336	59,318	59,364	
Federal Funds	41,800	4,888	41,120	41,123	
Hearings Puruant to Complaint	17,000	17,000	18,000	18,000	
General Fund	17,000	17,000	17,000	17,000	
Federal Funds	0	0	1,000	1,000	
Commission Meetings Costs	5,174	5,174	12,374	12,374	
General Fund	5,174	5,174	5,174	5,174	
Federal Funds	0	0	7,200	7,200	

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Appropriatio	FY 2011-12 Request	DI/Notes
Indirect Cost Assessment - FF	35,738	37,208	35,191	32,133	
					Request vs. Appropriation
TOTAL - (3) CIVIL RIGHTS	**2,037,850**	**1,683,909**	**1,756,872**	**1,775,882**	***1.1%***
FTE	**26.4**	**23.6**	**31.4**	**31.4**	***0.0%***
General Fund	870,177	1,045,722	1,027,030	1,010,876	*(1.6%)*
FTE	14.5	14.5	18.4	18.4	*0.0%*
Reappropriated Funds	418,653	272,752	297,629	302,391	*1.6%*
FTE	2.0	2.0	2.0	2.0	*0.0%*
Federal Funds	749,020	365,435	432,213	462,615	*7.0%*
FTE	9.9	7.1	11.0	11.0	*0.0%*

(4) OFFICE OF CONSUMER COUNSEL

The Office of Consumer Councel represents the interests of the consumer, mainly residential, agricultural and small businesses at electric, gas, telecommunications utility rate and service proceedings before the Public Utility Commission. The Public Utilities Commission Fixed Utility Fund funds this division, pursuant to Section 40-2-114, C.R.S.

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Appropriatio	FY 2011-12 Request	DI/Notes
Personal Services - CF	735,450	723,873	790,393	790,246	NP-5
FTE - CF	6.9	7.0	7.0	7.0	
Operating Expenses - CF	49,511	41,802	55,787	55,816	NP-1
Indirect Cost Assessments - CF	85,556	76,032	51,082	50,543	
					Request vs. Appropriation
TOTAL - (4) CONSUMER COUNSEL - CF	**870,517**	**841,707**	**897,262**	**896,605**	***(0.1%)***
FTE - CF	**6.9**	**7.0**	**7.0**	**7.0**	***0.0%***

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Appropriatio	FY 2011-12 Request	DI/Notes
(5) DIVISION OF FINANCIAL SERVICES					
The Division of Financial Services regulates state-chartered credit unions, life care institutions, and savings and loan associations; conduct examinations of institutions to ensure continued complainance with regulatory standards. This Division is entirely cash funded by the Division of Insurance Cash Fund, pursuant to Section 11-40-106 (2), C.R.S.					
Personal Services - CF	920,380	1,048,009	1,128,221	1,126,687	NP-5
FTE - CF	12.3	13.2	15.0	15.0	
Operating Expenses - CF	50,824	129,434	161,788	161,878	NP-1
Indirect Cost Assessments - CF	158,890	162,927	109,461	108,307	
					Request vs. Appropriation
TOTAL - (5) FINANCIAL SERVICES - CF	**1,130,094**	**1,340,370**	**1,399,470**	**1,396,872**	***(0.2%)***
FTE - CF	**12.3**	**13.2**	**15.0**	**15.0**	***0.0%***
(6) DIVISION OF INSURANCE					
This Division is responsible for licensing insurance agents and adjusters; regulating insurance companies, non-profit hospitals, prepaid dental plans, health maintenance organizaitions, self-insurance pools for workers' compensation, bail bondsmen, and pre-need funeral contracts. Unless otherwise indicated, the funding source is the Division of Insurance Cash Fund pursuant to Section 10-1-103 (3), C.R.S.					
Personal Services - CF	5,771,342	5,700,543	6,058,774	6,059,549	NP-5
FTE - CF	82.3	81.7	84.7	84.7	
Operating Expenses - CF	264,606	273,227	397,049	397,258	NP-1
Senior Health Counseling Program - FF	682,747	869,262	507,838	507,838	
FTE - FF	0.0	0.0	2.0	2.0	

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Appropriatio	FY 2011-12 Request	DI/Notes
Insurance Fraud Prosecution - CF	819,342	830,262	0	0	
Transfer to CAPCO Administration	91,930	79,196	79,593	79,593	
Indirect Cost Assessments	981,122	911,898	636,256	628,162	
Cash Funds	981,122	911,898	618,090	611,574	
Federal Funds	0	0	18,166	16,588	
					Request vs. Appropriation
TOTAL - (6) INSURANCE	**8,611,089**	**8,664,388**	**7,679,510**	**7,672,400**	***(0.1%)***
FTE	**82.3**	**81.7**	**86.7**	**86.7**	***0.0%***
Cash Funds	7,928,342	7,795,126	7,153,506	7,147,974	*(0.1%)*
FTE	82.3	81.7	84.7	84.7	*0.0%*
Federal Funds	682,747	869,262	526,004	524,426	*(0.3%)*
FTE	0.0	0.0	2.0	2.0	*0.0%*

(7) PUBLIC UTILITIES COMMISSION

The Public Utilities Commission regulates the rates and services of fixed and transportation utilities in Colorado; administers the Colorado Telecommunications High Cost Program, the Low-Income Telephone Assistance Program, and the Disabled Telephone Users Program.

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Appropriatio	FY 2011-12 Request	DI/Notes
Personal Services - Cash Funds	7,984,503	7,937,847	8,750,726	8,703,927	NP-5
FTE - Cash Funds	87.3	86.3	101.6	101.1	
Operating Expenses - CF	411,439	453,045	451,301	446,005	NP-1
Expert Testimony - CF	9,850	25,000	25,000	25,000	
Disabled Telephone Users Payment - CF	1,736,679	2,009,738	2,439,591	2,439,591	

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Appropriatio	FY 2011-12 Request	DI/Notes
Transfer to Reading Services for the Blind Cash Fund - CF	250,000	250,000	250,000	250,000	
Commission for the Deaf and Hard of Hearing Cash Fund - CF	643,139	730,626	910,190	910,190	
Commission for the Blind or Visually Impaired Cash Fund - CF	51,589	98,822	112,067	112,067	
Low Income Telephone Assistance - CF	2,030,531	1,094,729	2,143,752	2,143,752	
Colorado Bureau of Investigation Background Checks Pass-through - CF	26,860	46,649	67,128	67,128	
Indirect Cost Assessments - CF	1,186,784	1,095,953	733,389	725,657	
					Request vs. Appropriation
TOTAL - (7) PUBLIC UTILITIES COMM. - CF	**14,331,374**	**13,742,409**	**15,883,144**	**15,823,317**	***(0.4%)***
FTE - CF	**87.3**	**86.3**	**101.6**	**101.1**	***(0.5%)***

(8) DIVISION OF REAL ESTATE

The Division of Real Estate licenses real estate brokers, real estate appraisal professionals, and mortgage brokers; administer enforcement programs to ensure compliance with state and federal regulatory laws.

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Appropriatio	FY 2011-12 Request	DI/Notes
Personal Services - CF	2,796,953	2,692,133	3,311,110	3,326,756	NP-5
FTE - CF	42.7	43.1	52.3	52.3	
Operating Expenses - CF	222,615	189,346	220,436	210,679	NP-1
Commission Meeting Costs - CF	28,136	23,972	38,836	38,836	

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Appropriatio	FY 2011-12 Request	DI/Notes
Hearings Pursuant to Complaint - CF	133	0	4,000	4,000	
Mortgage Broker Consumer Protection - CF	295,724	304,252	305,313	305,313	
Indirect Cost Assessment - CF	568,336	533,316	365,600	361,746	
					Request vs. Appropriation
TOTAL - (8) REAL ESTATE - Cash Funds	**3,911,897**	**3,743,019**	**4,245,295**	**4,247,330**	***0.0%***
FTE - Cash Funds	**42.7**	**43.1**	**52.3**	**52.3**	***0.0%***

(9) DIVISION OF REGISTRATIONS

The Division of Registrations oversees boards and commissions that promulgate rules to ensure continued competency of regulated professionals, enforce laws, and take action agaisnt individuals failing to follow the laws and rules.

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Appropriatio	FY 2011-12 Request	DI/Notes
Personal Services	11,056,781	10,919,756	11,853,388	11,972,431	NP-5
FTE	164.8	172.5	184.4	187.4	
Cash Funds	8,877,212	9,307,088	9,640,029	9,821,744	
FTE	144.9	152.6	163.2	166.2	
Reappropriated Funds	2,179,569	1,612,668	2,213,359	2,150,687	NP-2
FTE	19.9	19.9	21.2	21.2	
Operating Expenses - CF	1,359,354	1,301,438	1,358,838	1,367,167	
Cash Funds	1,359,354	1,301,438	1,352,094	1,366,692	NP-1
Reapporiated Funds	0	0	6,744	475	
Office of Expedited Settlement Program Costs - CF	n/a	315,127	355,008	361,397	
FTE - CF	n/a	0.0	5.0	5.0	
Hearings Pursuant to Complaint - CF	269,704	215,768	307,075	307,075	

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Appropriatio	FY 2011-12 Request	DI/Notes
Payments to Department of Health Care Policy and Financing - CF	14,652	14,652	14,652	14,652	
Indirect Cost Assessment	4,095,901	4,021,952	3,467,647	3,422,249	
Cash Funds	4,095,901	4,021,952	3,460,823	3,416,018	
Federal Funds	0	0	6,824	6,231	
					Request vs. Appropriation
TOTAL - (9) REGISTRATIONS	**16,796,392**	**16,788,693**	**17,356,608**	**17,444,971**	***0.5%***
FTE	**164.8**	**172.5**	**189.4**	**192.4**	***1.6%***
Cash Funds	14,616,823	15,176,025	15,129,681	15,287,578	*1.0%*
FTE	144.9	152.6	168.2	171.2	*1.8%*
Reappropriated Funds	2,179,569	1,612,668	2,220,103	2,151,162	*(3.1%)*
FTE	19.9	19.9	21.2	21.2	*0.0%*
Federal Funds	0	0	6,824	6,231	*(8.7%)*

(10) DIVISION OF SECURITIES

The Division of Securities monitors the conduct of Colorado broker-dealers and sales representatives; and investigate citizen complaints and other indications of investment fraud. The funding source is the Division of Securities Cash Fund pursuant to Section 11-51-707 (2), C.R.S.

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Appropriatio	FY 2011-12 Request	DI/Notes
Personal Services - CF	1,660,142	1,700,013	1,956,533	2,132,555	DI #2, NP-5
FTE - CF	19.7	21.0	23.0	26.0	
Operating Expenses - CF	47,769	57,696	56,149	67,829	DI #2, NP-1
Hearings Puruant to Complaint - CF	19,134	12,271	19,594	19,594	
Board Meeting Costs - CF	1,416	2,505	4,500	4,500	

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Appropriatio	FY 2011-12 Request	DI/Notes
Securities Fraud Prosecution - CF	454,785	473,028	493,081	493,081	
Indirect Cost Assessment - CF	244,417	238,960	167,840	166,071	
					Request vs. Appropriation
TOTAL - (10) SECURITIES - CF	**2,427,663**	**2,484,473**	**2,697,697**	**2,883,630**	***6.9%***
FTE - CF	**19.7**	**21.0**	**23.0**	**26.0**	***13.0%***
					Request vs. Appropriation
DEPARTMENT OF REGULATORY AGENCIES					
TOTALS	**75,029,522**	**73,996,242**	**77,770,070**	**78,829,725**	***1.4%***
FTE	**528.8**	**531.9**	**578.4**	**586.9**	***1.5%***
General Fund	1,398,462	1,457,250	1,510,435	1,524,085	*0.9%*
FTE	14.5	14.5	18.4	18.4	*0.0%*
Cash Funds	63,707,641	63,505,442	68,203,204	69,704,089	*2.2%*
FTE	431.7	439.4	496.3	504.8	*1.7%*
Reappropriated Funds	8,449,995	7,751,200	6,825,033	6,391,485	*(6.4%)*
FTE	72.7	70.9	50.7	50.7	*0.0%*
Federal Funds	1,473,424	1,282,350	1,231,398	1,210,066	*(1.7%)*
FTE	9.9	7.1	13.0	13.0	*0.0%*

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APPENDIX B: SUMMARY OF MAJOR LEGISLATION

❑ **S.B. 10-109 (Romer/Massey): Medical Marijuana Doctor Patient Relations.** Requires the Department of Public Health and Environment (DPHE) to promulgate new rules for medical marijuana identification cards and prescribing physicians. Establishes requirements for physicians who prescribe medical marijuana and allows the State Board of Medical Examiners in the Department of Regulatory Agencies to investigate and sanction physicians guilty of violations. Also allows DPHE to impose sanctions on physicians guilty of violating these requirements. Establishes reporting requirements for patients with a valid identification card who are convicted of a drug offense and requirements for patients with legal guardians. Makes the following appropriations:

- Appropriates $815,224 cash funds from the Medical Marijuana Program Cash Fund and 2.1 FTE to the Department of Public Health and Environment (DPHE).
- Reappropriates $593,333 along with 1.2 FTE to the Department of Regulatory Agencies (DORA) from the moneys appropriated to the DPHE.
- Reappropriates $612,463 along with 5.2 FTE to the Department of Law for the provision of legal services to DPHE and DORA. Of this amount, $99,879 is from the DPHE and $512,584 is from DORA.

❑ **S.B. 10-124 (Carroll M./Ryden): Michael Skolnik Medical Transparency 2010.** Extends the Michael Skolnik Medical Transparency Act to certain health care professionals applying for a new, reinstated, reactivated or renewal license or certification to submit information to the State Board of Medical Examiners. Appropriates $98,873 cash funds from the Division of Registrations Cash Fund and 1.0 FTE to the Division of Registrations in the Department of Regulatory Agencies and reappropriates $7,538 to the Department of Law for the provision of legal services.

❑ **H.B. 10-1001 (Tyler/Schwartz): Renewable Energy Standards Solar Certification.** Requires certain utility providers to have a renewable energy portfolio standard (RPS) equal to 30.0 percent by 2020 and requires a portion of the RPS to be met through "distributed generation" (DG). Allows the Public Utilities Commission (PUC) to reduce the DG percentage after 2014 and incrementally reduce the existing standard rebate offer if the market can support the change. Directs the PUC to require registration with a regional system for tracking renewable energy generation for large DG facilities. The act also:

- Allows a utility to advance funds that do not exceed the 2.0 percent rate cap from year to year for the acquisition of renewable energy resources with PUC approval;
- Directs the PUC to ensure that a utility allocates its expenditures according to the proportion of it's revenues derived from residential and nonresidential customers;
- Increases the threshold at which a utility may negotiate purchases of renewable energy credits from individual customers from 100 kW to 500 kW; and

- Allows the PUC to determine a reasonable retail rate that solar program participants pay into the renewable energy standard adjustment.

Requires new photovoltaic (PV) installations occurring on and after January 1, 2012 to be funded through ratepayer incentives and rebates and to be installed by licensed electricians or apprentices. Authorizes any committee formed by executive order for the purpose of studying the desirability of regulating solar installers to request a sunrise review. Appropriates $51,440 cash funds from the PUC Fixed Utility Fund and 0.5 FTE to the Public Utilities Commission.

❏ **H.B. 10-1114 (Liston/Johnston): Register Agent Money Transmitter.** Authorizes the Banking Board (Board) to share information about money transmitters with the United States Attorney General. Requires money transmitter agents to provide certain business information to the Board, sign a statement containing a notice of the money laundering laws, and/or receive training on money laundering laws. Prohibits a money transmitter from employing an agent who has committed certain crimes related to banking or property. Makes the initial violation a class 2 misdemeanor and subsequent violations a class 1 misdemeanor. Appropriates $23,124 cash funds from the Division of Banking Cash Fund and 0.5 FTE to the Division of Banking.

❏ **H.B. 10-1128 (Looper/Hudak): Registrations Regulatory Efficiency.** Clarifies that moneys collected on behalf of administering entities of professional peer review programs do not constitute state fiscal year spending for purposes of Section 20 of Article X of the State Constitution (TABOR). Clarifies that exemptions from the dental practice act apply to dental students and residents. Deletes duplicative requirements for foreign-trained dentists teaching at dental schools and duplicative requirements for X-ray technicians. Authorizes the Director of the Division of Registrations to take disciplinary action against massage therapists convicted of unlawful sexual behavior or prostitution-related offenses. Exempts out-of-state chiropractors and medical doctors working at United States Olympic Committee sanctioned events, and out-of-state medical doctors working at Shriners hospitals from the requirement to obtain special temporary licenses. Repeals the regulation of athlete agents by the Division of Registrations. Reduces the FY 2010-11 appropriation to the Division of Registrations in the Department of Regulatory Agencies by $25,887 cash funds, and reduces the appropriation to the Department of Law by $9,799 reappropriated funds.

❏ **H.B. 10-1141 (Carroll T./Tochtrop): Mortgage Company Registration.** Creates the five member Board of Mortgage Loan Originators (Board) in the Division of Real Estate as a Type 1 board and requires the Board to regulate mortgage companies, loan originators, and brokers. Requires mortgage companies and loan originators to have a state license and be registered with the Nationwide Mortgage Licensing System and Registry effective January 1, 2011. Requires mortgage companies and loan originators to obtain a unique identifying number that must appear on all residential loan application forms. Appropriates $15,782 cash funds from the Mortgage Company Loan Originator Licensing Fund to the Division of Real Estate in the Department of Regulatory Agencies and reappropriates $6,407 to the Department of Law for the provision of legal services.

- ❑ **H.B. 10-1148 (Gerou/Tapia): Architect License Renew Profile Competency.** Repeals the continuing professional competency required for an architect license. Reduces the FY 2010-11 appropriation to the Division of Registrations by $11,307 cash funds, and reduces the appropriation to the Department of Law by the same amount of reappropriated funds.

- ❑ **H.B. 10-1197 (Ferrandino/Heath): Reduce Conservation Easement Cap Amount.** Limits aggregate credits for donating conservation easements to $26 million each year for the 2011, 2012, and 2013 income tax years. Requires taxpayers to submit a claim for a tax credit to the Division of Real Estate, which will issue a certificate in the order the claims were received. If more than $26 million in credits are claimed, the claims not issued certificates will be placed on a waiting list and certificates will be issued in a subsequent year. Appropriates $9,028 cash funds from the Conservation Easement Holder Certification Fund and 0.2 FTE to the Division of Real Estate.

- ❑ **H.B. 10-1224 (Gerou/Boyd): Sunset Colorado Podiatry Board.** Continues the regulation of podiatrists by the Colorado Board of Podiatry until July 1, 2020 and implements the recommended changes in the 2009 sunset review. Appropriates $3,149 cash funds from the Division of Registrations Cash Fund to the Division of Registrations and reappropriates $2,261 to the Department of Law for the provision of legal services.

- ❑ **H.B. 10-1260 (Riesberg/Boyd): Sunset Review Board of Medical Examiners.** Continues the regulation of medical doctors by the Colorado Medical Board through July 1, 2019, and implements the recommendations made in the 2009 sunset review. On January 1, 2011 transfers the regulation of emergency medical technicians from the Board to the newly-created, eleven member, Emergency Medical Practice Advisory Council within the Department of Public Health and Environment. Appropriates $29,686 cash funds from the Division of Registrations Cash Fund to the Division of Registrations and reappropriates $16,584 to the Department of Law for the provision of legal services.

- ❑ **H.B. 10-1278 (Ryden/Carroll M.): Create HOA Ombudsman.** Creates the Home Owners Association (HOA) Information and Resource Center (Center) which is under the direction of the HOA Information Officer. Requires the Center to advocate on behalf of unit owners, mediate disputes, and act as a clearing house for information on the governing law, to track inquiries and complaints, and to report annually on the number and type of inquiries and complaints received. Requires HOAs to register and pay the applicable fee and prohibits an HOA from pursuing lien for assessments or otherwise enforce its rights and remedies under the "Colorado Common Interest Ownership Act" if the HOA fails to register and/or pay the fee. Caps the registration fee at $50 and exempts HOAs from the fee if they do not charge a fee or cap their fee at $400. Creates the HOA Information and Resource Center Cash Fund (Fund). Makes an appropriation of $205,828 cash funds from the Fund and 2.0 FTE to the Division of Real Estate in the Department of Regulatory Agencies and reappropriates $15,679 along with 0.1 FTE to the Department of Law for the provision of legal services.

- ❑ **H.B. 10-1365 (Solano/Whitehead): Incentive Utility Convert Coal To Natural Gas.** Requires all rate-regulated utilities that own or operate coal-fired electric generating units to submit to the Public Utilities Commission (PUC) a plan to reduce emissions from those units covering the lesser of 900 megawatts or 50.0 percent of the utility's coal-fired electric generating units in Colorado. Allows the Department of Public Health and Environment to comment on the utilities' plans and to determine whether the new or repowered electric generating units proposed under the plans will achieve certain emission rates. Requires the PUC to accept, reject or modify plans by December 15, 2010 and requires utilities to implement plans by December 31, 2017. Allows the PUC on and after January 1, 2012 to approve interim rates and requires a utility to rebate the excess if a final rate is lower than an interim rate. Appropriates $74,115 cash funds and 0.6 FTE to the Public Utilities Commission in the Department of Regulatory Agencies and reappropriates $13,041 along with 0.1 FTE to the Department of Law for the provision of legal services.

- ❏ **H.B. 10-1376 (Pommer/Keller) Long Appropriations Bill.** General appropriations act for FY 2010-11.

- ❏ **H.B. 10-1385 (Lambert/Tapia): Funding Insurance Fraud Cases.** Requires the insurance fraud fee be credited to the newly created Insurance Fraud Cash Fund, and caps the fee at $561. Requires the fee be used to offset the direct and indirect costs of insurance fraud investigations and prosecutions by the Department of Law. Reduces the FY 2010-11 appropriation to the Division of Insurance by $860,186 cash funds.

- ❏ **H.B. 10-1415 (Gagliardi/Morse): Sunrise Surgical Technologist Registration.** Effective April 1, 2011 creates a registration program in the Division of Registrations for surgical assistants and surgical technologists. Requires the Division to create a database of registered surgical assistants and surgical technologists, and requires employers to check the database before employing a surgical assistant or surgical technologist. Appropriates $43,414 cash funds from the Division of Registrations Cash Fund and 0.4 FTE to the Division of Registrations in the Department of Regulatory Agencies and reappropriates $3,769 to the Department of Law for the provision of legal services.

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APPENDIX C: UPDATE OF FY 2010-11 LONG BILL FOOTNOTES AND REQUESTS FOR INFORMATION

Long Bill Footnotes

The Department of Regulatory Agencies had no footnotes in the 2010 Long Bill.

Requests for Information

1. **All Departments, Totals** -- Every department is requested to submit to the Joint Budget Committee, by November 1, 2010, information on the number of additional federal and cash funds FTE associated with any federal grants or private donations that were received in FY 2009-10. The Departments are also requested to identify the number of additional federal and cash funds FTE associated with any federal grants or private donations that are anticipated to be received during FY 2010-11.

   Response: The Department has not added any permanent FTE using federal grants. The Department has received several one-time federal grants involving temporary FTE which are outlined in the following table.

Summary of FY 2009-10 Federal Grants Received by the Department of Regulatory Agencies					
Grant Source, Name	**Division, Program**	**Grant Amount**	**FF FTE**	**Grant Expires**	**Description**
Dept. of Transportation, Enhance 911 Programs	Public Utilities Commission (PUC), Local 911 Programs	$487,500	0.0	Sept. 2012	These funds are received by the Department and passed on to local governments for improvements to the local 911 programs. These funds are not spent by the Department.
Dept. of Energy, SERA Electricity Grant	PUC, State Electricity Regulators Assistance	$875,899	1.5	Oct. 2013	These funds are one-time American Recovery and Reinvestment Act (ARRA) funds, used by the PUC to monitor the performance of ARRA related initiatives by utilities in the state.
Dept. of Energy, pass-through from the Colorado Governor's Energy Office	PUC, Utility Regulation	$100,000	1.0	Sept. 2011	These are one-time ARRA funds passed to the Department from the Governor's Energy Office (GEO) to support a study by the PUC of Colorado's transmission infrastructure and smart grid technology. This study is a component of a larger GEO project.

Summary of FY 2009-10 Federal Grants Received by the Department of Regulatory Agencies					
Grant Source, Name	**Division, Program**	**Grant Amount**	**FF FTE**	**Grant Expires**	**Description**
Dept. of Health and Human Services, PPACA	Div. of Insurance, Health Insurance Premium Review	$1,000,000	5.0	Sept. 2011	These funds were made available in 2010 by the Patient Protection and Affordable Care Act (PPACA). These funds support 5.0 FTE who are charged with reviewing health insurance premiums in the state. The Department can review this grant for three years, for a total grant amount of $3.0 million.
Colorado Governors's Office, PPACA	Div. of Insurance, Exchange Planning Grant	$30,000	0.0	Sept. 2011	This one-time funding associated with the PPACA covers the Division's expenses related to the planning of the health insurance exchange. The Governor's Office is the planning coordinator and these funds are passed to the Department from the Governors's Office.

56. **Department of Regulatory Agencies, Division of Registrations, Office of Expedited Settlement Program Costs** -- The Department is requested to submit to the Joint Budget Committee, on or before November 1, 2010, a report detailing the method being used to track the number of legal services hours billed to the Office of Expedited Settlement by the Department of Law and the number of hours billed to the Office of Expedited Settlement for FY 2009-10 and the current fiscal year broken out by board.

Response: During the 2004 Legislative session, the Joint Budget Committee approved the Division of Registrations to hire 2.0 FTE to expand the use of expedited settlement in the resolution of disciplinary actions by creating an Office of Expedited Settlement (OES). OES was expanded during 2007 and again during 2009, and presently has a staff of five. OES was created to help mitigate the increasing need for legal services and to conserve existing legal resources by avoiding unnecessary legal expenditures when case resolutions can be resolved without their use.

The expedited settlement process (ESP) begins after a regulatory board determines disciplinary action related to a violation of a professional practice act. Instead of immediately referring the complaint to the Office of the Attorney General (OAG) for formal adjudication, a board staff member attempts to settle the disciplinary action in accordance with the board's settlement guidance. If the respondent agrees to the settlement terms, or the board agrees to a proposed counter offer, a stipulation and final agency order is drafted and signed by the respondent, at which time the complaint was closed without having incurred significant legal expenditures. In the event the complaint is not resolved, the staff member refers the complaint to the OAG for initiation of formal disciplinary proceedings.

The cost avoidance and conservation of resources depends on whether the expenditures for ESP are less than the legal expenditures that would be expected if the matters were referred automatically to OAG. Because the costs of ESP staff are less than the costs of OAG ($75 per hour at the blended legal rate), assuming one-for-one time is spent, ESP clearly avoids costs.

However, in order to more conservatively evaluate this cost avoidance, the standard assumption is that each case will cost only 10 hours in OAG.

It is hoped that by demonstrating efficiency with even conservative assumptions that are lower than actual, the benefit of the program will be even more clearly represented, without possibility of overstating cost savings. The level of legal costs incurred by OES, however, should certainly be part of this equation, and concerns over the level of such expenditures are the basis for this request for information. While OAG believed there were significant hours expended, DORA did not possess any information that could substantiate this, and so it became important for the agencies to work collaboratively to develop a tracking mechanism.

In response to those concerns, DORA and OAG staff met in March of 2009 to discuss the tracking of such expenditures. A code was created to track any charges incurred by OAG that they believe are related to ESP, and monthly reports are completed to substantiate these charges between agencies. OAG now provides a standardized report by the 5th day of every month in which itemized detail is provided, broken down by board, of specific work performed by OAG for ESP. Reports are typically 1-5 pages in length and include everything from hourly billings for work on ESP templates to a 6 minute billing from attorneys in OAG who called to introduce themselves to ESP staff. The process is working relatively well, and it is functioning as intended in order for the two agencies to determine and agree on reasonable expenditures attributable to ESP. For FY 09-10, a total of 152.0 hours were billed by OAG for ESP related matters, as set forth in the following table:

Legal Service Hours Used by OES in FY 2009-10		
Month (FY 2009-10)	**Hours Bills**	**Fiscal Year-to-Date Total**
July	19.0	19.0
August	14.0	33.0
September	15.5	48.5
October	9.0	57.5
November	3.4	60.9
December	2.4	63.3
January	23.3	86.6
February	13.0	99.6
March	14.3	113.9
April	16.0	129.9
May	5.3	135.2
June	15.9	151.1
Total	**151.1**	**151.1**

ESP related charges typically include annual updates of templates, statutory changes, specific requests by ESP, and direct communication with ESP settlement specialists. They are itemized as ESP related matters. Additionally, ESP and an OAG staff representative meet bi-monthly, and that billing is itemized as an ESP charge. During FY 10-11 year-to-date, monthly time billed to ESP has been an average of 16 hours, and this is expected to decrease over time since during the first three months of this year there was a transition of AGs and they wished to update to templates. By board, ESP legal billings for FY 09-10 and FY 10-11 year-to-date are as follows:

Office of Expedited Settle Use of Legal Service Hours by Board													
	July	**Aug.**	**Sept.**	**Oct.**	**Nov.**	**Dec.**	**Jan.**	**Feb.**	**Mar.**	**Apr.**	**May**	**June**	**Total**
Accountancy	2.5	10.5	3.9	2.5	0.1	0.9	0.4	0.0	0.0	0.0	0.0	0.0	**20.8**
Dental	0.0	0.1	11.0	0.3	0.4	0.0	2.6	0.1	1.7	0.0	0.2	0.0	**16.4**
Massage Therapists							2.3	0.5					**2.8**
Mental Health - CAC		1.0					4.5						**5.5**
Medical	0.6			3.3	0.8		2.0	3.4	9.9	16.0	5.1	9.1	**50.2**
Nursing - RN/LPN	1.2				1.9	0.3	11.5	8.7				0.5	**24.1**
Nursing - NHA			0.6										**0.6**
Pharmacy									0.3			6.3	**6.6**
Podiatry								0.6					**0.6**
Veterinarians	14.2												**14.2**
General	0.5	2.4	0.0	2.9	0.2	1.2	0.0	0.6	2.4				**10.2**
Total	**19.0**	**14.0**	**15.5**	**9.0**	**3.4**	**2.4**	**23.3**	**13.9**	**14.3**	**16.0**	**5.3**	**15.9**	**152.0**

For FY 2010-11, through September, the total of 1.8 hours have been billed to OES as set forth below:

FY 2010-11 OES Legal Service Hours		
Month	**Hours Billed**	**Year to Date Total**
July	0.4	0.4
August	0.0	0.4
September	1.4	1.8
Total	**1.8**	

By Board, these billings are as follows:

FY 2010-11 OES Legal Service Hours by Board			
	July	**August**	**September**
Nursing - RN/LPN	0.3	0.0	0.0
Pharmacy	0.1	0.0	1.4
Total	0.4	0.0	1.4

APPENDIX D: DETERMINATION IF A CHANGE TO THE INSURANCE PREMIUM TAX CREDIT REQUIRES A VOTE OF THE PEOPLE

Step 1 - Determine if any statute is being changed in a manner that modifies or affects tax policy. If the answer is Yes go to Step 2

Is Statute relating to the imposition of a tax being created, repealed, or amended in a manner that results in a modification of the standards of rules governing the imposition of the tax? - Yes.

Step 2 - Determine whether the tax policy change directly causes a net tax revenue gain to the state or a local government - If the answer to any of these question is NO, prior voter approval is not required pursuant to TABOR. If the answer to all of these questions is YES, then proceed to step 3.

A. Does the tax policy change result in increased tax revenue for the state or a local government? Yes.

B. Is any increase in tax revenue for the state or a local government greater than any decrease in tax revenue for each of the respective governments cause by the tax policy change? Yes.

C. Would the net increase in tax revenue not have been collected without the tax policy change? Yes.

Step 3 - Determine whether the net tax revenue gain is a de minimis amount. - If the answer is Yes go to Step 4.

Is the net tax gain more than the cost to the state or local government, as applicable, to conduct an election to obtain voter approval? Yes. The estimate revenue increase from changing the IPT is estimated to be $23.0 million for FY 2010-11. The Department of State is responsible for elections has requested a total of $2.0 million for election reimbursement and initiative and referendums for FY 2010-11.

Step 4 - Determine whether the net tax revenue gain exceeds a spending limitation in TABOR. - If the answer is No, prior voter approval is not required.

Is the sum of total revenues of the state or local governments(s), as applicable, and the net tax revenue gain resulting from the tax policy change greater than:

1. spending? N/A.
3. The limitation on a local government's property tax revenue? N/A.

Since the answer to part 1 of Step 4 is No, the memorandum from the Office of Legislative Legal Services states that this tax policy change does not require prior voter approval.