

**COLORADO GENERAL ASSEMBLY  
JOINT BUDGET COMMITTEE**



**FY 2013-14 STAFF BUDGET BRIEFING**

**DEPARTMENT OF LAW**

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

**Prepared By:  
Carolyn Kampman, JBC Staff  
November 26, 2012**

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

## TABLE OF CONTENTS

Department Overview .....	1
Department Budget: Recent Appropriations.....	2
Department Budget: Graphic Overview .....	3
General Factors Driving the Budget .....	5
Summary: FY 2012-13 Appropriation and FY 2013-14 Request.....	8
Issues:	
Appellate Case Backlog.....	11
Major Litigation Pending Against the State .....	20
Mortgage Servicing/ Foreclosure Processing Settlement .....	34
Appendices:	
A - Numbers Pages	
B - Recent Legislation Affecting Department Budget	
C - Update on Long Bill Footnotes & Requests for Information	
D - Indirect Cost Assessment Methodology	
E - Change Requests' Relationship to Performance Measures	
F - Recent Legislation Impacting Legal Services to State Agencies (FY 2009-10 through FY 2012-13)	
G - FY 2012-13 Appropriations for the Purchase of Legal Services from the Department of Law, by Agency	
H - Hours of Legal Services Provided, by Agency (FY 2002-03 through FY 2012-13)	
I – Department of Law Organizational Chart	

# DEPARTMENT OF LAW

## Department Overview

---

The Attorney General is one of five independently elected constitutional officers of the State, whose powers and duties are prescribed by the General Assembly<sup>1</sup>. As the chief executive officer of the Department of Law, the Attorney General represents and defends the legal interests of the people of the State of Colorado and, with the exception of the legislative branch<sup>2</sup>, serves as the legal counsel and advisor to all state agencies. The statutory responsibilities of the Department are summarized below.

### Legal Counsel and Advice to the State

- Provide state agencies and elected officials with legal services such as legal representation, legal advice and opinions, contract review, and rule writing assistance.

### Civil Enforcement

- Protect Colorado consumers against fraud and enforce state and federal consumer protection, antitrust, charitable solicitation, consumer lending, and fair debt collection laws.
- Represent the State's interests in interstate and federal water cases.
- Lead enforcement actions at sites contaminated with hazardous substances under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
- Pursue civil recoveries and damages from Medicaid providers for fraud and over billing.
- Enforce provisions of the tobacco master settlement agreements and protect the State's interests under the settlement payment calculation provision.

### Criminal Enforcement

- Investigate and prosecute certain complex and multi-jurisdictional cases, environmental crimes, election fraud, and foreign fugitives.
- Provide investigative and prosecutorial support to district attorneys in complex homicides, cold cases, human trafficking cases, and large-scale drug conspiracies.
- Investigate and prosecute securities, insurance, and workers' compensation fraud.
- Represent the State in criminal appeal cases in state and federal courts.
- Investigate and prosecute Medicaid provider fraud and patient abuse.
- Oversee the Peace Officers Standards and Training (P.O.S.T.) Board, which manages the training and certification of peace officers.
- Assure that the constitutional and statutory rights of victims are preserved in criminal cases being prosecuted or defended by the Department.

---

<sup>1</sup> See Article IV, Section 1 of the Colorado Constitution and Article 31 of Title 24, C.R.S.

<sup>2</sup> Under certain circumstances the Legislative Branch does purchase legal services from the Department of Law, including requests for a legal opinion from the Attorney General or for legal representation when the interests of the Executive Branch and the Legislative Branch are consistent.

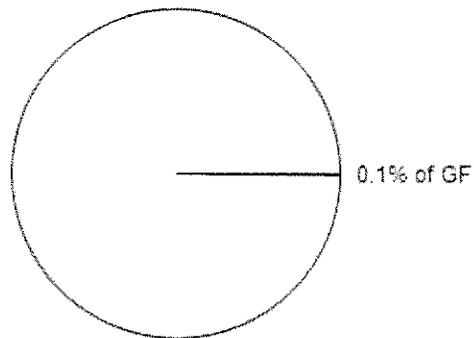
## Department Budget: Recent Appropriations

Funding Source	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14 *
General Fund	\$9,510,373	\$9,422,208	\$9,896,185	\$12,005,240
Cash Funds	10,185,661	10,389,960	10,779,963	9,858,850
Reappropriated Funds	32,774,465	33,059,968	34,998,817	38,183,737
Federal Funds	<u>1,469,226</u>	<u>1,500,064</u>	<u>1,576,165</u>	<u>1,721,508</u>
<b>Total Funds</b>	<b>\$53,939,725</b>	<b>\$54,372,200</b>	<b>\$57,251,130</b>	<b>\$61,769,335</b>
Full Time Equiv. Staff	420.7	419.0	429.2	437.6

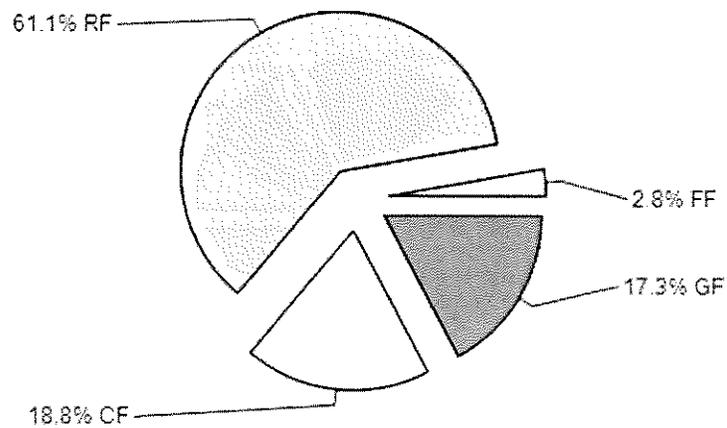
\*Requested appropriation.

# Department Budget: Graphic Overview

### Department's Share of Statewide General Fund

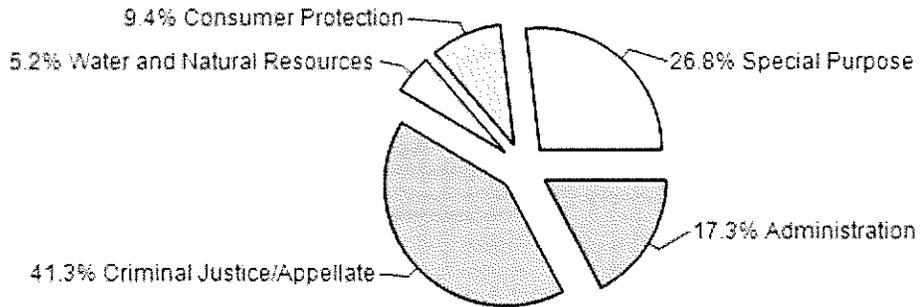


### Department Funding Sources

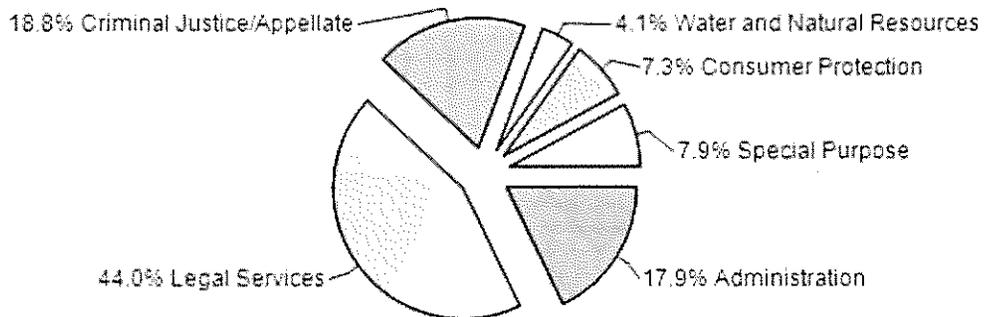


All charts are based on the FY 2012-13 appropriation

### Distribution of General Fund by Division



### Distribution of Total Funds by Division



All charts are based on the FY 2012-13 appropriation

## **General Factors Driving the Budget**

---

The FY 2013-14 request consists of 17.3 percent General Fund, 18.8 percent cash funds, 61.1 percent reappropriated funds, and 2.8 percent federal funds. Cash funds include: fees and fines paid by regulated entities; funds awarded to the Department; a statewide vehicle registration fee that supports peace officer training programs; tobacco settlement moneys; fees paid by applicants seeking peace officer certification; and the Colorado Water Conservation Board's Litigation Fund. Reappropriated funds primarily include: moneys transferred from other state agencies for the purchase of legal services, for the prosecution and enforcement of the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and for the prosecution of securities fraud cases; indirect cost recoveries; and grants from other state agencies. Three significant factors driving the Department's budget are described below.

### **Legal Services to State Agencies**

Prior to 1973, most state agencies were represented by "assistant solicitors" who were housed within and paid by the agencies they represented. The system became problematic as there were serious differences in legal policy between agencies, resulting in an inconsistent legal policy for the State in the courts. In 1973, the General Assembly passed legislation that moved all the assistant solicitors into the Department of Law, and prohibited any state agency from employing a person to perform legal services. As a trade-off, the Department of Law became subject to the "Oregon Plan", whereby the General Assembly appropriates moneys for legal services to the various state agencies, who in turn purchase services from the Department of Law at hourly rates (one rate for attorneys and one rate for legal assistants). The Department of Law's budget includes appropriations authorizing the receipt and expenditure of moneys received from other state agencies.

For FY 2012-13, the General Assembly has authorized the Department of Law to spend up to \$28.9 million providing legal services to state agencies (including associated central appropriations). This amount represents about half of the Department's total appropriation. As shown in the table on the following page, eight state agencies account for more than 80 percent of these services. The table also details the total number of hours of legal services provided and the average hourly rate charged by the Department of Law.

Fluctuations in legal services expenditures are due to: (1) changes in the Department of Law's hourly rates; and (2) changes in the number of hours of legal services provided to state agencies by attorneys and legal assistants. The Department's hourly rates fluctuate based on the costs of employee salaries and benefits, and operating expenses.

Three appendices provide data related to the provision of legal services. Appendix F lists legislation passed from 2008 through 2012 that affected state agencies' need for legal services. Appendix G details appropriations for the purchase of legal services from the Department of Law for FY 2012-13, by state agency. Appendix H details the hours of legal services provided (or anticipated to be provided) for FY 2002-03 through FY 2012-13, by state agency.

Legal Services to State Agencies: FY 2009-10 to FY 2012-13					
State Department	FY 09-10 Actual	FY 10-11 Actual	FY 11-12 Actual	FY 12-13 Approp./ Estim.	% of Total
Regulatory Agencies	\$7,546,070	\$7,485,354	\$7,359,709	\$8,102,284	28.0%
Natural Resources	3,260,139	3,283,382	3,323,637	3,789,051	13.1%
Revenue	974,158	1,738,069	2,864,901	3,000,545	10.4%
Personnel	2,363,953	2,555,590	2,550,581	2,686,910	9.3%
Public Health and Environment	2,146,754	2,021,921	2,275,229	2,378,374	8.2%
Human Services	1,550,136	1,409,467	1,394,458	1,424,413	4.9%
Transportation	1,187,488	1,081,661	1,132,068	1,269,372	4.4%
Corrections	1,401,307	1,075,919	1,010,582	1,181,771	4.1%
Other agencies 1/	4,456,698	5,158,978	5,198,384	5,094,798	17.6%
<b>Total expenditures/appropriation</b>	<b>\$24,886,703</b>	<b>\$25,810,341</b>	<b>\$27,109,549</b>	<b>\$28,927,518</b>	<b>100.0%</b>
% change of total from prior year	-2.4%	3.7%	5.0%	6.7%	
% of total Department of Law appropriations	50.4%	47.9%	49.9%	50.5%	
% of total state operating appropriations	0.1%	0.1%	0.1%	0.1%	
<b>Blended Legal Rate</b>	<b>\$75.38</b>	<b>\$73.37</b>	<b>\$75.71</b>	<b>\$77.25</b>	
% change from prior year	0.4%	-2.7%	3.2%	2.0%	
<b>Total Hours</b>	<b>329,907</b>	<b>349,029</b>	<b>357,139</b>	<b>374,478</b>	
% change from prior year	1.0%	5.8%	2.3%	4.9%	

1/ Actual expenditures are provided by the Department of Law. The appropriation column includes the Department's estimates of legal services to be provided to institutions of higher education and to the Public Employees' Retirement Association (PERA).

## Criminal Justice and Appellate

The largest allocation of General Fund in the Department is for the Criminal Justice and Appellate section, which accounts for more than 40 percent of General Fund appropriations to the Department for FY 2012-13. More than half of the General Fund in this section is devoted to the Appellate Unit, which represents the State in criminal appeals, and about one-third is devoted to the Special Prosecutions Unit, which investigates and prosecutes a variety of crimes. The following table provides expenditure and workload data for the Appellate Unit.

Appellate Unit Data: FY 2007-08 to FY 2012-13						
	FY 07-08 Actual	FY 08-09 Actual	FY 09-10 Actual	FY 10-11 Actual	FY 11-12 Actual	FY 12-13 Approp.
Expenditures/ Appropriations (excluding central appropriations)	\$2,133,564	\$2,360,972	\$2,555,197	\$2,646,858	\$2,603,619	\$2,709,335
FTE	26.4	28.3	30.7	31.6	30.9	32.0
Opening Briefs Received	979	1,240	1,152	1,050	1,171	n/a
Answer Briefs Filed	865	1,029	1,054	1,021	894	n/a
Case Backlog	270	395	434	398	608	n/a

In 2006 and 2007, legislation increased the number of judges, including adding a total of six judges for the Court of Appeals. To date, the Department's Appellate Unit has received funding to add four of the six attorneys anticipated to be required based on this legislation.

### **District Attorneys' Salaries**

The Colorado Constitution requires each judicial district to elect a district attorney (DA). Similar to the Attorney General, DAs are part of the executive branch of government and their powers and duties are prescribed by the General Assembly<sup>3</sup>. Each DA is responsible for representing the legal interests of the people of the State of Colorado, and prosecuting on behalf of the people criminal cases for crimes committed within his or her judicial district. Upon request, DAs provide legal advice and legal representation to county officers and employees, and render legal advice to peace officers pertaining to affidavits and warrants for arrests, searches, seizures, and court orders for the production of records.

While DAs' office budgets are primarily set and provided by boards of county commissioners within each respective judicial district, the State provides direct funding for DAs, via state agencies, for certain purposes. The Department of Law's budget includes an annual appropriation for DA salaries. Pursuant to Section 20-1-306, C.R.S., the State contributes 80 percent of the funding for a minimum DA salary that is established in statute (including the associated costs of employer Public Employees' Retirement Association contributions). In 2007 (H.B. 07-1170), the General Assembly raised the statutory minimum salary for DAs over a four-year period, from \$67,000 in 2008 to \$130,000 as of January 1, 2012. A judicial district may choose to pay a salary that exceeds the statutory minimum using local funds.

The appropriation to the Department of Law for the State's contribution for DA salaries currently accounts for more than one-fourth of total General Fund appropriations to the Department. The following table details recent expenditures/ appropriations for this purpose.

<b>State Expenditures for District Attorney Salaries: FY 2007-08 to FY 2012-13</b>			
<b>Fiscal Year</b>	<b>Expenditures</b>	<b>Annual Increase</b>	<b>Cumulative Increase</b>
2007-08	\$1,315,985	n/a	n/a
2008-09	1,654,605	\$338,620	\$338,620
2009-10	2,096,027	441,422	780,042
2010-11	2,263,229	167,202	947,244
2011-12	2,479,847	216,567	1,163,811
2012-13 (approp.)	2,656,368	176,572	1,340,383

<sup>3</sup> See Article VI, Section 13 of the Colorado Constitution and Article 1 of Title 20, C.R.S

## Summary: FY 2012-13 Appropriation & FY 2013-14 Request

Department of Law						
	Total Funds	General Fund	Cash Funds	Reappropriated Funds	Federal Funds	FTE
<b>FY 2012-13 Appropriation:</b>						
HB 12-1335 (Long Bill)	\$57,000,607	\$9,887,386	\$10,583,286	\$34,953,770	\$1,576,165	427.1
Other legislation	<u>250,523</u>	<u>8,799</u>	<u>196,677</u>	<u>45,047</u>	<u>0</u>	<u>2.1</u>
<b>TOTAL</b>	<b>\$57,251,130</b>	<b>\$9,896,185</b>	<b>\$10,779,963</b>	<b>\$34,998,817</b>	<b>\$1,576,165</b>	<b>429.2</b>
<b>FY 2013-14 Requested Appropriation:</b>						
FY 2012-13 Appropriation	\$57,251,130	\$9,896,185	\$10,779,963	\$34,998,817	\$1,576,165	429.2
R-1: Add Appellate FTE	554,200	554,200	0	0	0	5.5
R-2: Add Special Prosecution FTE	298,906	211,232	43,837	43,837	0	1.9
R-3: Refinance tobacco litigation efforts	0	676,952	(676,952)	0	0	0.0
R-4: Refinance Public Information Officer	89,277	20,351	(95,071)	160,400	3,597	0.0
NPI-1: Risk management adjustment	3,284		0	3,284	0	0.0
Employee benefits/common changes	2,467,932	229,385	189,235	1,956,089	93,223	0.0
Relocation to Carr Center	1,652,678	416,935	237,157	950,063	48,523	0.0
Change in anticipated grant funding	43,159		0	43,159	0	0.5
Annualize 2012 session bills	19,431		(18,423)	37,854	0	0.5
Tobacco litigation expense reduction	(380,000)		(380,000)	0	0	0.0
Annualize prior year budget actions	<u>(230,662)</u>	<u>0</u>	<u>(220,896)</u>	<u>(9,766)</u>	<u>0</u>	<u>0.0</u>
<b>TOTAL</b>	<b>\$61,769,335</b>	<b>12,005,240</b>	<b>\$9,858,850</b>	<b>\$38,183,737</b>	<b>\$1,721,508</b>	<b>437.6</b>
<b>Increase/(Decrease)</b>	\$4,518,205	\$2,109,055	(\$921,113)	\$3,184,920	\$145,343	8.4
Percentage Change	7.9%	21.3%	(8.5%)	9.1%	9.2%	2.0%

### Description of Requested Changes

**R-1: Add Appellate FTE:** The request includes \$554,200 General Fund to add six Assistant Attorneys General to address the growing backlog of cases requiring responses from the Appellate Unit. The Department proposes that four of the additional positions would be temporary, and the remaining two would be ongoing. Specifically, the Department anticipates that one position would be eliminated in FY 2016-17 when the backlog has been reduced to a manageable level (68), and three more positions would be eliminated in FY 2017-18. *For further information about this budget request, see the first briefing issue following this section.*

**R-2: Add Special Prosecution FTE:** The request includes \$298,906 total funds (including \$211,232 General Fund) and 1.9 FTE for FY 2013-14 to support the efforts and workload needs of the Special Prosecution Unit. The request would allow the Department to: (1) add a First Assistant Attorney General to assist in the supervision and management of the Unit; (2) fill a vacant Criminal Investigator position; and (3) add a Program Assistant to provide clerical support to all the attorneys and investigators in the Unit.

**R-3: Refinance tobacco litigation efforts:** The Department of Law is responsible for enforcing provisions of the tobacco master settlement agreements, and ensuring that Colorado's interests

are protected under the settlement payment calculation provisions. The Department's budget thus includes funding to support 1.0 FTE attorney, as well as funding for outside counsel and other expenses related to the ongoing arbitration concerning states' diligent enforcement of settlement provisions concerning nonparticipating tobacco manufacturers.<sup>4</sup>

To date, the Department's efforts have been supported by the Tobacco Settlement Defense Account of the Tobacco Litigation Settlement Cash Fund. This Account consists of reimbursements the State received in FY 2000-01 for attorney fees related to the tobacco settlement, plus interest earnings. The Department projects that the funds available in the Account will be exhausted by the end of FY 2012-13. The Department thus requests a total of \$676,952 General Fund for these efforts for FY 2013-14. *Further information about this issue, including potential funding options for the Committee's consideration, will be included in the staff briefing concerning the Tobacco Master Settlement Agreement Funding Policy, scheduled for Wednesday, November 28, 2012.*

**R-4: Refinance Public Information Officer:** The request includes an increase of \$89,277 total funds to refinance the Department's Public Information Officer position. This position is currently supported by custodial moneys that the Department receives as a result of consumer protection efforts. The Department proposes supporting this position in the same manner as other general administrative positions, with a combination of indirect cost recoveries and General Fund. The request reflects a net increase in appropriations because indirect cost recoveries appear twice in the budget: once in the program area where recoveries are collected from various fund sources, and a second time as reappropriated funds in the line item where the recoveries are anticipated to be spent.

**NPI-1: Employee engagement service adjustment:** The request includes a \$3,284 increase in reappropriated funds to support the Department's share of a survey to gauge employees' attitudes toward their work and their work environment, their overall satisfaction, and trends developing

---

<sup>4</sup> When the tobacco Master Settlement Agreement (MSA) was signed in 1998, participants recognized that the extra costs that the settlement imposed on participating manufacturers would place them at a competitive disadvantage when compared with manufacturers who have not joined the agreement. In an effort to level the playing field, the agreement required states to enact qualifying statutes that force nonparticipating manufacturers (NPM) to make payments into escrow accounts that are comparable to what they would have paid had they participated in the agreement. House Bill 99-1208 added the qualifying statute to Colorado law. The MSA requires states to "diligently enforce" their qualifying statutes. If certain preconditions are met, settlement payments to states that do not diligently enforce are reduced.

Since 2006, Colorado and the other states have been involved in a legal dispute with the participating manufacturers, who allege that the states are not diligently enforcing their NPM laws. Due to this dispute, some tobacco companies have withheld a portion of their settlement payments, placing them in escrow. When a diligent enforcement question arises, it is settled by a panel of arbitrators who must decide the issue in a unified national proceeding in which a separate decision will be made on the diligent enforcement efforts of each participating state. Thus the arbitrators might decide that one state should receive a reduced payment because it failed to diligently enforce, while another state diligently enforced and is entitled to its full payment.

within the workforce. *This request item will be addressed in a separate staff briefing concerning the Department of Personnel and Administration scheduled for Monday, December 10, 2012.*

**Employee benefits/common changes:** The request includes an increase of \$2,467,932 total funds, including: \$2,068,416 for employee benefits and \$399,516 for other statewide common policy adjustments.

**Relocation to Carr Center:** The request includes an increase of \$1,652,678 total funds (including \$416,935 General Fund) related to the Department's relocation to the new Ralph L. Carr Colorado Judicial Center. *The overall statewide impact of various state agencies' relocation to the Carr Center will be addressed as part of a separate staff briefing concerning the Judicial Branch scheduled for Monday, December 3, 2012.*

**Change in anticipated grant funding:** The request reflects an anticipated \$43,159 increase in the amount of funding available from the Department of Public Safety to support the Department of Law's efforts to investigate and prosecute multi-jurisdictional auto theft.

**Annualize 2012 session bills:** The request includes an increase of \$19,431 total funds and 0.5 FTE to reflect the FY 2013-14 impact of legislation that was passed in 2012, including the following acts: S.B. 12-110; H.B. 12-1110; H.B. 12-1300; H.B. 12-1303; H.B. 12-1311; and H.B. 12-1330. Appendix B provides a short description of each of these acts.

**Tobacco litigation expense reduction:** The Department of Law is responsible for enforcing provisions of the tobacco master settlement agreements, and ensuring that Colorado's interests are protected under the settlement payment calculation provisions. The Department's budget thus includes funding to support 1.0 FTE attorney, as well as funding for outside counsel and other expenses related to the ongoing arbitration concerning states' diligent enforcement of settlement provisions concerning nonparticipating tobacco manufacturers. The request includes a reduction of \$380,000 cash funds due to a projected decrease in the cost of outside counsel and other arbitration-related expenses.

**Annualize prior year budget actions:** The request includes a decrease of \$230,662 total funds to reflect the FY 2013-14 impact of several FY 2012-13 budget decisions, including the following five requests (R) and a budget amendment (BA):

- R-1: Consumer protection enhancement (decrease of \$34,410 cash funds)
- R-2: Consumer credit unit – unlicensed entities compliance effort (decrease of \$9,766 cash funds)
- R-3: Case management system (decrease of \$157,254 cash and reappropriated funds)
- R-4: Add Deputy Attorney General (decrease of \$6,882 reappropriated funds)
- BA-1: Lowry Range Legal Services and Litigation expenses (decrease of \$22,350 cash funds)

## **Issue: Appellate Case Backlog**

---

The Department of Law has requested \$554,200 General Fund for FY 2013-14 to add six Assistant Attorneys General to address its growing backlog of criminal appeals cases.

### **SUMMARY:**

- The Department of Law's Appellate Unit handles criminal appeals, representing the prosecution when a defendant challenges his/her felony conviction before the state appellate court or the federal courts. The backlog of cases awaiting the Unit to file an Answer Brief grew to 608 as of June 2012, and most Answer Briefs are delayed by a minimum of 140 days beyond the 35-day time frame contemplated in rule.
- The Appellate Unit backlog has been a concern for more than a decade. In FY 2000-01 and FY 2001-02, the General Assembly significantly increased staffing for the Appellate Unit to address the growing caseload and the case backlog. However, due to two economic downturns, base attorney resources for the Unit have decreased by four since FY 2001-02, and the Unit is currently two attorneys short of what was anticipated to be required when three appellate judges were added through H.B. 07-1054.
- The Department of Law has requested \$554,200 General Fund for FY 2013-14 to add six Assistant Attorneys General to address its growing backlog. Four of the additional positions are only anticipated to be required until the backlog reaches a manageable level.

### **RECOMMENDATION:**

Those state agencies that are involved in criminal appeals cases agree that delays in processing appeals are detrimental to all parties involved. Staff recommends that the Committee approve the Department of Law's FY 2013-14 funding request for the Appellate Unit and monitor its success in reducing the backlog of cases awaiting Answer Briefs.

In addition, if the General Assembly's goal is to reduce the overall time required to process criminal appeals cases, it will also need to address workload challenges at the Office of the State Public Defender (OSPD). Specifically, if the Department of Law is successful in reducing its backlog of cases awaiting an Answer Brief, the OSPD's workload related to these cases will be impacted to some extent in the short term. In addition, there is a significant backlog of criminal appeals cases that are awaiting an Opening Brief from the OSPD. Both the OSPD and the Department of Law will likely need additional resources to effectively address this backlog of cases.

Staff recommends that the Committee ask the OSPD to discuss at its December 14, 2012, hearing the potential workload impact should the Department of Law succeed in reducing its backlog of cases awaiting an Answer Brief. In addition, staff recommends that the Committee ask the OSPD to discuss its own backlog of cases awaiting an Opening Brief, and what resources might be required to reduce such backlog.

## **DISCUSSION:**

### **Appellate Unit Responsibilities**

The Department of Law's Appellate Unit handles criminal appeals, representing the prosecution when a defendant challenges his/her felony conviction before the state appellate court or the federal courts<sup>5</sup>. Most of the cases handled by the Unit are in the Colorado Court of Appeals, with the remainder in the Colorado Supreme Court and the federal courts. This Unit also prepares a weekly digest summarizing published cases to ensure that Appellate Unit attorneys and prosecutors throughout the state are informed about developments in criminal law and procedure. This portion of the Appellate Unit<sup>6</sup> is funded by General Fund and indirect cost recoveries. In FY 2011-12, the 28 attorneys in this unit filed 894 briefs, and argued 115 cases before the appellate court.

### **Appellate Unit Workload**

A case is officially "activated" when the Appellate Unit receives an Opening Brief from the defense or an order to show cause from the federal district court. In FY 2011-12, the Unit activated 1,171 new appeals; the sources of these appeals were as follows:

- 40.3 percent were filed by the Office of the State Public Defender (OSPD);
- 31.7 percent were filed by private attorneys (including attorneys who are paid by the Office of the Alternate Defense Counsel (OADC)); and
- 27.9 percent were filed by self-represented defendants

These cases primarily involve felonies, including: homicide and attempted homicide; kidnapping; assault; sexual assault; completed and attempted aggravated robbery; and burglary and theft. For each case initiated by the defense, the Unit must review the trial court record compiled and the Opening Brief filed by the defense, perform legal research concerning the defendant's claims, and file an Answer Brief in response. Staff must monitor each case, file motions as necessary, and present oral arguments before the appellate court when necessary.

About 90 percent of the Unit's cases are affirmed on appeal. However, the Unit may seek *certiorari* review in the Colorado Supreme Court when: (a) the Court of Appeals issues an opinion that appears to be contrary to established law and/or would have an adverse impact on law enforcement; or (b) conflicting decisions from the Court of Appeals emphasize the need for clarification in particular areas of law. In the last three fiscal years, the Supreme Court has agreed to hear 28 cases in response to requests filed by the Unit. The Unit may also file a Petition for Rehearing with the Court of Appeals, asking that the court reconsider its action if the Unit believes that one or more issues were wrongly decided by the court.

The Appellate Unit backlog measures the number of cases in which the Unit has received Opening Briefs. The Colorado Appellate Rules provide that Answer Briefs are to be filed 35

---

<sup>5</sup> See Sections 16-12-101 and 24-31-101 (1) (a), C.R.S.

<sup>6</sup> Since FY 2010-11, the Appellate Unit line item has also included funding for 1.0 FTE Victims' Services Coordinator. The Coordinator position is supported by General Fund and the Victims Assistance and Law Enforcement (VALE) Fund.

days after the Opening Brief is served. Most of the Answer Briefs are delayed a minimum of 140 days beyond the original due date, with many of the larger cases delayed far beyond that. The Unit indicates that a backlog of less than 100 cases is manageable. As detailed in Table 1, the Appellate Unit backlog increased from 258 in FY 2006-07 to 434 in FY 2009-10, and then decreased in FY 2010-11 to 398. However, the backlog has subsequently increased, reaching 608 by the end of FY 2011-12.

<b>Fiscal Year</b>	<b>Opening Briefs Received</b>	<b>Answer Briefs Filed</b>	<b>Cases Resolved in Other Ways /a</b>	<b>Fiscal Year-End Case Backlog</b>
2006-07	951	973	48	258
2007-08	979	865	102	270
2008-09	1,240	1,029	87	395
2009-10	1,152	1,054	62	434
2010-11	1,050	1,021	66	398
2011-12	1,171	894	67	608

a/ These figures include cases on the "expedited docket", which was implemented in March 2007, cases on the "experimental docket", which was implemented in March 2012, and cases that were transferred or dismissed.

### **Court of Appeals Caseload and Trends**

The Court of Appeals provided data concerning the average elapsed time for various types of appellate cases. Since at least 2005, criminal cases have taken the most time, on average, to resolve (measured from when an Appellant files a Notice of Appeal to when the court issues the Mandate). For example, in 2011, criminal appeals required an average of 570 days, compared to 386 days for civil cases, 343 days for Industrial Claims Appeals Office cases, 241 days for juvenile cases (other than dependency and neglect cases), and 206 days for dependency and neglect cases. The average time elapsed for criminal appeals cases declined significantly from 2005 to 2008 (from 837 to 481). However, it began increasing again in 2010 and remained steady in 2011. In FY 2011-12, criminal cases accounted for 42 percent of appellate filings (*i.e.*, a Notice of Appeal was filed).

### **Recent Appropriations for the Appellate Unit**

The Appellate Unit backlog has been a concern for more than a decade. Prior to FY 2000-01, the General Assembly had authorized funding for contract attorneys to address the backlog. However, the Department determined that it is significantly less expensive and more effective to address the backlog by hiring additional staff, rather than using contract attorneys. In FY 2000-01 and FY 2001-02, the General Assembly significantly increased staffing for the Appellate Unit to address the growing caseload and the case backlog, adding nine attorneys and one support staff person. As a result, the FY 2001-02 appropriation supported 28 attorneys the three support staff; this staffing level was intended to handle an annual caseload of up to 1,000, and address a backlog of about 150 cases. In 2003 the number of attorneys was reduced by 5.0 FTE due to the economic downturn. One attorney position was restored at the end of FY 2005-06 due to concerns about the growing case backlog.

In 2006 and 2007, the General Assembly increased the number of judges, including adding a total of six judges to the Court of Appeals<sup>7</sup>. To date, the Department's Appellate Unit has received funding to add four of the six attorneys anticipated to be required as a result of the 2006 and 2007 legislation. Specifically, the Legislative Council Staff Fiscal Note for H.B. 07-1054 anticipated that the Unit would require an additional 2.0 FTE in FY 2008-09 and another 3.0 FTE in FY 2009-10 to handle the accelerated pace at which cases would reach the appellate courts due to increases in the number of trial court judges. While the Unit did receive the additional 2.0 FTE in FY 2008-09 and 1.0 FTE in FY 2009-10, the Department proposed deferring the remaining 2.0 FTE until the state's fiscal situation recovers enough to support the required appropriation.

In summary and as detailed in Table 2, base attorney resources for the Unit have decreased by four since FY 2001-02, and the Unit is currently two attorneys short of what was anticipated to be required as a result of H.B. 07-1054.

<b>Fiscal Year</b>	<b>Attorneys 1/</b>	<b>Support Staff</b>	<b>Victims' Services</b>	<b>Total</b>	<b>Notes</b>
2001-02	28.0	3.0		31.0	Over two year period, 9.0 FTE attorneys and 1.0 FTE support staff added due to case backlog
2002-03	26.8	3.0		29.8	Staff reduction due to downturn
2003-04	23.0	3.0		26.0	Staff reduction due to downturn
2004-05	23.0	3.0		26.0	
2005-06	23.3	3.0		26.3	1.0 FTE added mid-year to address backlog
2006-07	25.0	3.0		28.0	Annualization of 1.0 FTE staff added mid-year in FY 2005-06; 1.0 FTE (of 1.0 FTE total) added per H.B. 06-1028
2007-08	27.0	3.0		30.0	2.0 FTE (of 5.0 FTE total) added per H.B. 07-1054
2008-09	27.0	3.0		30.0	
2009-10	28.0	3.0		31.0	1.0 FTE added per H.B. 07-1054
2010-11	28.0	3.0	1.0	32.0	Victims' services funding consolidated with Appellate Unit
2011-12	28.0	3.0	1.0	32.0	
2012-13	28.0	3.0	1.0	32.0	

1/ The number of attorneys includes the Deputy Attorney General who leads the Appellate Unit.

In addition, as detailed in Table 3, the Unit has experienced base funding reductions in four of the last five fiscal years. To date, all but two of these base reductions have been reversed, leaving a net base reduction of \$31,901.

<sup>7</sup> House Bill 06-1028 added three judges to the Court of Appeals in FY 2006-07. House Bill 07-1054 added three judges to the Court of Appeals in FY 2008-09.

<b>Fiscal Year</b>	<b>Total Staff</b>	<b>Notes</b>
2007-08	(\$10,240)	0.5% base reduction
2008-09	(21,661) (120,000)	1.0% base reduction Hiring freeze
2009-10	120,000 (45,320)	Reverse hiring freeze reduction to fill vacant positions 1.82% base reduction
2010-11	45,320	Reverse base reduction
2011-12	(37,428)	1.5% base reduction
2012-13	37,428	Reverse base reduction
	<b>(31,901)</b>	<b>Net base reduction since FY 2006-07</b>

Most recently, the General Assembly approved the Department's funding request for FY 2012-13, including approval of decision item #5 (of six) to restore a 1.5 percent base reduction that was taken in FY 2011-12 (\$37,428). In addition, the Joint Budget Committee's common policy to reduce certain personal services line items by 1.0 percent for FY 2012-13 would have reduced funding for this line item by \$25,566. However, the General Assembly elected to not take this reduction.

The Department notes that its ability to address the backlog is hampered by a relatively high turnover rate in the Appellate Unit. Specifically, since July 1, 2010, the Unit has lost eight of its 28 attorneys. This turnover is at least partly due to a disparity between the salaries paid by the Appellate Unit and the salaries paid by other units within the Department. Of the eight attorneys who have left the Appellate Unit since July 2010, three accepted positions in other sections of the Department, three went to the private sector, one accepted a position with the Office of Legislative Legal Services, and one retired.

#### **June 2012 Funding Request**

In June 2012, the Department submitted to the Joint Budget Committee an interim supplemental request for an increase of \$185,442 General Fund for FY 2012-13 to add two Assistant Attorneys General in the Appellate Unit to reduce the growing backlog of appeal cases. The Department indicated that the requested attorneys, along with recently implemented efficiencies, should minimize the growth in the monthly backlog. However, the request was not anticipated to be sufficient to decrease the backlog.

In response to this request, staff expressed concern about the rapidly growing backlog of appellate cases, and indicated that it would be appropriate to restore funding for the four attorney positions that were eliminated in 2003 and add funding for the two remaining attorney positions that were anticipated to be needed due to the implementation of H.B. 07-1054. However, staff recommended denying the request because it was not consistent with the statutory criteria related to interim supplemental requests. Staff indicated that this is an ongoing policy issue that can and

should be addressed through the normal supplemental process for FY 2012-13 and/or the normal budget process for FY 2013-14.

In addition, staff noted that efficiencies implemented by the Department to date and the requested funding were only anticipated to minimize the growth in the monthly backlog – not to decrease it. Staff recommended that the Department consider developing a comprehensive, long-term plan to reduce the appellate backlog to an appropriate level, including: (a) further changes to the internal processes and tools used by the Unit to respond when cases are filed; and (b) potential statutory or rule changes that would reduce the number or scope of appeals filed (if appropriate) or the time and effort required to process criminal appeals cases. In order to develop a comprehensive plan that takes into consideration impacts to the prosecution, the defense, and the courts, staff suggested that the Department seek input from the other affected state agencies (e.g., the Court of Appeals, the OSPD, and the OADC) to develop such a plan.

The Joint Budget Committee unanimously rejected the June 2012 request, but directed the Department to work with the relevant agencies involved in criminal appeals and to submit a plan to address the case backlog and an associated funding request in November 2012.

#### **November 2012 Funding Request**

The Department has included as part of its FY 2013-14 budget request an increase of \$554,200 and 5.5 FTE for FY 2013-14 to add six Assistant Attorneys General to address the growing backlog of cases awaiting responses from the Appellate Unit. The Department proposes that four of the additional positions would be temporary, and the remaining two would be ongoing. Specifically, the Department anticipates that one position would be eliminated in FY 2016-17 when the backlog has been reduced to a manageable level (68), and three more positions would be eliminated in FY 2017-18. Table 4 details the Department's projections of how the requested resources would affect the Appellate Unit backlog.

<b>Fiscal Year</b>	<b>Opening Briefs Received</b>	<b>Answer Briefs Filed</b>	<b>Cases Resolved in Other Ways /a</b>	<b>Fiscal Year-End Case Backlog</b>
2011-12	1,171	894	67	608
2012-13	1,153	1,018	65	678
2013-14	1,153	1,250	65	516
2014-15	1,153	1,250	65	354
2015-16	1,153	1,250	65	192
2016-17	1,153	1,212	65	68
2017-18	1,153	1,095	66	60

a/ These figures include cases on the "expedited docket", which was implemented in March 2007, cases on the "experimental docket", which was implemented in March 2012, and cases that were transferred or dismissed.

The Department notes that delays in processing appeals are detrimental to all parties involved. When a case is reversed after many years, both the prosecution and the defense generally have difficulty preparing a case for retrial – witnesses may be gone, memories may fade; and evidence may be lost or misplaced. This does a disservice to everyone affected by that case, most significantly victims and defendants. In addition, the Department indicates that there has been an increase in the number of instances in which a defendant seeks to have their conviction vacated because they have allegedly been denied their right to a speedy appeal. While the Colorado Court of Appeals has not been receptive to these claims to date, it is conceivable that there could come a point where the Court would agree with this argument and vacate an otherwise valid conviction. The Department indicates that the U.S. Court of Appeals for the 10<sup>th</sup> Circuit has concluded that, "delay in adjudicating a direct criminal appeal beyond two years from the filing of the notice of appeal gives rise to a presumption that the state appellate process is ineffective"<sup>8</sup>.

### **Other Potential Solutions to Address Backlog**

The Department describes several efficiencies it has implemented internally to try to address the growing backlog within existing resources, including the following:

- directing cases to individuals with subject matter expertise in particular areas, when possible;
- assigning subsequent appeals on the same defendant or related appeals to the attorney who handled the original case;
- prioritizing cases according to complexity of issues; and
- providing a variety of resource materials and short cuts to speed up case processing.

In February 2012, the Department's Chief Deputy Attorney General and Deputy Solicitor General met with the Chief Judge of the Court of Appeals and the Clerk of the Combined Courts to discuss the Department's appellate backlog and brainstorm ideas for reducing it. One of the ideas that has been implemented is the use of an "experimental docket" in which the Department of Law files an abbreviated Answer Brief that provides a special panel with the basic information necessary to evaluate the defendant's claims without full briefing on all the issues raised. The Department has met with the Court once since then to refine that process. As of October 31, 2012, the Unit has filed abbreviated Answer Briefs in 81 cases, and has received opinions in 29 of those cases.

More recently, the Department met with representatives from the OSPD, the OADC, and the Court of Appeals to discuss possible systemic changes that might reduce the number of criminal appeals. The Department indicates that, "not surprisingly, the parties' different orientations resulted in little consensus as to what changes would be either appropriate or desirable". However, the parties did agree that there needs to be a working group to review procedures, rules, and practices for handling postconviction appeals, and all parties committed to participating in that review and recommending changes.

Currently, procedures for postconviction appeals are governed by Section 16-5-402, C.R.S., and the Colorado Supreme Court's Rules of Criminal Procedure 35 (c). Those authorities establish

---

<sup>8</sup> *Harris v. Champion*, 15 F.3d 1538, \*1556 (10<sup>th</sup> Cir. 1994).

time limits for filing for review in all but capital cases, and impose limitations on successive filings. The Department notes, however, that as a practical matter litigants – particularly self-represented litigants – frequently ignore these rules. The litigants file their motions; the courts entertain them, even if they deny the motions as time-barred or successive; and the defendants repeatedly appeal those denials. This practice increases the workload for the trial and appellate courts, the Department of Law, the OSPD, and the OADC.

The Department offers that one possible solution to this issue would be to provide counsel for all defendants for their first postconviction appeal. Ideally, this solution would significantly reduce the number of postconviction motions filed in the trial courts and thereafter appealed, and would insure that legitimate claims are reviewed by an attorney trained to recognize and argue them in a timely fashion. The Department indicates that there is no constitutional right to counsel on postconviction motions, and only a limited statutory right to such representation. However, the Department notes that the interests of justice are best served if all legitimate challenges are raised as soon as possible after a conviction becomes final, and litigated at that time to the extent the trial court feels it is appropriate. The outcome of that proceeding could be appealed by either party. The Department argues that thereafter, there should be stricter limitations on any further postconviction motions, barring exceptional circumstances.

The Department anticipates that any recommendations that result from these discussions would require both statutory and rule changes. The Department does not anticipate that this group will have any recommendations ready until the 2014 legislative Session.

#### **Office of the State Public Defender Appellate Caseload and Trends**

As indicated earlier in this issue brief, about 40 percent of Opening Briefs received by the Appellate Unit are filed by the OSPD. Thus, if the Appellate Unit is successful in reducing its backlog of cases awaiting an Answer Brief, the OSPD will be impacted to the extent that the number of cases for which it may be required to file Reply Briefs, make oral arguments, etc., will increase in the short term. If the goal of the Department of Law's request is to shorten the time to ultimate resolution of criminal appeals, the potential OSPD workload impact should be taken into consideration. In addition, there are a significant number of criminal appeals cases that are awaiting an Opening Brief from the OSPD, and this OSPD backlog contributes to the overall delay in processing criminal appeals. Specifically, in FY 2011-12, 1,256 cases were pending an Opening Brief from the OSPD; this is more than 60 percent higher than the backlog that existed from FY 2000-01 through FY 2004-05. If the General Assembly's goal is to reduce the average time required to process criminal appeals cases, it will need to address the backlogs that exist at the OSPD and at the Department of Law.

### **RELEVANCE OF BRIEFING ISSUE TO THE DEPARTMENT'S STRATEGIC PLAN:**

This briefing issue provides background and context for the Department's first priority request to add staff to the Appellate Unit. The stated objective of the Appellate Unit is to "minimize state risk through the effective representation of state prosecution when defendants challenge their felony convictions before the state appellate courts or the federal courts". The Unit's strategy is to resolve cases in a timely fashion while providing quality representation of the State's interests.

The request for additional staff is aimed at addressing the issue of timeliness and reducing the growing backlog of appellate cases.

## **Issue: Major Litigation Pending Against the State**

This issue brief provides a summary of legal cases involving the State that could have a significant financial impact.

### **SUMMARY:**

The following legal cases involving the State that could have a significant financial impact:

#### Corrections

- *Montez, et al. v. Ritter, et al.*

#### Education

- *Lobato, et al. v. the State of Colorado, et al.*

#### Health Care Policy and Financing

- *Rocky Mountain Hospital and Medical Service, Inc. d/b/a/ Anthem Blue Cross and Blue Shield v. Department of Health Care Policy and Financing*

#### Natural Resources

- Potential U.S. Supreme Court Case with Kansas Suing Nebraska and Colorado Regarding the Republican River Compact
- *Pure Cycle Corporation and Rangeview Metropolitan District v. State of Colorado, by and through its State Board of Land Commissioners*

#### Revenue

- *BP America Production Co. v. Colorado Department of Revenue*
- Conservation Easement Tax Credit Denial Cases
- *Direct Marketing Association v. Colorado Department of Revenue*
- *Public Service Company of Colorado v. Colorado Department of Revenue*

#### Transportation

- *TABOR Foundation v. Colorado Bridge Enterprise, Colorado Transportation Commission*

#### Risk Management Fund

- *American Family Insurance, et al. v. State of Colorado, et al.* [Colorado State University, Colorado State Forest Service, Department of Public Safety]
- *Comprehensive Addiction Treatment Services Center v. Department of Human Services, Division of Behavioral Health, et al.*
- *Havens, Darrell v. William Johnson* [Corrections, Public Safety, Natural Resources]
- *Justus, Gary, et al. v. State of Colorado, Gov. Bill Ritter, Public Employees' Retirement Association (PERA), et al.*
- *Kemp, Keith, et al. v. Ivan Lawyer, et al.* [Department of Public Safety]

## **RECOMMENDATION:**

Staff recommends that the Committee ask the Department to discuss the status of the cases concerning school finance (*Lobato*), the Colorado Bridge Enterprise (*TABOR Foundation*), PERA (*Justus*), conservation easement tax credit denials, and the Lower North Fork Wildfire (*American Family Insurance*), as well as any other cases the Attorney General believes warrant the Committee's attention.

In addition, staff recommends that the Committee ask the Attorney General to discuss any legal issues the General Assembly should take into consideration as it determines how to implement Amendment 64 (concerning the use and regulation of marijuana) which Colorado voters recently approved.

## **DISCUSSION:**

The Department of Law submits an annual report to the State Controller concerning pending or threatened litigation, claims, and assessments involving significant dollar amounts, brought against the State and to which the Department has devoted substantial attention on behalf of the State. The Department's annual report describes the nature and status of each case, the claims asserted by the plaintiff and the objectives and/or damages sought, how management is responding to the litigation, the Attorney General's evaluation of the likelihood of an unfavorable outcome, and an estimate as to the amount or range of potential loss. This annual report does not, however, include information about two types of cases or claims:

- As the Department does not represent the General Assembly (except in cases under the Risk Management Fund) or the University of Colorado Board of Regents, this report excludes information about cases brought against these two entities.
- Although notices of claims in the nature of tort must be filed with the Attorney General pursuant to the Colorado Governmental Immunity Act (CGIA)<sup>9</sup>, the Department of Personnel's State Risk Management Office and the State Claims Board have the responsibility to investigate, adjust, and settle such claims before they become lawsuits<sup>10</sup>. All tort and federal claims alleging damages against state agencies and employees, if settled, are to be paid out of the Risk Management Fund to the limits of the CGIA. Thus, the report excludes information about claims that have not resulted in lawsuits.

Based on the most recent annual report dated September 7, 2012, as well as additional information from the Department of Law and the Judicial Branch, staff has provided below a brief summary of unresolved cases in which the potential financial impact, either through damages, attorneys' fees and costs, or the cost of state compliance with court orders, exceeds \$5 million. The cases are organized by department, in the same order as they are listed on the previous page.

---

<sup>9</sup> See Section 24-10-109, C.R.S.

<sup>10</sup> See Section 24-30-1501, *et seq.*, C.R.S.

## **Corrections**

### ***Montez, et al. v. Ritter, et al.***

*Case.* This is a certified class action filed on behalf of prison inmates with disabilities consisting of mobility, sight, and hearing impairments, and diabetes. Inmates brought this class action seeking damages and declaratory and injunctive relief against the Governor, the Department of Corrections, and a lengthy list of prison officials, based on federal law.

*Status.* The case settled in August 2003. The Department made physical changes at several prisons to comply with federal Americans with Disabilities Act (ADA) requirements, and was found to be in compliance. The Department was not initially found to be in compliance with regard to programmatic, tracking, and training issues. The Department received approximately \$2.4 million in 2006 for increased personnel, equipment, and computer systems to come into compliance with programmatic changes. A subsequent compliance hearing ended in November 2010, both parties filed proposed findings of fact in May 2011, and related responses in August 2011. A court ruling concerning compliance is pending.

Approximately 1,440 individual members of the class filed claims with the Special Master concerning injuries suffered as a result of any alleged violation of the ADA. The State has won most of the claims that have been decided. Rulings of the Special Master are appealable to U.S. district court. To date, the Special Master has awarded minimal damages in a few cases and the court has reversed very few of the Special Master orders.

*Financial Impact.* Risk Management has paid \$60,498 in damages, plus over \$6 million for plaintiffs' attorneys' fees and for Special Masters' fees. The few damages claims yet to be litigated may result in insignificant awards. Attorneys' fees, Special Masters' fees, and costs will continue to be paid during the compliance and monitoring periods and could amount to more than \$1 million. Risk Management will cover damages, costs, and attorneys' fees.

## **Education**

### ***Lobato, et al. v. the State of Colorado, et al.***

*Case.* In June 2005 a complaint was filed alleging that Colorado's system of funding public schools is unconstitutional because it does not provide adequate funding, and funding is not allocated in a manner rationally related to the constitutional mandate that the General Assembly provide for the maintenance of a "thorough and uniform" public school system. The Plaintiffs have asked the court to declare the entire existing system of funding public schools unconstitutional, and to require the General Assembly to enact and fund a new system.

*Status.* The trial court initially dismissed the case on the ground that the issue presented a non-justiciable political question. The Court of Appeals affirmed the decision, but the Colorado Supreme Court reversed and remanded the case for trial. The five week trial in Denver district court concluded in September 2011. The Denver district court issued a decision in December 2011 concluding that the entire system of public school finance (including the Public School Finance Act, categorical programs, and capital construction funding) is not rationally related to the constitutional "thorough and uniform" mandate.

The court enjoined the Defendants from adopting, implementing, administering, or enforcing any laws and regulations that fail to establish, maintain, and fund a thorough and uniform system of schools that fulfills the qualitative mandate and that is in full compliance with constitutional local control requirements. The court further enjoined the Defendants to design, enact, fund, and implement a system of public school finance that provides and assures that adequate, necessary, and sufficient funds are available in a manner rationally related to these constitutional requirements.

However, the court stayed the enforcement of the injunctive relief in order to provide the State a reasonable time to create and implement a system of public school finance that meets these constitutional mandates. This stay will continue in effect until final action by the Colorado Supreme Court upon appeal of the Denver district court's decision. If such an appeal had not been made, the Denver district court would have reviewed the stay upon application of either party submitted no earlier than the conclusion of the 2012 legislative session. While this stay is in place and until further action by the Supreme Court or the Denver district court, the present financing formula and funding may remain in effect.

In July 2012 the State filed a direct appeal to the Colorado Supreme Court. The Plaintiffs (the Appellees for purposes of the current appeal case) have filed their reply brief, the State has filed its answer brief, and a number of *amici curiae* or "friend of the court" briefings have been filed in support of both the State and the Appellees. The next step in the case is expected to be oral arguments before the court.

*Financial Impact.* Other than reasonable attorneys' and expert witness fees, the Plaintiffs are not seeking a specific monetary judgment. However, Plaintiffs assert that the system is underfunded and requires at least an additional \$1.35 million to \$4.15 billion annually to allow school districts to meet all state and federal standards and requirements (excluding transportation, food services, or facility-related expenses). With respect to facility needs, Plaintiffs assert that an additional \$5.7 billion to \$17.9 billion should be spent on capital facilities. Finally, if the Plaintiffs prevail on their claim for attorneys' fees and costs, Plaintiffs' attorneys' fees and costs will likely exceed \$1 million.

#### **Health Care Policy and Financing**

##### ***Rocky Mountain Hospital and Medical Service, Inc. d/b/a/ Anthem Blue Cross and Blue Shield v Department of Health Care Policy and Financing***

*Case.* The Plaintiff is pursuing claims for breach of contract, promissory estoppel, and unjust enrichment/implied contract. Anthem alleges that it entered into an oral contract with the Department of Health Care Policy and Financing (DHCPF) to administer the Medicaid Prenatal Presumptive Eligibility Program from 2005 through 2008, and that the DHCPF owes additional funds to Anthem for the administration of the program.

*Status.* Mediation was set for September 28, 2012, and was successful.

*Financial Impact.* The plaintiff sought \$6.9 million in damages and interest. The case was recently settled for \$3,075,000. The DHCPF will pay this amount to Anthem no later than November 30, 2012.

## **Natural Resources**

### **Potential U.S. Supreme Court Case with Kansas Suing Nebraska and Colorado Regarding the Republican River Compact**

*Case.* In 1998, Kansas sued Nebraska and Colorado, alleging overuse of water from the Republican River, which flows from Colorado and Nebraska into Kansas. In 2003, the three states entered into a settlement decree to resolve the dispute. As a result of that decree, Colorado developed new water enforcement rules, retired thousands of acres of irrigated land, and took additional actions such as the partial draining of Bonny Reservoir.

*Status.* In 2008 Kansas began arbitration proceedings against Nebraska and Colorado, alleging continued overuse of river water. The U.S. Supreme Court accepted a Kansas suit against Nebraska for violating the Republican River Compact and appointed a Special Master to oversee the case. If Nebraska loses the litigation, it has indicated it may pursue a claim against Colorado for contribution. Although Kansas has not yet asserted specific claims against Colorado, Kansas has reserved the right to seek relief at a later time against Colorado for its violations of the Compact, and has expressed interest in pursuing such claims in the current fiscal year. Discovery concluded and trial took place in August, 2012. The Special Master has requested additional briefing on damages before determining what amount, if any, would constitute a reasonable damages award.

The State hopes to reach a resolution with Kansas and/or Nebraska prior to any suit being filed against Colorado. If such negotiations prove unsuccessful, the State will invoke the non-binding arbitration process pursuant to the Final Settlement Stipulation prior to any formal litigation. If that is not successful, the State will vigorously defend the case.

*Financial Impact.* Kansas has not stated a specific dollar amount it seeks from Colorado; however, Kansas has sought over \$70 million from Nebraska for alleged violations of the Compact. The Department of Law indicates that the likelihood of an unfavorable outcome on liability is probable. The numbers accepted by all three states show that Colorado has consumed more water than is permitted under the Compact, although the states have not agreed on the exact amount. Therefore, the only issue will be damages and what Colorado will do in the future to achieve and maintain compliance. Colorado's liability for past over-consumption will likely be in the \$1 million to \$10 million range.

### ***Pure Cycle Corporation and Rangeview Metropolitan District v. State of Colorado, by and through its State Board of Land Commissioners***

*Case.* The State Land Board entered into a water lease with Rangeview Metropolitan District (RMD) in 1986 for the right to use all the water on and under the Lowry Range. RMD retained Pure Cycle Corporation to act as service provider of water developed at the Lowry Range. With oil and gas development moving forward on the Lowry Range, RMD asserts that it has exclusive right to provide water to all users at Lowry Range, including oil and gas lessees. The Land Board disagrees with this assertion. Pure Cycle and RMD filed a lawsuit against the Land Board alleging breach of contract, promissory estoppel, contract reformation, and unjust enrichment claims.

On March 2, 2012, the Land Board approved leasing the Lowry Range to ConocoPhillips, with a one-time "bonus" payment for the lease totaling approximately \$137 million to be spread over four years. The approved lease also includes a 20 percent royalty payment on all production from the Lowry Range, which the Land Board estimates could provide several hundred million dollars of royalty payments over the life of the wells.

*Status.* The Land Board filed a Motion to Dismiss which has not been determined. Once a ruling on the Motion is entered, the Land Board will file its Answer if appropriate. The Land Board and the Department intend to contest the case vigorously and have hired Hogan Lovells as outside counsel to assist in the litigation. [The case has been consolidated with *High Plains A&M LLC v. Pure Cycle Corporation*, in which High Plains seeks rescission of its acquisition of an ownership position in Pure Cycle in exchange for certain Arkansas River water rights. High Plains claims Pure Cycle misrepresented Pure Cycle's rights under the lease. The Land Board is not party to this case.]

*Financial Impact.* The amount of monetary or other damages is not stated in the preliminary case filings. Based on prior negotiations, the claim may be over \$100 million. However, Pure Cycle's vague articulation of damages to date, from what the Department of Law understands now, seems highly inflated and improbable.

#### **Revenue**

##### ***BP America Production Co. v. Colorado Department of Revenue***

*Case.* BP America Production Co. claims a refund of severance taxes paid based on its claim that its expenses for transportation and processing should include a deduction for "return on investment." This is a novel issue in Colorado. Other jurisdictions have allowed the deduction in certain contexts, however, the Department of Revenue (DOR) contends that the deduction is a matter of statutory grant (or not), and that the deduction may only be allowed where expressly provided by law.

*Status.* The Executive Director of DOR held that the Department was justified in denying the additional deduction. The taxpayer appealed to Denver district court and the district court granted summary judgment for BP. The State has filed an appeal. However, the briefing stage has not yet been reached in the appeal. The State must provide its record for the case by December 12, 2012, and the briefing period will begin when the trial court submits the record on appeal (which will occur on December 12, at the latest). Resolution is expected mid-2013.

*Financial Impact.* The amount of the refund claimed is approximately \$2 million, including interest, and including all amounts claimed for both 2003 and 2004.

### **Conservation Easement Tax Credit Denial Cases**

*Case.* Approximately 600 conservation easement tax credit denial cases<sup>11</sup> are pending at the Department of Revenue (DOR). The taxpayers seek to reverse the DOR's denial of their tax credit claims. Among other things, H.B. 11-1300 created a process by which taxpayers may elect to waive their administrative hearing on the disallowance of the conservation easement tax credits and proceed with an appeal and *de novo* trial to a district court, presided over by a specially appointed judge. The taxpayers in the H.B. 11-1300 cases seek to challenge DOR's determinations regarding the validity and value of conservation easement tax credits.

*Status.* The taxpayers were required to elect one of several procedural tracks by September 30, 2011. It appears that the incentives established by the General Assembly to encourage taxpayers to elect the district court option were successful. The following distribution of cases is accurate as of August 31, 2012.

- The representatives of 464 donations elected to proceed in state district court. After the consolidation of cases based on the land and individuals involved, a total of 175 discrete H.B. 11-1300 district court cases are pending against the DOR.
- Four cases in which representatives elected to have an administrative hearing have had the hearing pursuant to Section 39-21-103, C.R.S. The Executive Director's designee ruled in favor of the DOR. These four cases are currently on appeal in district court.
- Another 29 cases in which representatives elected to have an administrative hearing remain in the administrative process, with hearings to be completed by July 1, 2014.
- Representatives of the final 41 donations made no election and, by default, their administrative hearings must be completed by July 30, 2016.

House Bill 11-1300 established special venue provisions and divided the judicial districts into three regions. District court appeals pursuant to H.B. 11-1300 must be filed in the region in which the encumbered land is located. Chief Justice Bender appointed three judges to hear these cases:

- Region 1 (Northeast): Includes the following judicial districts: 1<sup>st</sup>, 2<sup>nd</sup>, 8<sup>th</sup>, 13<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, and 20<sup>th</sup>. Cases will be heard by James F. Hartmann, Jr., Chief Judge for the 19<sup>th</sup> judicial district (Weld county).
- Region 2 (Southeast): Includes the following judicial districts: 3<sup>rd</sup>, 4<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 15<sup>th</sup>, and 16<sup>th</sup>. Cases will be heard by M. Jon Kolomitz, Chief Judge for the 16<sup>th</sup> judicial district (comprised of Bent, Crowley, and Otero counties).
- Region 3 (West): Includes the following judicial districts: 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup>, 14<sup>th</sup>, 21<sup>st</sup>, and 22<sup>nd</sup>. Cases will be heard by Michael A. O'Hara III, Chief Judge for the 14<sup>th</sup> judicial district (comprised of Grand, Moffat, and Routt counties).

---

<sup>11</sup> Please note that "cases" are counted based on donations. A single piece of land may involve multiple donations, and a single donation may involve multiple "transferees" (taxpayers who purchase a tax credit or a portion of a tax credit). For example, one of the largest cases involves one family that divided up their property into multiple parcels, thereby maximizing the number of donations and thus the total value of the tax credits. Individual donations involve multiple transferees, so this piece of land involves 477 individuals. The cases related to this property have been consolidated down to 28 cases.

Due to the number of properties involved in these disputes that are located in the southeast part of the state, about three-quarters of the cases will be heard by Chief Judge Kolomitz. Funding has been provided to the Judicial Branch to add staff to support these judges and to pay for retired judges to hear other district court cases in the interim.

The cases pending in district court are in the earliest stages. In the preliminary stage, the court must determine the validity of the conservation easement tax credit claimed, as well as any other claims or defenses touching the regularity of the proceedings. If the credit is determined to be valid, the first phase is limited to the determination of the value of the easement. The second phase is limited to the determination of the tax, interest, and penalties due, and the apportionment of the tax liability among persons who claimed a credit in relation to the easement. The third and final phase will address all other claims related to the conservation easement tax credit, including those between and among third parties. DOR is not a party to this final phase.

In order to ensure complete and final resolution of any tax credit dispute, DOR sought to compel the "tax matter representatives" (the Plaintiffs in these cases) to join all taxpayers who purchased a credit ("transferees") as necessary parties because the transferees' tax liability will be determined by these actions. The Court of Appeals ruled that transferees are not a party to a case. However, a tax matter representative is required to notify transferees about an appeal, and a transferee may intervene in the case. This case caused many other cases to be put on hold, pending the Court of Appeals ruling. As important issues that affect the process and outcome of these cases come before the Court of Appeals, it is likely that other cases will continue to be put on hold until these issues are settled.

There are a handful of cases wherein the tax matter representative retained and did not sell any portion of the tax credits. As these cases do not involve transferees, they are expected to proceed to the preliminary stage with hearings on the validity of the credits potentially by next Summer.

*Financial Impact.* The total amount of income tax liability at issue estimated for fiscal note purposes under H.B. 11-1300 was \$222.8 million, including \$154.9 million from conservation easement tax credit claims; \$18.6 million in penalties assessed on denied credit claims; and \$49.3 million in interest on those denied credit claims. However, H.B. 11-1300 contains strong language encouraging DOR to waive penalties and interest. As a result, penalty and interest recovered by the Department will be reduced. If the State does not prevail in these matters, much of these funds will be lost in the form of taxes not collectable. However, an unknown amount represents claims for refund plus statutory interest, payable by the DOR.

*Please note that the State Auditor's Office released a report concerning a performance audit of the Conservation Easement Tax Credit program in October 2012. The report includes background information about the program, as well as some recommended changes to strengthen the program prospectively. The audit may be accessed through the following link:*

*<http://www.leg.state.co.us/OSA/coauditor1.nsf/ReportPublicRelease?OpenForm>*

***Direct Marketing Association v. Colorado Department of Revenue***

*Case.* The Direct Marketing Association (DMA) sued the Department of Revenue (DOR) over implementation of H.B. 10-1193. This act requires retailers to notify consumers of their use tax obligations and to make annual reports to DOR, and establishes penalties for the failure to do so. The DMA claims that the law and regulations are unconstitutional. The DMA requests: a declaration that H.B. 10-1193 and DOR's related regulations are unconstitutional, an injunction against enforcement of the statute and regulations, and reimbursement for its attorneys' fees and costs. The dispute in this case is over what methods the State may employ to enforce and collect the undisputedly constitutional use tax on sales made via the Internet and other remote means.

*Status.* DMA filed a motion for preliminary injunction limited to its Commerce Clause claims. In January 2011, the U.S. district court granted DMA's motion, enjoining the DOR from enforcing the notice and reporting requirements. The district court found that the notice and reporting requirements discriminate against and unduly burden interstate commerce in violation of the dormant Commerce Clause. The State filed an appeal with the Tenth Circuit Court seeking reversal of the district court's permanent injunction. The State argues that the dormant Commerce Clause does not require that interstate commerce be treated *more favorably* than intrastate commerce and that the modest reporting requirements on retailers without a physical presence in the state do not approach the significant burdens upon retailers with such a presence for collecting and remitting the use tax.

*Financial Impact.* No damages are sought. DMA's attorneys' fees and costs are estimated to total \$750,000 to \$1.5 million. An award of attorneys' fees under federal law would be covered by the Risk Management Fund.

***Public Service Company of Colorado v. Colorado Department of Revenue***

*Case.* Public Service of Company of Colorado (PSCo) claims a \$12 million refund of sales and use taxes paid on equipment used to generate electricity. PSCo claims the purchases were exempt from sales or use tax under the "manufacturing machinery" exemption. PSCo seeks a refund. PSCo also seeks declaratory relief that future generation of electricity qualifies for the exemption.

*Status.* The Executive Director of the Department of Revenue (DOR) ruled against PSCo in a hearing, but PSCo appealed to the Denver district court and prevailed. The Denver district court entered a \$9.9 million judgment, plus interest. The DOR appealed the decision, and the Court of Appeals issued a decision in favor of PSCo. The DOR filed a petition for certiorari in the Colorado Supreme Court in March 2012. The petition was pending as of August 28, 2012.

*Financial Impact.* The amount of refund claimed is approximately \$12 million. Interest will be ordered if the Department loses, which could result in up to \$20 million.

**Transportation**

***TABOR Foundation v. Colorado Bridge Enterprise, Colorado Transportation Commission***

*Case.* In May 2012 the TABOR Foundation sued the Colorado Bridge Enterprise, the Colorado Transportation Commission, and individual Commissioners in their official capacities, claiming that the bridge safety surcharge levied by the Colorado Bridge Enterprise (pursuant to S.B. 09-

108) constitutes a tax rather than a fee and thus requires a vote of the Colorado electorate. The Plaintiff also alleges that \$300 million in bonds issued by the Bridge Enterprise in December 2010 to fund designated bridge repair and reconstruction projects required voter approval. The Plaintiff seeks a declaratory judgment and permanent injunction declaring the bridge safety surcharge a tax requiring voter approval and declaring the bonds as unconstitutionally issued.

*Status.* The complaint and answer briefs have been filed. A trial date will be set in the near future.

*Financial Impact.* No specific money damages are sought, but the Plaintiff seeks a refund of all bridge safety surcharge revenues collected since its inception in July 2009 and an order declaring the revenue bonds unconstitutional. To date, the Bridge Enterprise has collected approximately \$200 million in surcharges and issued \$300 million in revenue bonds. Claims against the Department of Transportation or the Transportation Commission should not impact the General Fund as these claims are satisfied out of the dollars made available to the Department and allocated by the Commission.

### **Risk Management Fund**

***American Family Insurance, et al. v. State of Colorado, et al. [Colorado State University, Colorado State Forest Service]***

*Background Information.* On March 22, 2012, the Colorado State Forest Service (CFSF) conducted a prescribed burn on property owned by the Denver Water Board to mitigate wildfire potential near the town of Foxton, southeast of Conifer, in Jefferson County. The prescribed burn was done pursuant to a contract with the Denver Water Board and according to a program of forest management by the CFSF intended to thin forests and reduce fuel buildup that contributes to wildfire danger. The prescribed burn was complete by the end of the day on March 22, 2012. On March 23 and 24, 2012, the CFSF conducted mopping-up operations on the perimeter of the burn area, and by the end of the day on March 24, 2012, the only fire activity was in isolated stumps, logs, and pockets of decaying leaves and branches within the burn unit, surrounded by a 200 foot perimeter. The Burn Boss and the CSFS District Forester determined based on conditions within the burn area at the end of the day on March 24, 2012, that no patrol would be necessary for the next day.

On Sunday, March 25, 2012, the burn area was unstaffed. However, at 12:15 p.m. on Sunday, the National Weather Service issued a "Red Flag Warning" for wind and low relative humidity from 10:00 a.m. to 8:00 p.m. on Monday, March 26, 2012. The Weather Service warning was for sustained winds of 20 to 30 mph and gusts to 50 mph. On Monday, March 26, 2012, because of the Weather Service warning, CFSF put a three person patrol on the burn area. At the time the patrol arrived at the burn area, they observed the same basic conditions that had existed on the evening of March 24, 2012, with two isolated smokes in the interior of the burn area. By 12:45 p.m., winds had increased to approximately 10 to 15 mph and were fanning hot spots within the burn area resulting in increased smoke and embers spreading within the burn area and reigniting available fuels. The patrol called for additional assistance at 1:00 p.m., at which time the patrol was fighting two "desk-sized" burns. Winds continued to increase, and fuels within the burn area continued to reignite hot spots. The Elk creek Fire Department arrived between 2:00 p.m.

and 2:15 p.m. At 2:30 p.m. the fire was declared escaped. The fire grew very rapidly in size and intensity. Homeowners in the area reportedly received conflicting information on evacuation, but evacuations were eventually declared and put into effect. Before the fire was brought under control, approximately 26 homes were damaged or destroyed, and three persons were killed when their homes burned, in what has become known as the Lower North Fork wildfire.

In response to the Lower North Fork fire, the General Assembly passed a pair of bills, H.B. 12-1283 and H.B. 12-1361, which shifted fire mitigation and control functions of CFSF to the Department of Public Safety, along with all liabilities for prescribed fires accrued as of July 1, 2012, and retroactively waived the State's sovereign immunity for negligence claims arising from prescribed fires.

*Case.* On July 2, 2012, a group of five insurance companies brought suit in Jefferson County district court to recover amounts paid or to be paid on claims of their insureds for damage resulting from the Lower North Fork wildfire. Plaintiffs named the State of Colorado, Colorado State University (CSU), and CSFS as Defendants. The Plaintiffs assert claims under new provisions of the Colorado Governmental Immunity Act (CGIA), as well as claims for inverse condemnation and "takings" under Article II, section 15 of the Colorado Constitution.

*Status.* On July 23, 2012, the State filed an Answer, Counterclaims and Petition in Interpleader on behalf of Department of Public Safety due to legislation that shifted responsibility for the fire from CSU and CSFS to the Department of Public Safety. The State has generally denied all allegations of negligence, but has conceded liability for negligence claims asserted under new provisions of the CGIA. The State is vigorously defending against claims for inverse condemnation or on "takings" theories. The State asked the court to stay proceedings until October 8, 2012, to permit all potential claimants to file notices of claim and to be joined in the case. The court granted the motion.

*Financial Impact.* Liability under new provisions of the CGIA for negligence in conducting a controlled fire are limited to \$600,000, and are covered by the Risk Management Fund. The State has conceded this liability and \$600,000 has been reserved in the Fund. Estimates of damage to homes and property in the Lower North Fork wildfire exceed \$11 million. In addition, three persons died in fires that engulfed their homes. Not all insurers with policies in effect in the Lower North Fork burn area have joined in this lawsuit, however all insurers affected by the fire are believed to be contemplating joining this lawsuit or initiating their own lawsuits to assert inverse condemnation claims. The State expects that, as the litigation progresses, claims will be made for the full amount of damages suffered in the fire. While damages under the CGIA are limited to \$600,000 per occurrence, if insurance companies and individual home and business owners in the area successfully plead claims for inverse condemnation and "takings," or if they successfully plead claims under 42 U.S.C. 5 1983, liability on their claims will be unlimited. In addition, if inverse condemnation claims are successful, awards could include attorneys' fees and costs of litigation. Fees awarded in inverse condemnation cases are not covered by Risk Management or any insurance policy.

***Comprehensive Addiction Treatment Services Center v. Department of Human Services, Division of Behavioral Health, et al.***

*Case.* Plaintiffs, a methadone treatment facility and its owner, allege tort and civil rights claims pursuant to 42 U.S.C. § 1983 in connection with regulatory action taken against the clinic that resulted in a brief suspension of the clinic license and an 18-month period during which the clinic was barred from admitting new patients or re-admitting former patients. Following clinic reports of six patients dying of suspected overdoses over the course of a two-year period, the Division of Behavioral Health (DBH) found numerous deficiencies in the files of the deceased patients, as well as those selected at random. The DBH brought two adverse licensing actions against the plaintiffs. The licensing actions were later overturned by an Administrative Law Judge following two trials. Department of Human Services officials feel strongly that the Administrative Law Judge failed to consider or to appreciate the seriousness of the on-going deficiencies at the Center and the danger to its patients.

*Status.* The court set a quick trial date for March 2011, but the parties agreed that the trial date could not be met. The parties agreed to enter into a tolling agreement, which resulted in the Plaintiffs re-filing the complaint. The Department responded with another motion to dismiss based on qualified immunity, it has been fully briefed, and they await a court decision. On July 10, 2012, the court entered a stay of discovery pending a determination of the qualified immunity issue.

*Financial Impact.* Plaintiffs' notice of claim states the clinic is seeking damages in the amount of \$25 million. Plaintiffs' economic expert estimates plaintiffs' lost profits and expenses as a result of the two licensing actions at \$2.5 million, plus pre-judgment interest. This amount does not include the finance charges plaintiffs incurred to obtain funding for the legal expenses. As part of the \$2.5 million, plaintiffs are claiming over \$1 million in legal fees incurred in defending against the licensing actions. It is possible that a provoked jury may be willing to award the plaintiff more than \$1 million in compensatory damages. If plaintiffs prevail on their claim that defendants violated federal law, they would be entitled to attorneys' fees in addition to damages. They are also seeking punitive damages. The Risk Management Fund would cover any losses.

***Havens, Darrell v. William Johnson [Corrections, Public Safety, Natural Resources]***

*Case.* An inmate at the Fort Lyons Correctional Facility alleges tort and civil rights claims in connection with his initial arrest and subsequent denial of parole. On July 3, 2007, plaintiff was lured to a sting operation where he was to sell a stolen vehicle. During the sting operations, plaintiff attempted to escape and almost ran down a police officer in the vehicle he was driving. That officer shot the plaintiff, rendering him a quadriplegic. Plaintiff contends that he was shot without provocation and that the approximately 20 officers on the scene, including three Colorado State Patrol (CSP) Troopers and a State Parks Officer, conspired to wrongly convict him of attempted murder. On February 1, 2010, the Colorado Parole Board granted plaintiff medical parole. Parole was subsequently revoked based on a request from the Arvada Police Department and Jefferson County District Attorney's office. This request was submitted when the plaintiff refused to dismiss several previous federal lawsuits against various Arvada and Jefferson County personnel. As a result, the Parole Board members were also named as defendants.

*Status.* This case involves 22 named defendants, 38 John Doe defendants, two related federal cases, and a related state case. All of the Defendants have moved to dismiss the case and stay discovery. The court has stayed discovery but allowed the Plaintiff to amend his complaint three times, requiring re-briefing of all the motions to dismiss. In November 2011, the court consolidated the two state cases, and instructed the Plaintiff to file a (fourth) consolidated complaint. The court also entered an accelerated briefing and discovery schedule. The CSP troopers and the Parole Board members have been dismissed from the case. The remaining State Parks Officer has moved for summary judgment based on the statute of limitation.

*Financial Impact.* Plaintiffs' notice of claim states that he is seeking damages over \$122.7 million. In addition, plaintiff is seeking his legal costs incurred in prosecuting this action. The Risk Management Fund would cover any losses attributed to the CSP Troopers, State Parks Officers, and Parole Board Members.

***Justus, Gary, et al. v. State of Colorado, Gov. Bill Ritter, Public Employees' Retirement Association (PERA), et al.***

*Case.* Plaintiffs are former state and local government employees who can or will receive retirement benefits under PERA. They allege violations of the Colorado and U.S. Constitutions arising from changes to PERA's cost of living adjustment (COLA) pursuant to S.B. 10-001. Among other relief, plaintiffs sought class action status, a permanent injunction against the continued implementation of the revised COLA formula, payment of 2010 (and future) COLA amounts, as well as costs and attorney fees.

*Status.* In late June, 2012, the Denver District Court granted defendants' motion for summary judgment and dismissed Plaintiffs' lawsuit, finding that the modern, three part Contracts Clause analysis applied to the constitutional questions posed in the complaint. The Court applied the first prong of the Contracts Clause test and determined that Plaintiffs had no right to a specific, unalterable COLA to their retirement pension. Plaintiffs appealed. On October 11, 2012, the Court of Appeals reversed. The Court found that PERA members have a contractual right to a COLA, and remanded the case for further consideration of all three prongs of the Contracts Clause analysis. On remand, the District Court was asked to determine what contract was in place for each retiree, whether changes to the COLA for the retirees imposed a "substantial" impairment to members' contract rights, and whether the reduction "was reasonable and necessary to serve a significant and legitimate public purpose". Defendants (and possibly Plaintiffs) will appeal the Court of Appeals ruling through a petition for certiorari to the Colorado Supreme Court.

*Financial Impact.* If S.B. 10-001 is found unconstitutional and enjoined, and the court orders that prior unpaid amounts be repaid to COLA-eligible recipients, the outstanding unpaid COLA amount for 2010 through 2012 could exceed \$250 million. In addition, if successful in their 42 U.S.C. § 1983 claims, plaintiffs would be entitled to receive their attorneys' fees and costs, an amount that could range from \$150,000 to \$450,000. The Risk Management Fund would pay any attorneys' fees and costs judgment against the State defendants, if awarded under federal law.

***Kemp, Keith, et al. v. Ivan Lawyer, et al.*** [Public Safety]

*Case.* Plaintiffs allege tort and civil rights claims pursuant to 42 U.S.C. § 1983 in connection with the shooting death of Jason Kemp. On July 20, 2010, the Colorado State Patrol (CSP) received reports of three males driving while intoxicated and causing a minor crash. Sergeant Dunlap, Corporal Firko, and Trooper Lawyer responded to the reports by going to Mr. Kemp's residence. The allegations are that Trooper Lawyer pepper sprayed Mr. Kemp, and then broke the door down and shot Mr. Kemp - who was unarmed - point blank in the chest. Mr. Kemp died at the scene. Ralph Turano of the CSP is also named as a defendant in a failure to train capacity.

*Status.* Both Trooper Lawyer and Corporal Firko were indicted for their role, and the criminal trial occurred earlier this year. Trooper Lawyer was prosecuted for homicide. The trial resulted in a hung jury and the district attorney has chosen not to pursue the matter or bring charges against Corporal Firko. There is a possibility that a federal prosecution against the two could occur.

Plaintiffs intend to name five additional defendants as the supervisors/trainers of Trooper Lawyer and Corporal Firko. Based on a mediation before the Judicial Arbitrator Group, the Department of Law believes that the State would be held liable for the ultimate result of Trooper Lawyer's actions – the death of Jason Kemp. The Claims Board recently approved a settlement, and the Department is preparing the final release for signature. The complete settlement should be in place by the end of the month.

*Financial Impact.* Plaintiffs have not stated the amount of damages sought. Given the allegations, and recent settlement discussions, it is presumed that plaintiffs will request over \$5 million should the case go to trial. If plaintiffs prevail on their claim that defendants violated federal law, they would be entitled to attorneys' fees in addition to damages. They are also seeking punitive damages. The Risk Management Fund would cover any judgment, unless the defendants are found to be acting outside the scope of their employment, or willfully and wantonly. As indicated above, a settlement has been reached in this case and is in the process of being finalized.

**RELEVANCE OF BRIEFING ISSUE TO THE DEPARTMENT'S STRATEGIC PLAN:**

This briefing issue, which is included annually, provides a summary of legal cases involving the State that could have a significant financial impact. The Department's first stated objective in its strategic plan is to "minimize risk through the effective representation of client agencies and protect citizens by enforcing regulatory laws and prosecuting cases referred by client agencies".

## **Issue: Mortgage Servicing/ Foreclosure Processing Settlement**

The Department of Law has received \$51.2 million as the result of a multi-state settlement with five major mortgage servicing companies.

### **SUMMARY:**

- To address the rise in mortgage fraud and foreclosure rescue fraud, the General Assembly passed several bills in 2006 and 2007, and added one attorney and two investigators for the Department of Law to enforce these new laws.
- In late 2011, through the efforts of these staff, Colorado's Attorney General, several other state attorneys general, and federal agencies, a multi-state settlement was signed with five major mortgage servicing companies. The settlement requires these companies to establish proper loan servicing and foreclosure practices, and provides monetary relief.
- Colorado's estimated share of the settlement funds totals \$203.3 million. Most of this funding will benefit individual borrowers who were impacted by mortgage servicers' illegal conduct and loan servicing abuse. However, the Department of Law has received and allocated \$51.2 million of these moneys to various state agencies and non-profit entities for purposes consistent with the requirements of the settlement agreement. More than 80 percent of these funds will support supplemental loan modification programs and affordable housing programs. The remaining funds will be used provide counseling and legal services to consumers, to enforce the terms of the settlement agreement, and for outreach efforts.

### **RECOMMENDATION:**

Staff continues to recommend that the General Assembly not reflect the multi-state settlement funds received by Colorado in appropriations to the Department of Law. However, staff does not yet have enough information to make a recommendation about whether the Committee should consider reflecting the \$18.2 million in multi-state settlement funds that will be administered by the Division of Housing in appropriations to the Department of Local Affairs. Staff recommends that the Committee ask the Department of Local Affairs to discuss its plans related to these funds at its December 4, 2012, hearing.

### **DISCUSSION:**

#### **Legislation Concerning Mortgage Fraud and Foreclosure Rescue Fraud**

To address the rise in mortgage fraud and foreclosure rescue fraud, the General Assembly passed the Foreclosure Protection Act of 2006, passed four mortgage fraud bills in 2007, and added one attorney and two investigators for the Department of Law to enforce these new laws. These positions are supported by licensing fees paid by mortgage originators to the Department of Regulatory Agencies' Division of Real Estate; a portion of this fee revenue is transferred to the Department of Law to support its enforcement unit. Most of the work of this unit throughout the

past year has been occupied with a historic \$25 billion multi-state settlement with five major mortgage servicing companies, described below.

### **Multi-state Settlement**

Beginning in 2010, the Department of Law worked with other state and federal law enforcement offices to investigate bank foreclosure practices. Following the investigation, Attorney General Suthers joined a negotiating committee with the U.S. Department of Justice, the U.S. Department of Housing and Urban Development, and seven other attorneys general to explore a resolution with the banks that would end foreclosure violations and provide a fair process to borrowers who are trying to stay in their homes. Throughout 2011 this team negotiated a settlement that would establish proper loan servicing and foreclosure practices that the banks must follow. The resulting multi-state settlement includes five major mortgage servicing companies: Bank of America, JP Morgan Chase, Wells Fargo, Citibank, and Ally/GMAC. As a result of the settlement, these five banks agreed to a detailed injunction and monitoring plan which will regulate the way they conduct foreclosures and handle loan modification requests.

The multi-state settlement also provides monetary relief, including an estimated \$203.3 million for Colorado. Most of this funding is available as credits that the banks can earn by modifying loans or refinancing certain high risk loans. On September 24, 2012, the Attorney General issued a press release concerning the availability of these funds to compensate certain borrowers who were impacted by mortgage servicers' illegal conduct and loan servicing abuse. The National Settlement Administrator mailed notification postcards to the eligible borrowers nationwide in mid-September. In Colorado, packets containing a letter from Attorney General Suthers, a claim form, instructions, and answers to frequently asked questions were mailed to eligible borrowers from mid-September to mid-October. The deadline for all claims is January 18, 2013, and payment checks are expected to be mailed in mid-2013. On November 19, 2012, the Attorney General announced that \$207.4 million in consumer relief has gone to 3,700 homeowners in Colorado to date, based on a recent report released by an independent monitor.

### **Distribution of Funds Received by the State**

The remaining \$51.2 million in settlement funds was paid to Colorado to help prevent foreclosures and stabilize the housing market. The Department of Law has worked with the Governor's Office, the Department of Local Affairs' Division of Housing, legislative leadership in the House and the Senate, and the local housing community to devise a plan to spend these funds. In July 2012, the Attorney General notified the State Treasurer and the Joint Budget Committee of the receipt of \$50,170,188 related to the multi-state settlement. Of this amount, the first \$1.0 million is required to be used for "future consumer protection and antitrust enforcement and education efforts"; this amount was moved to Fund 146 (an existing fund for consumer protection-related custodial funds) for such purpose. The remaining \$49,170,188 was moved to a new Fund 14D to be used for "programs relating to foreclosure prevention, loan modification and housing and for future consumer protection and antitrust enforcement and education efforts", as required by the consent judgment. Finally, the settlement provided an additional \$1,000,000 to Colorado to be used for "purposes related to foreclosure prevention, loan modification and housing and for future consumer protection and antitrust enforcement and education efforts". These moneys were also credited to the new Fund 14D.

As of October 18, 2012, the Attorney General and the Governor completed arrangements for distribution of \$51.2 million in settlement moneys to a series of programs and organizations to provide statewide foreclosure and housing relief over three fiscal years, beginning in FY 2012-13. The following table details the allocation of funds and the state agencies or entities responsible for administering each allocation.

<b>Distribution of Multi-state Settlement Funds Received by State</b>		
<b>Amount</b>	<b>Purpose</b>	<b>Entities Responsible for Administering Funds</b>
\$24,000,000	Supplemental loan-modification programs	Funding Partners - Initial allocation of \$8.0 million for modification assistance program  Colorado Housing Assistance Corporation - Initial allocation of \$2.0 million for delinquent payment assistance program  Remaining \$14.0 million is being held and will be disbursed as the programs show some results.
18,195,188	Affordable housing programs	Department of Local Affairs, Division of Housing
5,625,000	Housing counseling support	Colorado Housing and Finance Authority
1,500,000	Legal services	Colorado Legal Services
750,000	Temporary staffing at the Attorney General's Office for enforcement and monitoring support	Department of Law
600,000	Colorado Foreclosure Hotline	Contract with Brothers Redevelopment, Inc.
500,000	Marketing and outreach to distressed homeowners	Contract with Brothers Redevelopment, Inc.
<b>\$51,170,188</b>	<b>TOTAL</b>	

The Department has worked over the last six months to get these programs up and running and most were operational by October 1, 2012.

Finally, please note that for purposes of administrative efficiency, the Department has also credited custodial funds that were received from Countrywide Finance Corporation, Wells Fargo Bank, and Lender Processing Services, Inc., to the new Fund 14D. These three sources of funds now total more than \$4.0 million. These custodial funds are required to be used for purposes similar to the recent multi-state settlement, so the Attorney General elected to use these moneys in combination with the multi-state settlement moneys for foreclosure prevention and mitigation.

**Custodial Moneys and Appropriations to the Department of Law**

Pursuant to Section 24-31-108 (3), C.R.S., the Attorney General has directed the State Treasurer in writing to place the moneys received through the multi-state settlement in separate accounts, and provided a copy of the written direction to the Joint Budget Committee. The written direction indicates that the Attorney General has determined that the moneys received as a result of the multi-state settlement are custodial pursuant to Section 24-31-108, C.R.S., as these moneys: (1) originated from a source other than the State; (2) were provided to the State for a

particular purpose; and (3) represent amounts for which the State is acting as a custodian or trustee to carry out the particular purpose for which the moneys have been provided.

While custodial moneys may be indicated in the Long Bill for informational purposes, they are not subject to appropriation by the General Assembly. The Department of Law is required to provide with its annual budget request, however, an accounting of how custodial moneys have been or will be expended. Staff did not recommend reflecting the settlement funds in the FY 2012-13 Long Bill for informational purposes for three reasons:

- It was unclear what portion of the funds would be spent in FY 2012-13.
- These funds are one-time, rather than ongoing.
- These funds are unlikely to support activities that are similar to activities authorized in state statute.

The Department's FY 2013-14 budget request includes schedules related to the various custodial funds received by the Department. For each fund that receives custodial moneys, the Department details the moneys received and credited to the fund in the last two fiscal years; actual expenditures of custodial moneys in each of the last two actual fiscal years; and projected revenues and expenditures for the current and next two fiscal years. The budget request also includes a more detailed accounting of actual (and in some cases) projected expenditures.

Staff continues to recommend that the General Assembly not reflect the multi-state settlement funds received by Colorado in appropriations to the Department of Law. The Department of Law will spend \$750,000 of the settlement funds over three fiscal years (beginning in FY 2012-13) for temporary staff to enforce the terms of the settlement. All of the remaining funds will be granted out to other state agencies or nongovernmental organizations. Staff does not yet have enough information to make a recommendation about whether the Committee should consider reflecting the \$18.2 million in multi-state settlement funds that will be administered by the Division of Housing in appropriations to the Department of Local Affairs. Staff recommends that the Committee ask the Department of Local Affairs to discuss its plans related to these funds at its December 4, 2012, hearing. If these funds will be combined with state funds and expended through existing, ongoing state programs, the Committee may want to consider reflecting these funds in the appropriations for such program(s) for informational purposes.

## **RELEVANCE OF BRIEFING ISSUE TO THE DEPARTMENT'S STRATEGIC PLAN:**

This briefing issue provides information about: (1) recent legislation to address the rise in mortgage fraud and foreclosure rescue fraud; (2) the staff that were added to the Department to enforce the legislation; and (3) a recent multi-state settlement that establishes proper loan servicing and foreclosure practices that the banks must follow; compensates certain borrowers who were impacted by mortgage servicers' illegal conduct and loan servicing abuse, and provides funding for the State to help prevent foreclosures and stabilize the housing market. The stated objective of the Department's Consumer Protection section is to "facilitate consumer protection and maintain financial integrity through consumer protection and antitrust enforcement efforts".

**JBC Staff Budget Briefing: FY 2013-14**  
**Staff Working Document - Does Not Represent Committee Decision**

**Appendix A: Number Pages**

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	Request vs. Appropriation
--	----------------------	----------------------	-----------------------------	-----------------------	------------------------------

**DEPARTMENT OF LAW**

**John Suthers, Attorney General**

**(1) ADMINISTRATION**

This section includes funding for the Attorney General, the Solicitor General, and other management staff, as well as the Department's human resources, accounting/budgeting, information technology, and legal support services units. These units are supported by General Fund and indirect cost recoveries. This section also includes central appropriations for the entire Department, including funding for employee benefits, facilities, vehicles, and information technology. Cash funds appropriations include moneys received by the Attorney General as an award of attorney fees or costs, and various other sources. Reappropriated funds derive from indirect cost recoveries and moneys transferred from a variety of other appropriations. Federal funds are from the Medicaid Fraud Control Program and the Colorado Justice Review Project.

Personal Services	<u>2,939,483</u>	<u>2,937,442</u>	<u>3,049,837</u>	<u>3,139,121</u>	
FTE	38.5	39.1	41.7	42.7	
General Fund	0	0	14,072	0	
Cash Funds	0	0	0	0	
Reappropriated Funds	2,939,483	2,937,442	3,035,765	3,139,121	
Health, Life, and Dental	<u>1,967,131</u>	<u>2,261,494</u>	<u>2,620,363</u>	<u>2,875,286</u>	
General Fund	474,390	577,900	712,358	757,853	
Cash Funds	216,077	237,546	307,246	280,953	
Reappropriated Funds	1,226,397	1,385,970	1,497,893	1,708,446	
Federal Funds	50,267	60,078	102,866	128,034	
Short-term Disability	42,246	49,028	49,196	57,762	
General Fund	11,893	13,008	13,008	14,930	
Cash Funds	3,829	4,457	4,457	5,662	
Reappropriated Funds	25,271	30,127	30,127	34,828	
Federal Funds	1,253	1,436	1,604	2,342	

**JBC Staff Budget Briefing: FY 2013-14**  
**Staff Working Document - Does Not Represent Committee Decision**

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	Request vs. Appropriation
S.B. 04-257 Amortization Equalization Disbursement					
General Fund	654,314	773,099	965,510	1,165,243	
Cash Funds	183,131	203,279	271,731	301,266	
Reappropriated Funds	58,252	70,505	93,597	113,381	
Federal Funds	393,530	476,591	559,668	703,769	
	19,401	22,724	40,514	46,827	
S.B. 06-235 Supplemental Amortization Equalization					
Disbursement	477,318	620,125	828,618	1,051,954	
General Fund	133,747	162,234	232,402	271,976	
Cash Funds	42,475	56,656	80,435	102,357	
Reappropriated Funds	286,950	382,975	480,964	635,347	
Federal Funds	14,146	18,260	34,817	42,274	
Salary Survey for Classified Employees					
General Fund	0	0	0	264,303	
Cash Funds	0	0	0	64,048	
Reappropriated Funds	0	0	0	54,723	
Federal Funds	0	0	0	123,984	
	0	0	0	21,548	
Salary Survey for Exempt Employees					
General Fund	0	0	0	563,778	
Cash Funds	0	0	0	145,152	
Reappropriated Funds	0	0	0	14,289	
Federal Funds	0	0	0	400,653	
	0	0	0	3,684	

**JBC Staff Budget Briefing: FY 2013-14**  
**Staff Working Document - Does Not Represent Committee Decision**

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	Request vs. Appropriation
Merit Pay for Classified Employees					
General Fund	0	0	0	<u>165,278</u>	
Cash Funds	0	0	0	59,712	
Reappropriated Funds	0	0	0	27,434	
Federal Funds	0	0	0	65,178	
				12,954	
Merit Pay for Exempt Employees					
General Fund	0	0	0	<u>367,907</u>	
Cash Funds	0	0	0	87,555	
Reappropriated Funds	0	0	0	8,884	
Federal Funds	0	0	0	267,460	
				4,008	
Workers' Compensation					
General Fund	50,863	66,843	73,256	74,366	
Cash Funds	14,877	18,378	19,388	19,320	
Reappropriated Funds	5,038	6,919	7,666	9,149	
Federal Funds	29,605	39,449	43,950	43,671	
	1,343	2,097	2,252	2,226	
Attorney Registration and Continuing Legal Education					
General Fund	<u>92,626</u>	<u>92,626</u>	<u>99,263</u>	<u>99,263</u>	
Cash Funds	22,238	22,238	21,769	22,144	
Reappropriated Funds	4,538	4,538	3,000	2,625	
Federal Funds	65,287	65,287	72,525	72,525	
	563	563	1,969	1,969	
Operating Expenses					
General Fund	<u>182,724</u>	<u>169,196</u>	<u>193,513</u>	<u>190,629</u>	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	0	0	
	182,724	169,196	193,513	190,629	

**JBC Staff Budget Briefing: FY 2013-14**  
**Staff Working Document - Does Not Represent Committee Decision**

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	Request vs. Appropriation
Administrative Law Judge Services	0	0	1,135	4,315	
Cash Funds	0	0	1,135	4,315	
Purchase of Services from Computer Center	37,522	73,188	107,588	53,855	
Reappropriated Funds	37,522	73,188	107,588	53,855	
Payment to Risk Management and Property Funds	28,842	92,047	87,949	130,115	
Reappropriated Funds	28,842	92,047	87,949	130,115	
Multituse Network Payments	0	0	0	118,313	
Reappropriated Funds	0	0	0	118,313	
Vehicle Lease Payments	74,330	65,989	70,285	70,285	
General Fund	22,184	18,277	19,980	19,980	
Cash Funds	21,848	22,153	21,501	21,501	
Reappropriated Funds	25,484	22,896	26,189	26,189	
Federal Funds	4,814	2,663	2,615	2,615	
ADP Capital Outlay	0	0	154,370	0	
Cash Funds	0	0	154,370	0	
Information Technology Asset Maintenance	407,667	407,667	445,807	445,807	
General Fund	15,291	15,291	21,754	22,803	
Cash Funds	59,588	59,588	63,299	62,250	
Reappropriated Funds	331,407	331,407	359,373	359,373	
Federal Funds	1,381	1,381	1,381	1,381	

**JBC Staff Budget Briefing: FY 2013-14**  
**Staff Working Document - Does Not Represent Committee Decision**

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	Request vs. Appropriation
Leased Space	26,220	26,220	27,789	27,789	
General Fund	4,321	4,321	4,580	4,580	
Cash Funds	2,880	2,880	3,052	3,052	
Reappropriated Funds	18,857	18,857	19,985	19,985	
Federal Funds	162	162	172	172	
Capitol Complex Leased Space	<u>1,252,757</u>	<u>1,284,061</u>	<u>1,273,320</u>	<u>0</u>	<u>0</u>
General Fund	368,073	352,895	335,366	0	0
Cash Funds	124,080	132,910	132,620	0	0
Reappropriated Funds	727,537	757,812	766,375	0	0
Federal Funds	33,067	40,444	38,959	0	0
Ralph L. Carr Colorado Judicial Center Leased Space	0	0	0	2,926,487	
General Fund	0	0	0	767,179	
Cash Funds	0	0	0	353,185	
Reappropriated Funds	0	0	0	1,718,514	
Federal Funds	0	0	0	87,609	
Security for State Services Building	<u>120,919</u>	<u>125,430</u>	<u>140,489</u>	<u>140,000</u>	
General Fund	34,587	34,472	37,180	36,702	
Cash Funds	11,976	12,983	14,704	16,896	
Reappropriated Funds	71,164	74,024	84,287	82,211	
Federal Funds	3,192	3,951	4,318	4,191	
Communication Services Payments	<u>7,744</u>	<u>8,365</u>	<u>10,614</u>	<u>8,205</u>	
General Fund	2,748	2,946	3,765	3,285	
Cash Funds	2,092	2,269	2,868	1,843	
Reappropriated Funds	1,056	1,146	1,448	1,119	
Federal Funds	1,848	2,004	2,533	1,958	

**JBC Staff Budget Briefing: FY 2013-14**  
**Staff Working Document - Does Not Represent Committee Decision**

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	Request vs. Appropriation
COFRS Modernization Reappropriated Funds	0 0	0 0	46,431 46,431	46,431 46,431	
Attorney General Discretionary Fund General Fund	5,000 5,000	5,000 5,000	5,000 5,000	5,000 5,000	
<b>TOTAL - (I) Administration</b>	8,367,706	9,057,820	10,250,333	13,991,492	36.5%
<i>FTE</i>	38.5	39.1	41.7	42.7	2.4%
General Fund	1,292,480	1,430,239	1,712,353	2,603,485	52.0%
Cash Funds	552,673	613,404	889,950	1,082,499	21.6%
Reappropriated Funds	6,391,116	6,858,414	7,414,030	9,941,716	34.1%
Federal Funds	131,437	155,763	234,000	363,792	55.5%

**JBC Staff Budget Briefing: FY 2013-14**  
**Staff Working Document - Does Not Represent Committee Decision**

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	Request vs. Appropriation
<b>(2) LEGAL SERVICES TO STATE AGENCIES</b>					
The Department provides legal services on a fee-for-service basis to state agencies and enterprises. This section includes appropriations for the attorneys, legal assistants, and support personnel who provide these services. In most cases, the appropriations in this section are reflected as reappropriated funds because a duplicate appropriation for the purchase of legal services appears in the client agency's budget. Cash funds reflect payments the Department receives from state agencies that are not duplicated in appropriations elsewhere in the budget.					
Personal Services	18,649,052	19,247,465	20,550,841	20,584,910	
FTE	218.0	226.3	238.0	238.5	
Cash Funds	1,582,388	1,560,550	253,320	253,320	
Reappropriated Funds	17,066,664	17,686,915	20,297,521	20,331,590	
Operating and Litigation	898,698	1,533,916	1,675,225	1,672,128	
Cash Funds	0	0	27,256	27,256	
Reappropriated Funds	898,698	1,533,916	1,647,969	1,644,872	
Indirect Cost Assessment	2,608,316	2,809,499	2,950,911	3,253,100	
Reappropriated Funds	2,608,316	2,809,499	2,950,911	3,253,100	
<b>TOTAL - (2) Legal Services to State Agencies</b>	22,156,066	23,590,880	25,176,977	25,510,138	1.3%
FTE	218.0	226.3	238.0	238.5	0.2%
Cash Funds	1,582,388	1,560,550	280,576	280,576	0.0%
Reappropriated Funds	20,573,678	22,030,330	24,896,401	25,229,562	1.3%

**JBC Staff Budget Briefing: FY 2013-14**  
**Staff Working Document - Does Not Represent Committee Decision**

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	Request vs. Appropriation
<b>(3) CRIMINAL JUSTICE AND APPELLATE</b>					
This division investigates and prosecutes fraud involving insurance, securities, Medicaid, and workers' compensation. It also handles foreign prosecutions, certifies peace officers, provides support to district attorneys in certain cases, and represents the state in criminal appeals. When the Department is involved in criminal appeals or in trial court criminal prosecution, this division is responsible for keeping crime victims informed about the case. Cash fund sources include moneys paid by insurance companies for the investigation and prosecution of insurance fraud, fees paid by peace officers for P.O.S.T. Board certification, and a statewide vehicle registration fee to support training for peace officers. Reappropriated funds are transferred from the Department of Regulatory Agencies and the Department of Public Safety. Federal funds are from the U.S. Department of Health and Human Services' Medicaid Fraud Control Program.					
Special Prosecutions Unit	<u>2,759,362</u>	<u>2,795,921</u>	<u>3,013,205</u>	<u>3,293,688</u>	
FTE	28.5	29.6	32.5	34.4	
General Fund	1,570,474	1,359,303	1,391,287	1,602,519	
Cash Funds	794,728	883,377	1,067,153	1,092,567	
Reappropriated Funds	394,160	553,241	554,765	598,602	
Auto Theft Prevention Grant	<u>227,976</u>	<u>222,007</u>	<u>239,075</u>	<u>282,234</u>	
FTE	2.0	2.0	2.0	2.5	
Reappropriated Funds	227,976	222,007	239,075	282,234	
Appellate Unit	<u>2,646,858</u>	<u>2,603,619</u>	<u>2,709,335</u>	<u>3,263,535</u>	
FTE	31.6	30.9	32.0	37.5	
General Fund	2,449,993	2,219,720	2,195,709	2,528,013	
Reappropriated Funds	196,865	383,899	513,626	735,522	
Medicaid Fraud Control Unit	<u>1,495,791</u>	<u>1,535,692</u>	<u>1,579,511</u>	<u>1,579,511</u>	
FTE	15.0	16.6	17.0	17.0	
General Fund	381,574	383,914	394,876	394,876	
Federal Funds	1,114,217	1,151,778	1,184,635	1,184,635	

**JBC Staff Budget Briefing: FY 2013-14**  
**Staff Working Document - Does Not Represent Committee Decision**

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	Request vs. Appropriation
Peace Officers Standards and Training Board Support	2,485,503	2,529,852	2,683,620	2,683,620	
FTE	6.5	4.6	7.0	7.0	
Cash Funds	2,485,503	2,529,852	2,683,620	2,683,620	
Safe2Tell	94,765	100,615	100,686	100,686	
FTE	1.0	1.0	1.0	1.0	
General Fund	94,765	100,615	100,686	100,686	
Indirect Cost Assessment					
Cash Funds	382,767	440,209	446,544	490,622	
Reappropriated Funds	205,732	222,031	215,830	237,134	
Federal Funds	46,101	71,943	73,184	80,407	
	130,934	146,235	157,530	173,081	
<b>TOTAL - (3) Criminal Justice and Appellate</b>	<b>10,093,022</b>	<b>10,227,915</b>	<b>10,771,976</b>	<b>11,693,896</b>	<b>8.6%</b>
FTE	84.6	84.7	91.5	99.4	8.6%
General Fund	4,496,806	4,063,552	4,082,558	4,626,094	13.3%
Cash Funds	3,485,963	3,635,260	3,966,603	4,013,321	1.2%
Reappropriated Funds	865,102	1,231,090	1,380,650	1,696,765	22.9%
Federal Funds	1,245,151	1,298,013	1,342,165	1,357,716	1.2%

**JBC Staff Budget Briefing: FY 2013-14**  
**Staff Working Document - Does Not Represent Committee Decision**

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	Request vs. Appropriation
--	----------------------	----------------------	-----------------------------	-----------------------	------------------------------

**(4) WATER AND NATURAL RESOURCES**

This section provides funding for department staff who protect and defend the interests of the State and its citizens in all areas of natural resources law and environmental law, including the use of surface and ground water, oil and gas development, mining and minerals, wildlife, the clean-up of contaminated sites, the proper storage or disposal of hazardous waste, and protection of the state's air and water. Cash fund sources include the Colorado Water Conservation Board's Litigation Fund and moneys received by the Attorney General as an award of attorney fees or costs. Reappropriated funds are transferred from the Department of Public Health and Environment from the Hazardous Substance Response Fund.

Federal and Interstate Water Unit	<u>497,751</u>	<u>486,995</u>	<u>513,883</u>	<u>513,883</u>	
FTE	5.5	5.3	5.5	5.5	
General Fund	497,751	486,995	513,883	513,883	
Defense of the Colorado River Basin Compact	<u>279,249</u>	<u>300,355</u>	<u>335,198</u>	<u>335,198</u>	
FTE	3.0	3.0	3.0	3.0	
Cash Funds	279,249	300,355	335,198	335,198	
Defense of the Republican River Compact	<u>66,133</u>	<u>64,156</u>	<u>110,000</u>	<u>110,000</u>	
Cash Funds	66,133	64,156	110,000	110,000	
Consultant Expenses	<u>49,358</u>	<u>106,426</u>	<u>400,000</u>	<u>400,000</u>	
Cash Funds	49,358	106,426	400,000	400,000	
Comprehensive Environmental Response, Compensation and Liability Act	<u>310,097</u>	<u>348,625</u>	<u>460,629</u>	<u>460,629</u>	
FTE	3.4	3.8	3.5	3.5	
Reappropriated Funds	310,097	348,625	460,629	460,629	
Comprehensive Environmental Response, Compensation and Liability Act Contracts	<u>337,085</u>	<u>300,440</u>	<u>425,000</u>	<u>425,000</u>	
Reappropriated Funds	337,085	300,440	425,000	425,000	

**JBC Staff Budget Briefing: FY 2013-14**  
**Staff Working Document - Does Not Represent Committee Decision**

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	Request vs. Appropriation
Natural Resource Damage Claims at Rocky Mountain Arsenal	0	0	50,000	50,000	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	50,000	50,000	
Indirect Cost Assessment	41,384	43,414	43,414	47,699	
Reappropriated Funds	41,384	43,414	43,414	47,699	
<b>TOTAL - (4) Water and Natural Resources</b>	1,581,057	1,650,411	2,338,124	2,342,409	0.2%
FTE	11.9	12.1	12.0	12.0	0.0%
General Fund	497,751	486,995	513,883	513,883	0.0%
Cash Funds	394,740	470,937	845,198	845,198	0.0%
Reappropriated Funds	688,566	692,479	979,043	983,328	0.4%

**JBC Staff Budget Briefing: FY 2013-14**  
**Staff Working Document - Does Not Represent Committee Decision**

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	Request vs. Appropriation
<b>(5) CONSUMER PROTECTION</b>					
This section provides funding for department staff who protect Colorado consumers against fraud and enforce state and federal consumer protection, antitrust, charitable solicitation, consumer lending, and fair debt collection laws. This section also provides funding to support one attorney who is responsible for enforcing the tobacco master settlement agreements and protecting the State's interests under the settlement payment calculation provision. Cash fund sources include fees paid by regulated entities, custodial moneys awarded to the Attorney General in consumer protection lawsuits, and tobacco settlement moneys. Reappropriated funds are transferred from the Department of Regulatory Agencies for consumer protection activities related to mortgage brokers.					
Consumer Protection and Antitrust	1,794,040	1,691,441	2,170,214	2,046,520	
FTE	19.7	19.3	26.0	25.0	
General Fund	907,056	865,872	931,023	1,084,818	
Cash Funds	644,928	586,642	997,710	720,221	
Reappropriated Funds	242,056	238,927	241,481	241,481	
Consumer Credit Unit	1,338,218	1,320,369	1,521,916	1,512,150	
FTE	18.0	17.9	20.0	20.0	
Cash Funds	1,338,218	1,320,369	1,521,916	1,512,150	
Indirect Cost Assessment	307,418	334,907	471,352	504,250	
Cash Funds	271,947	297,695	434,140	463,365	
Reappropriated Funds	35,471	37,212	37,212	40,885	
<b>TOTAL - (5) Consumer Protection</b>	3,439,676	3,346,717	4,163,482	4,062,920	(2.4%)
FTE	37.7	37.2	46.0	45.0	(2.2%)
General Fund	907,056	865,872	931,023	1,084,818	16.5%
Cash Funds	2,255,093	2,204,706	2,953,766	2,695,736	(8.7%)
Reappropriated Funds	277,527	276,139	278,693	282,366	1.3%

**JBC Staff Budget Briefing: FY 2013-14**  
**Staff Working Document - Does Not Represent Committee Decision**

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	Request vs. Appropriation
<b>(6) SPECIAL PURPOSE</b>					
The section includes funding to cover 80 percent of the statutory minimum salary for Colorado's twenty-two district attorneys, for unanticipated legal and technology expenses, and for litigation expenses associated with significant lawsuits. Cash fund sources include tobacco settlement moneys, moneys received from State Board of Land Commissioners from its Investment and Development Fund, and moneys received by the Attorney General as an award of attorney fees or costs. Reappropriated funds are transferred from the Office of the Governor.					
District Attorneys' Salaries General Fund	<u>2,263,229</u> 2,263,229	<u>2,479,795</u> 2,479,795	<u>2,656,368</u> 2,656,368	<u>2,676,960</u> 2,676,960	
Litigation Management and Technology Cash Funds	<u>382,256</u> 382,256	<u>250,894</u> 250,894	<u>325,000</u> 325,000	<u>325,000</u> 325,000	
Tobacco Litigation General Fund	<u>972,823</u> 0	<u>745,624</u> 0	<u>880,000</u> 0	<u>500,000</u> 500,000	
Cash Funds	972,823	745,624	880,000	0	
Lobato Litigation Expenses Reappropriated Funds	<u>417,573</u> 417,573	<u>242,037</u> 242,037	<u>50,000</u> 50,000	<u>50,000</u> 50,000	
Lowry Range Litigation Expenses Cash Funds	<u>0</u> 0	<u>0</u> 0	<u>638,870</u> 638,870	<u>616,520</u> 616,520	
<b>TOTAL - (6) Special Purpose</b>	<b>4,035,881</b>	<b>3,718,350</b>	<b>4,550,238</b>	<b>4,168,480</b>	<b>(8.4%)</b>
<i>FTE</i>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<b>0.0%</b>
General Fund	2,263,229	2,479,795	2,656,368	3,176,960	19.6%
Cash Funds	1,355,079	996,518	1,843,870	941,520	(48.9%)
Reappropriated Funds	417,573	242,037	50,000	50,000	0.0%

**JBC Staff Budget Briefing: FY 2013-14**  
**Staff Working Document - Does Not Represent Committee Decision**

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	Request vs. Appropriation
<b>TOTAL - Department of Law</b>	49,673,408	51,592,093	57,251,130	61,769,335	7.9%
<i>FTE</i>	<u>390.7</u>	<u>399.4</u>	<u>429.2</u>	<u>437.6</u>	<u>2.0%</u>
General Fund	9,457,322	9,326,453	9,896,185	12,005,240	21.3%
Cash Funds	9,625,936	9,481,375	10,779,963	9,858,850	(8.5%)
Reappropriated Funds	29,213,562	31,330,489	34,998,817	38,183,737	9.1%
Federal Funds	1,376,588	1,453,776	1,576,165	1,721,508	9.2%

## **Appendix B: Recent Legislation Affecting Department Budget<sup>6</sup>**

---

### **2011 Session Bills**

**S.B. 11-076 (PERA Contribution Rates):** For the 2011-12 state fiscal year only, reduces the employer contribution rate for the State and Judicial divisions of the Public Employees' Retirement Association (PERA) by 2.5 percent and increases the member contribution rate for these divisions by the same amount. In effect, continues the FY 2010-11 PERA contribution adjustments authorized by S.B. 10-146 for one additional year. Reduces the Department of Law's appropriations by a total of \$774,669, including \$180,082 General Fund, \$69,016 cash funds, \$502,668 reappropriated funds, and \$22,903 federal funds.

**S.B. 11-088 (Sunset: Direct-entry Midwives):** Continues until 2016 the regulation of direct-entry midwives by the Department of Regulatory Agencies (DORA). For FY 2011-12 provides \$4,109 reappropriated funds to the Department of Law for the provision of legal services to DORA.

**S.B. 11-091 (Sunset: Board of Veterinary Medicine):** Continues until 2022 the State Board of Veterinary Medicine, which is located in DORA. For FY 2011-12 provides \$4,402 reappropriated funds to the Department of Law for the provision of legal services to the Board.

**S.B. 11-094 (Sunset: Optometric Board):** Continues until 2022 the State Board of Optometric Examiners, which is located in DORA. For FY 2011-12 provides \$4,402 reappropriated funds to the Department of Law for the provision of legal services to the Board.

**S.B. 11-128 (Child-only Health Insurance Plans):** Requires all Colorado insurance carriers that sell individual health insurance plans to offer a child-only plan with no limitation for preexisting conditions. For FY 2011-12 provides \$2,935 reappropriated funds to the Department of Law for the provision of legal services to DORA.

**S.B. 11-169 (Sunset: Physical Therapy Board):** Continues until 2018 operation of the Physical Therapy Board, which is located in DORA. For FY 2011-12 provides \$38,886 reappropriated funds and 0.3 FTE to the Department of Law for the provision of legal services to DORA.

**S.B. 11-187 (Sunset: Mental Health Professionals):** Continues and expands the regulation of mental health professionals by DORA. For FY 2011-12 provides \$176,088 reappropriated funds and 1.4 FTE to the Department of Law for the provision of legal services to DORA.

**S.B. 11-209 (Long Bill):** General appropriations act for FY 2011-12.

---

<sup>6</sup> Appendix F provides a complete listing of legislation that included appropriations for departments to purchase legal services from the Department of Law for the period: FY 2009-10 through FY 2012-13.

**S.B. 11-251 (Division of Fire Safety Duties):** Makes changes to the authority of the Division of Fire Safety in the Department of Public Safety. For FY 2011-12 provides \$7,337 reappropriated funds to the Department of Law for the provision of legal services to the Department of Public Safety.

**H.B. 11-1100 (Military Experience License Certificate):** Requires the Division of Registrations and the state examining and licensing boards in DORA to accept education, training, or service completed by an applicant for licensure or certification while serving in the military toward the qualifications required to receive the license or certification. For FY 2011-12 provides \$34,484 reappropriated funds and 0.4 FTE to the Department of Law for the provision of legal services to DORA.

**H.B. 11-1121 (Safer Schools Act of 2011):** Bars those individuals who are convicted of certain felonies, including drug and domestic violence, from non-licensed employment in schools. For FY 2011-12 provides \$11,005 reappropriated funds to the Department of Law for the provision of legal services to the Department of Education.

**H.B. 11-1195 (Private Investigators Voluntary Licensing):** Creates a voluntary licensing system for private investigators within DORA. For FY 2011-12 provides \$7,337 reappropriated funds to the Department of Law for the provision of legal services to DORA.

**H.B. 11-1300 (Conservation Easement Tax Credit Dispute Resolution):** Authorizes a new expedited method for resolving disputed claims for conservation easement tax credits. For FY 2011-12 provides the Department of Law with \$1,349,581 reappropriated funds and 9.1 FTE to provide legal services to the Department of Revenue and \$2,352 reappropriated funds to provide legal services to DORA.

## **2012 Session Bills**

**S.B. 12-110 (Funding for Insurance Fraud Investigations):** Replaces the existing fee paid by insurance companies to support the Department of Law's efforts to investigate and prosecute allegations of insurance fraud with a tiered fee schedule. Under the tiered fee schedule, regulated insurance entities that receive more than \$1.0 million income in Colorado will pay one fee, and those receiving less than \$1.0 million income will pay a lesser fee. Subjects Pinnacol Assurance to the same tiered fee schedule as other insurance companies. Appropriates \$196,677 cash funds from the Insurance Fraud Cash Fund and 2.0 FTE to the Department of Law for FY 2012-13.

**H.B. 12-1110 (Regulation of Appraisal Management Companies):** Establishes within DORA's Division of Real Estate a licensure program for appraisal management companies. Although the act included an appropriation for FY 2012-13, the act is not effective until July 1, 2013. Thus, the appropriation did not go into effect.

**H.B. 12-1189 (Supplemental):** Supplemental appropriation to the Department of Law to modify FY 2011-12 appropriations included in the FY 2011-12 Long Bill (S.B. 11-209).

**H.B. 12-1246 (Reverse Paydate Shift for Biweekly Employees):** Reverses the annual pay date shift as it applies to state employees paid on a biweekly basis. Appropriates \$8,799 General Fund to the Department of Law for FY 2012-13.

**H.B. 12-1248 (Receipt of Certain Moneys by Law):** For three fiscal years (through June 30, 2015), authorizes the Department of Law to spend gifts, grants, and donations without an appropriation. Requires the Department to include with its annual budget request a report describing the receipt and expenditure of any such moneys. Also creates the Legal Services Cash Fund for purposes of accounting for moneys received from other state agencies for the provision of legal services. Moneys in the Fund are subject to annual appropriation to the Department for the direct and indirect costs associated with providing legal services to state agencies and for any litigation expenses.

**H.B. 12-1300 (Sunset: Professional Review Committee):** Implements the recommendations from DORA 2011 Sunset Review concerning professional review committees under the Colorado Professional Review Act, and extends the functions of the committees until 2019. For FY 2012-13, provides \$2,271 reappropriated funds to the Department of Law for the provision of legal services to DORA.

**H.B. 12-1303 (Certify Speech-language Pathologists):** Creates within DORA's Division of Registrations a certification program for speech-language pathologists. For FY 2012-13, provides \$16,656 reappropriated funds and 0.1 FTE to the Department of Law for the provision of legal services to DORA.

**H.B. 12-1311 (Sunset: Pharmacy Board):** Modifies and recodifies laws regulating the practice of pharmacy and continues until 2021 the Colorado State Board of Pharmacy, which is located in DORA. For FY 2012-13, provides \$23,092 reappropriated funds to the Department of Law for the provision of legal services to DORA.

**H.B. 12-1330 (Hunting/Fishing License Suspension):** Creates a hearing process to end a suspension of hunting and fishing licenses. For FY 2012-13, provides \$3,028 reappropriated funds to the Department of Law for the provision of legal services to the Department of Natural Resources (DNR).

**H.B. 12-1335 (Long Bill):** General appropriations act for FY 2012-13. Also includes a supplemental adjustment to modify appropriations to the Department of Law included in the FY 2011-12 Long Bill (S.B. 11-209).

## **Appendix C:**

### **Update on Long Bill Footnotes & Requests for Information**

---

#### **Long Bill Footnotes**

- 39 Department of Law, Legal Services to State Agencies** -- In making this appropriation, it is the intent of the General Assembly that hourly billing rates charged by the Department for legal services to state agencies not exceed \$79.87 per hour for attorneys and not exceed \$64.79 per hour for legal assistants, which equates to a blended rate of \$77.25 per hour.

Comment: As expected, the Department is billing client agencies at the stated rates.

- 40 Department of Law, Special Purpose, Litigation Management and Technology** -- It is the intent of the General Assembly to grant the Department of Law additional flexibility by allowing the Department to use moneys appropriated in this line item to address unanticipated state legal needs that arise during FY 2012-13, as well as information technology asset maintenance needs that would otherwise require General Fund appropriations during FY 2012-13. It is also the intent of the General Assembly that moneys spent from this line item shall not require the appropriation of additional FTE and will not be used for any type of salary increase, promotion, reclassification, or bonus related to any present or future FTE employed by the Department of Law. It is furthermore the intent of the General Assembly that moneys spent from this line item will not be used to offset present or future personal services deficits in any division in the Department. The Department is requested to include with its annual budget request information detailing the purpose of line item expenditures. Such information is also requested with any supplemental requests for additional legal services funding within or outside of the Legal Services to State Agencies program.

Comment: The Department is complying with this footnote.

*Background Information on the Litigation Management and Technology appropriation.* This line item was added to the Long Bill in FY 1994-95 to pay for unanticipated legal costs that arise over the course of the fiscal year (especially when the General Assembly is not in session), and technology costs that would otherwise require a General Fund appropriation. This appropriation has reduced the need for legal services supplemental requests related to the Legal Services to State Agencies program (LSSA) and other unanticipated litigation.

Moneys for this appropriation come from two sources:

1. Excess revenues earned by the LSSA program during the previous fiscal year. This line item appropriation allows the Department to retain and roll forward a portion of any excess revenues to the next fiscal year. Moneys that have been rolled forward that are not spent in the following fiscal year revert to the General Fund. Please note

that excess earnings fluctuate substantially from year to year and the amount is not known with certainty until after the close of the fiscal year. The excess earnings for FY 2011-12, for example, were not known with certainty until July 2012, the first month of the fiscal year in which such earnings could be expended. The following table provides a history of excess LSSA revenues, and the portion that reverted to the General Fund.

Excess Legal Services to State Agencies (LSSA) Revenues					
Fiscal Year	Excess LSSA Revenues Earned	Excess Revenues as Percent of Total LSSA Revenues	Fiscal Year	Expenditures of Excess LSSA Revenues	Excess LSSA Revenues Credited to the General Fund
2005-06	\$532,673	2.8%	2006-07	(\$180,221)	\$352,452
2006-07	362,515	1.8%	2007-08	(216,577)	145,938
2007-08	267,456	1.2%	2008-09	(267,456)	0
2008-09	496,834	2.0%	2009-10	(145,258)	351,576
2009-10	367,965	1.5%	2010-11	(262,256)	105,709
2010-11	491,912	1.9%	2011-12	(250,894)	241,018
2011-12	93,490	0.3%	2012-13	n/a	n/a

2. Various court awards that are deposited into the Attorneys Fees and Costs Account, which is established in Section 24-31-108 (2), C.R.S. This account consists of any moneys received by the Attorney General as an award of attorney fees or costs that are not considered custodial moneys. Moneys in the Account are subject to annual appropriation by the General Assembly for legal services provided by the Department. For purposes of this appropriation, this source of funding serves as a backup, filling in the remainder of the appropriation to the Litigation Management and Technology appropriation when excess LSSA earnings come up short. The following table details revenues and expenditures for this account.

Attorney Fees and Costs Account				
Fiscal Year	Beginning Fund Balance	Revenues	Expenditures	Ending Fund Balance
2005-06	\$208,794	\$23,276	(\$100,477)	\$131,593
2006-07	131,593	244,420	(71,333)	304,680
2007-08	304,680	267,118	(142,251)	429,547
2008-09	429,547	105,671	(94,595)	440,623
2009-10	440,623	202,185	(54,021)	588,787
2010-11	588,787	123,861	(22,417)	690,231
2011-12	690,231	442,207	(7,426)	1,125,012

Finally, please note that H.B. 12-1248 (which was sponsored by the Joint Budget Committee) will require the Department to credit all moneys received from state agencies as payment for legal services to the newly created Legal Services Cash Fund, beginning in FY 2012-13. Moneys in the Fund are subject to annual appropriation to the Department for the direct and indirect costs associated with providing legal services to state agencies and for any of the Department's litigation expenses.

For FY 2012-13, this line item allows the Department to roll forward and spend the \$93,490 of excess LSSA revenues earned in FY 2011-12; moneys that are rolled forward and not spent in FY 2012-13 will revert to the General Fund. Excess legal services revenues that are earned in FY 2012-13 will be credited to the new Legal Services Cash Fund. In the FY 2013-14 Long Bill, this line item will thus consist of two fund sources: the Legal Services Cash Fund and various court awards that are deposited into the Attorneys Fees and Costs Account.

*Expenditure Update.* The Department has been utilizing the spending authority provided through the Litigation Management and Technology appropriation in the manner designated in this footnote. The Department's budget request reflects actual expenditures for this line item in FY 2010-11 and FY 2011-12. The majority of the expenditures reported for these two fiscal years were related to the purchase information technology equipment and software, and for DNA analyses related to the *Peggy Hettrick* homicide case.

## Requests for Information

### *Requests Applicable to All Departments*

- 4 **All Departments, Totals** -- Every department is requested to submit to the Joint Budget Committee, by November 1, 2012, information on the number of additional federal and cash funds FTE associated with any federal grants or private donations that were received in FY 2011-12. 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 2012-13.

Comment: The Department's budget request includes schedules (2, 3, and 4) that reflect cash and federal grants that are received. The Department has provided information related to two grants:

- The Department received a multi-year cash grant from the Colorado Automobile Theft Prevention Authority within the Department of Public Safety. Pursuant to Section 42-5-112 (4), C.R.S., this fund consists of a \$1.00 fee on automobile insurance policies, and gifts, grants, and donations. In FY 2011-12, the Department spent grant moneys totaling \$222,007 to support 2.0 FTE (an attorney and an investigator) who assist local law enforcement agencies and district attorneys in the investigation and prosecution of complex crimes related to automobile theft. The Department anticipates ongoing funding in FY 2012-13 and FY 2013-14 of \$282,234; the increase allows the Department to add 0.5 FTE Administrative Assistant. This grant is reflected as reappropriated funds in the Department of Law's budget, as the funding originates in the Department of Public Safety's budget.
- The Department previously received a federal grant from the National Institute of Justice to identify cases in which DNA testing could potentially exonerate a

wrongfully convicted inmate. Partnering with the Denver District Attorney's Office, the Department began the project by screening nearly 5,000 cases statewide of inmates incarcerated on murder, non-negligent manslaughter, and sexual assault convictions. Cases in which the inmate continuously maintained a claim of innocence throughout the pre-trial, trial, and post-trial proceedings received a second level of review involving a fact-intensive investigation.

The project team presented an overview of its work and a few specific cases to a panel with representation from the defense, the prosecution, the Colorado Bureau of Investigation (CBI), and the Denver Police Department Crime Laboratory Bureau. The panel sent one case for DNA testing, and re-opened the investigation of the original crime as a result. Disclosure of the results of the DNA testing is pending court action. The Department has been awarded a subsequent federal grant to review other types of cases, based on applications from inmates. Over the last two fiscal years the Department has spent a total of \$759,154. In the current fiscal year, the Department anticipates spending \$573,382 to support 2.8 FTE (1.8 FTE attorneys and 1.0 FTE investigator).

The Department's budget request also reflects actual and planned expenditures of various custodial moneys. Custodial moneys are defined as those funds received by the Attorney General from a source other than the State of Colorado, for a particular purpose. Pursuant to Section 24-31-108, C.R.S., these moneys are not subject to annual appropriation, but the Department is required to: (1) provide the Joint Budget Committee with a copy of the notification sent to the State Treasurer concerning custodial funds received; and (2) provide with its annual budget request an accounting of how custodial moneys have been or will be expended.

*Requests Applicable to Department of Law Only*

- 1 Department of Law, Criminal Justice and Appellate, Medicaid Fraud Control Unit -**  
- Pursuant to Section 25.5-4-310, C.R.S., the Department of Law's Medicaid Fraud Control Unit is required to submit an annual report by January 15 concerning: actions filed under the "Colorado Medicaid False Claims Act", the amount recovered as a result of such actions, and the amount of related expenditures. The General Assembly requests that the Department also include in this annual report information about expenditures and recoveries related to the Unit's criminal investigations.

Comment: The Department plans to include as part of its statutorily required January 2013 report the requested information about expenditures and recoveries related to the Unit's criminal investigations.

## Appendix D: Indirect Cost Assessment Methodology

### Description of Indirect Cost Assessment Methodology

The Department of Law's indirect cost assessment methodology is based on an *Indirect Cost Pool*, which is allocated based on the distribution of department staff by division and fund source. The Department's Indirect Cost Pool is comprised of the following six line item appropriations within the Administration section of the Long Bill:

- Personal Services
- Operating Expenses
- Purchase of Services from Computer Center
- Multiuse Network Payments
- Payment to Risk Management and Property Funds
- COFRS Modernization

The Department's Indirect Cost Pool also includes portions of various centrally appropriated line item appropriations that correspond to the staff that are supported by the Administration, Personal Services line item. The Department's Indirect Cost Pool is based on appropriated amounts for the same fiscal year (*e.g.*, the Indirect Cost Pool for FY 2012-13 was based on FY 2012-13 Long Bill appropriations). For FY 2013-14, the Department's Indirect Cost Pool as requested is \$4,610,539. **Table 1** details the components of the Department's Indirect Cost Pool for FY 2013-14.

The Department allocates its Indirect Cost Pool based on the fund sources that support full-time equivalent (FTE) permanent staff positions. For example, the Department's request for FY 2013-14 indicates that 82 percent of FTE (excluding the administrative positions that are part of the Indirect Cost Pool) will be supported by fund sources other than General Fund which can and should cover departmental indirect costs. This percentage is then applied to the Department's Indirect Cost Pool to determine the total amount of departmental indirect cost assessments (*e.g.*, \$3,782,514 for FY 2013-14). The Department's share of the Statewide Indirect Cost Pool that is attributed to fund sources other than General Fund is then added to this amount, resulting in the total *Indirect Cost Assessment* (*e.g.*, \$4,295,672 for FY 2013-14). The FTE distribution is also used to allocate the total Indirect Cost Assessment among divisions and fund sources.

The last four lines of Table 1 detail the calculation of the total Indirect Cost Assessment for FY 2013-14. **Table 2** details the distribution of FTE among fund sources, which is used to allocate indirect costs among fund sources. **Table 3** summarizes the allocation of the total Indirect Cost Assessment for FY 2013-14 among divisions and specific funding sources.

<b>Table 1</b>		
<b>Department of Law: Indirect Cost Pool</b>		
<b>Division</b>	<b>Line Item</b>	<b>FY 2013-14 Request</b>
Administration	Personal Services	\$3,049,837
	Health, Life, and Dental	268,378
	Short-term Disability	5,482
	Salary Survey, Classified	46,502
	Salary Survey, Exempt	7,771
	Performance-based Pay, Classified	42,806
	Performance-based Pay, Exempt	8,413
	S.B. 04-257 AED	103,878
	S.B. 06-235 SAED	93,778
	Workers' Compensation	7,281
	Attorney Registration and Continuing Legal	1,875
	Operating Expenses	190,629
	Vehicle Lease Payments	2,646
	Purchase of Services from Computer Center	53,855
	Multiuse Network Payments	118,313
	Payment to Risk Management and Property Funds	130,115
	Information Technology Asset Maintenance	22,803
	Leased Space (storage)	684
	Capitol Complex/ Carr Center Leased Space	286,533
	Building Security	13,707
	COFRS Modernization	46,431
	R-4: Refinance Public Information Officer	<u>108,822</u>
	<b>Departmental Indirect Cost Pool</b>	<b>4,610,539</b>
	Multiplied by: Proportion of Departmental Indirect Cost Pool attributed to non-General Fund sources (see Table 2)	<u>82.04%</u>
	Equals: Portion of Departmental Indirect Cost Pool recoverable from non-General Fund sources	3,782,514
	Plus: Department's share of Statewide Indirect Cost Pool attributed to non-General Fund sources (calculated by Department of Personnel)	<u>513,158</u>
	<b>Equals: Total Indirect Cost Pool recoverable from non-General Fund sources</b>	<b>\$4,295,672</b>

Department of Law: Calculation of Basis for Allocating Indirect Costs										
Division	Line Items Associated with FTE	Full-time Equivalent (FTE) Employees, by Fund Source				FTE NOT Included in Calculation	Total FTE	Percent Allocation		
		Other Fund Sources Which Do NOT Cover Indirect Costs	Other Fund Sources Which DO Cover Indirect Costs	Subtotal: FTE Included in Calculation	Subtotal: FTE Included in Calculation					
Administration	Personal Services	0.0	0.0	0.0	0.0	41.7	41.7	0.00%		
Legal Services to State Agencies	Personal Services									
	Special Prosecutions Unit	0.0	0.0	238.7	238.7	0.0	238.7	75.73%		
Criminal Justice and Appellate										
	Auto Theft Prevention Grant	14.2	0.0	16.3	30.5	0.0	30.5			
	Appellate Unit	0.0	0.0	0.0	0.0	2.5	2.5			
	Medicaid Fraud Control Unit	31.0	1.0	0.0	32.0	0.0	32.0			
	Peace Officers Standards and Training Board Support	4.3	0.0	12.7	17.0	0.0	17.0			
	Safe2Tell	0.0	0.0	7.0	7.0	0.0	7.0			
	Subtotal	1.0	0.0	0.0	1.0	0.0	1.0			
	Federal and Interstate Water Unit	50.5	1.0	36.0	87.5	2.5	90.0	11.42%		
Water and Natural Resources										
	Defense of the Colorado River Basin Compact	5.5	0.0	0.0	5.5	0.0	5.5			
	Comprehensive Environmental Response, Compensation and Liability Act	0.0	3.0	0.0	3.0	0.0	3.0			
	Subtotal	0.0	0.0	3.5	3.5	0.0	3.5			
Consumer Protection	Consumer Protection and Antitrust	5.5	3.0	3.5	12.0	0.0	12.0			
	Consumer Credit Unit	9.0	0.0	17.0	26.0	0.0	26.0			
	Subtotal	0.0	0.0	20.0	20.0	0.0	20.0			
Total		9.0	0.0	37.0	46.0	0.0	46.0	11.74%		
Percent of Total		65.0	4.0	315.2	384.2	44.2	428.4	100.00%		
		16.92%	1.04%	82.04%	100.00%					

Please note that two non-General Fund sources of funding do not cover their relative share of indirect costs, and thus reduce the amount of indirect cost recoveries that is available to offset General Fund expenditures. First, 3.0 FTE involved in defending the Colorado River Basin Compact are supported by the Water Conservation Board's Litigation Fund. These moneys were allocated by the Water Conservation Board with the understanding that indirect costs would not be charged to the Fund. Second, 1.0 FTE Victims' Services Coordinator is supported by a grant from the Victims Assistance and Law Enforcement Fund. However, this grant is not sufficient to cover the direct costs of this position, so it does not cover any indirect costs.

Table 3 Department of Law: Allocation of Indirect Costs Among Divisions and Fund Sources			
Division	Fund Source	Percentage (from Table 2)	Dollars
Legal Services to State Agencies	Legal Services Cash Fund	75.73%	\$3,253,099
Criminal Justice and Appellate	Federal Medicaid Fraud Control Program		173,081
	Insurance Fraud Cash Fund		141,735
	P.O.S.T. Board Cash Fund		95,399
	Transfer from DORA from Division of Securities Cash Fund		80,407
	Transfer from DPS from Automobile Theft Prevention Authority line item		0
	Transfer from DPS from State Victims Assistance and Law Enforcement Program line item		0
	Subtotal	11.42%	490,622
	Water and Natural Resources	Transfers from DPHE from the Hazardous Substance Response Fund	
Colorado Water Conservation Board's Litigation Fund			0
Subtotal		1.11%	47,699
Consumer Protection	Collection Agency Cash Fund or Uniform Consumer Credit Code Cash Fund		272,568
	Custodial moneys		190,798
	Transfers from DORA from the Mortgage Company and Loan Originator Licensing Cash Fund		40,885
	Tobacco Settlement Defense Account of the Tobacco Litigation Settlement Cash Fund		0
	Colorado No-call List annual registration fees		0
	Building Regulation Fund		0
	Subtotal	11.74%	504,251
	Total (from Table 1)		

The Indirect Cost Assessment is allocated among divisions based on each division's relative share of FTE (calculated in the last column of Table 2). Within a division, the Indirect Cost Assessment is allocated among fund sources based on each fund source's relative share of FTE and the adequacy/availability of each fund source to cover indirect costs.

Finally, please note that the Department occasionally receives grants which allow for the recovery of indirect costs. When this occurs, the Department charges a share of departmental and statewide indirect costs to the grant (as allowed by the grant or at a rate negotiated with the federal government). These moneys are then used to cover a portion of the Department's administrative costs that would otherwise require a General Fund expenditure.

*JBC Staff Budget Briefing: FY 2013-14*  
*Staff Working Document – Does Not Represent Committee Decision*

---

**FY 2013-14 Indirect Cost Assessment Request**

For FY 2013-14 the Department has requested indirect cost assessments totaling \$4,295,671. This amount matches the Indirect Cost Pool calculated in Table 1 (with a \$1 rounding difference). *Table 4* details the FY 2013-14 Department indirect cost assessment for each division based on the November 1, 2012, budget request. The FY 2013-14 indirect cost assessment request represents an increase of \$383,450 compared to FY 2012-13 appropriations primarily due to:

- proposed adjustments to employee benefits and services that are purchased from other state agencies;
- the Department's relocation to the Ralph L. Carr Colorado Judicial Center, which increases the Department's leased space expenses; and
- the proposed refinance of the Public Information Officer position (R-4).

Division	Total	Cash Funds	Reappropriated	
			Funds	Federal Funds
Legal Services to State Agencies	\$3,253,100	\$0	\$3,253,100	\$0
Criminal Justice and Appellate	490,622	237,134	80,407	173,081
Water and Natural Resources	47,699	0	47,699	0
Consumer Protection	504,250	463,365	40,885	0
<b>Total FY 2013-14 Request</b>	<b>4,295,671</b>	<b>700,499</b>	<b>3,422,091</b>	<b>173,081</b>
FY 2012-13 Indirect Cost Assessment	<u>3,912,221</u>	<u>649,970</u>	<u>3,104,721</u>	<u>157,530</u>
<b>Difference (FY 13-14 less FY 12-13)</b>	<b>383,450</b>	<b>50,529</b>	<b>317,370</b>	<b>15,551</b>

## Appendix E: Change Requests' Relationship to Performance Measures

This appendix will show how the Department of Law indicates each change request ranks in relation to the Department's top priorities and what performance measures the Department is using to measure success of the request.

<b>Change Requests' Relationship to Performance Measures</b>			
<b>R</b>	<b>Change Request Description</b>	<b>Goals / Objectives</b>	<b>Performance Measures</b>
1	Add Appellate FTE	<p>The stated objective of the Appellate Unit is to "minimize state risk through the effective representation of state prosecution when defendants challenge their felony convictions before the state appellate courts or the federal courts". The Unit's strategy is to resolve cases in a timely fashion while providing quality representation of the State's interests.</p> <p>This request is aimed at addressing the issue of timeliness and reducing the growing backlog of appellate cases.</p>	<p><i>Cases Resolved/ Case Backlog:</i> While some cases are resolved through an expedited docket or otherwise, most require the Appellate Unit to file a brief. For each of these cases, an Appellate Unit attorney must review the trial court record and the brief filed by the defense, do legal research into the defendant's claims, and file a response brief. The Department anticipates that the additional attorneys will increase the number of Answer Briefs filed from 894 in FY 2011-12 to 1,250 annually beginning in FY 2013-14. This, in turn, is anticipated to reduce the backlog of appellate cases from 608 in FY 2011-12 to 60 by the end of FY 2017-18.</p> <p><i>Success Rate:</i> The Department's goal is to maintain or exceed a 90 percent success rate (the percentage of cases with a successful outcome on appeal).</p>
2	Add Special Prosecution FTE	<p>The Department has statewide jurisdiction to prosecute criminal offenses, and the Special Prosecutions Unit handles a wide variety of criminal matters across all areas of the state including white collar crime offenses, human trafficking cases, homicides, complex drug conspiracies, and special prosecutions in which its assistance is requested by the Governor or a district attorney. This Unit also conducts a statewide program for investigating and prosecuting violations of applicable state laws pertaining to securities and insurance fraud which local jurisdictions would be unable to effectively handle.</p> <p>This request is designed to allow the Department to better protect Colorado citizens in the investigation and prosecution of complex criminal conspiracies, environmental crimes, and gang activities. Specifically, the request would:</p> <ol style="list-style-type: none"> <li>(1) add an attorney to assist in the supervision and management of the Unit;</li> <li>(2) add a Criminal Investigator who would support all Unit activities, with a particular focus on human trafficking and election fraud; and</li> <li>(3) add clerical support to all the attorneys and investigators in Unit.</li> </ol>	<p>This request does not appear to relate to the performance measures in the Department's 2012 strategic plan.</p>

*JBC Staff Budget Briefing: FY 2013-14*  
*Staff Working Document – Does Not Represent Committee Decision*

---

<b>Change Requests' Relationship to Performance Measures</b>			
<b>R</b>	<b>Change Request Description</b>	<b>Goals / Objectives</b>	<b>Performance Measures</b>
3	Refinance tobacco litigation efforts	This request simply refinances an existing program, so it does not specifically relate to the objectives in the Department's 2012 strategic plan.	This request simply refinances an existing program, so it does not specifically relate to the performance measures in the Department's 2012 strategic plan.
4	Refinance Public Information Officer	This request simply refinances an existing program, so it does not specifically relate to the objectives in the Department's 2012 strategic plan.	This request simply refinances an existing program, so it does not specifically relate to the performance measures in the Department's 2012 strategic plan.

**JBC Staff Budget Briefing: FY 2013-14**  
**Staff Working Document - Does Not Represent Committee Decision**

**Appendix F: Recent Legislation Impacting Legal Services to State Agencies (FY 2009-10 to FY 2012-13)**

Department Bill (Description)	FY 2009-10 Approp. to LSSA /1	FY 2010-11 Approp. to LSSA /1	FY 2011-12 Approp. to LSSA /1	FY 2012-13 Approp. to LSSA /1	Original Funding Source
<b>APPROPRIATION/ BUDGET BILLS:</b> Long Bill Appropriation for Legal Services to State Agencies' section (excludes central appropriations) Supplemental Bill(s) S.B. 11-076 (PERA contribution rates) <b>SUBTOTAL: Appropriation/ Budget Bills</b>	22,294,568 259,425 <b>22,553,993</b>	22,741,379 910,498 <b>23,651,877</b>	23,762,512 (416,933) <b>23,345,579</b>	25,131,930  <b>25,131,930</b>	
<b>SEPARATE LEGISLATION:</b> <b>Agriculture</b> S.B. 10-072 (Colorado Seed Potato Act) <b>Corrections</b> None		905 CF			
<b>Education</b> S.B. 09-123 (Healthy Choices Dropout Prevention) S.B. 09-163 (Education Accountability System) H.B. 09-1319 (Concurrent Enrollment) H.B. 11-1121 (Safer Schools Act of 2011) Subtotal	751 GF 7,135 GF 10,139 FF 18,025		11,005 CF 11,005		
<b>Governor-Lt. Governor-State Planning and Budgeting</b> None					
<b>Health Care Policy and Financing</b> None					
<b>Higher Education</b> None					
<b>Human Services</b> None					
<b>Judicial Branch</b> None					
<b>Labor and Employment</b> None					
<b>Law</b> None					

**JBC Staff Budget Briefing: FY 2013-14**  
**Staff Working Document - Does Not Represent Committee Decision**

**Appendix F: Recent Legislation Impacting Legal Services to State Agencies (FY 2009-10 to FY 2012-13)**

Legislative Branch	Department Bill (Description)	FY 2009-10		FY 2010-11		FY 2011-12		FY 2012-13	
		Approp. to LSSA /1	Original Funding Source						
None									
Local Affairs									
None									
Military and Veterans Affairs									
None									
Natural Resources									
H.B. 12-1330 (Hunting/Fishing License Suspension)								3,028	CF
Personnel and Administration									
H.B. 10-1176 (Require Government Recovery Audits)				2,000	GF				
Public Health and Environment									
H.B. 10-1018 (Reduce Waste Tire Stockpile Risks)				15,076	CF				
H.B. 10-1125 (Regulate Grease Collection and Disposal)				7,538	CF				
Subtotal		0		22,614		0			
Public Safety									
S.B. 11-251 (Division of Fire Safety Duties)						7,337	CF		
Regulatory Agencies									
S.B. 09-026 (Regulation of Athletic Trainers)		21,779	CF						
S.B. 09-138 (Sunset: Certified Nurse Aides)		3,755	CF						
S.B. 09-167 (Sunset: Board of Chiropractic Examiners)		4,882	CF						
S.B. 09-239 (Sunset: State Board of Nursing)		33,795	CF						
H.B. 09-1086 (Sunset: Mental Health Professionals)		30,000	CF						
H.B. 09-1136 (Electrical Education Licensing Requirements)		11,265	CF						
H.B. 09-1188 (Michael Skolnik Medical Transparency)		24,783	CF						
H.B. 09-1202 (Mortuary Science Registration)				612,463	CF				
S.B. 10-109 (Medical Marijuana Dr Patient Relations)				7,538	CF (from				
S.B. 10-124 (Michael Skolnik Medical Transparency)				(9,799)	CF				
H.B. 10-1128 (Registrations Regulatory Efficiency)				6,407	CF				
H.B. 10-1141 (Mortgage Company Registration)									

**JBC Staff Budget Briefing: FY 2013-14**  
**Staff Working Document - Does Not Represent Committee Decision**

**Appendix F: Recent Legislation Impacting Legal Services to State Agencies (FY 2009-10 to FY 2012-13)**

Department Bill (Description)	FY 2009-10		FY 2010-11		FY 2011-12		FY 2012-13	
	Approp. to LSSA /1	Original Funding Source						
H.B. 10-1148 (Architect License Renewal Professional Competency)		CF	(11,307)	CF				
H.B. 10-1224 (Sunset: Podiatry Board)		CF	2,261	CF				
H.B. 10-1260 (Sunset: Board Medical Examiners)		CF	17,262	CF				
H.B. 10-1278 (Create HOA Ombudsman)		CF	15,679	CF				
H.B. 10-1365 (Incent Utility Convert Coal to Natural Gas)		CF	13,041	CF				
H.B. 10-1415 (Sunrise: Surgical Technologist Registration)		CF	3,769	CF				
S.B. 11-088 (Sunset: Direct-entry Midwives)					4,109	CF		
S.B. 11-091 (Sunset: Board Veterinary Medicine)					4,402	CF		
S.B. 11-094 (Sunset: Optometric Board)					4,402	CF		
S.B. 11-128 (Child-only Health Insurance Plans)					2,935	FF		
S.B. 11-169 (Sunset: Physical Therapy Board)					38,886	CF		
S.B. 11-187 (Sunset: Mental Health Professionals)					176,088	CF		
H.B. 11-1100 (Military Experience License Certificate)					34,484	CF		
H.B. 11-1195 (Private Investigators Voluntary Licensing)					7,337	CF		
H.B. 11-1300 (Conservation Easement Tax Credit Dispute Resolution)					2,352	CF		
H.B. 12-1300 (Sunset: Professional Review Committee)							2,271	CF
H.B. 12-1303 (Certify Speech-language Pathologists)							16,656	CF
H.B. 12-1311 (Sunset: Pharmacy Board)							<u>23,092</u>	CF
<b>Subtotal</b>	130,259		657,314		274,995		42,019	
<b>Revenue</b>								
H.B. 09-1173 (Contraband Cigarettes & Tobacco Products)	7,510	CF						
H.B. 10-1193 (Sales Tax Out-of-state Retailers)		GF	40,000	GF				
H.B. 10-1284 (Medical Marijuana Regulation)		CF	271,368	CF				
H.B. 11-1300 (Conservation Easement Tax Credit Dispute Resolution)					<u>1,349,581</u>	GF		
<b>Subtotal</b>	7,510		311,368		1,349,581			

**JBC Staff Budget Briefing: FY 2013-14**  
**Staff Working Document - Does Not Represent Committee Decision**

**Appendix F: Recent Legislation Impacting Legal Services to State Agencies (FY 2009-10 to FY 2012-13)**

Department Bill (Description)	FY 2009-10		FY 2010-11		FY 2011-12		FY 2012-13	
	Approp. to LSSA /1	Original Funding Source						
State S.B. 10-203 (Independent Expenditures After Citizens United)			4,522	CF				
Transportation None								
Treasury None								
<b>SUBTOTAL: Separate legislation Number of Bills</b>	155,794 11		998,723 17		1,642,918 12		45,047 4	
<b>TOTAL Total FTE Appropriated</b>	22,709,787 220.4		24,650,600 237.5		24,988,497 237.8		25,176,977 238.0	

1/ This table lists appropriations to the Department of Law for the Legal Services to State Agencies section (which excludes centrally appropriated line items such as employee benefits and leased space), as well as appropriations to other state agencies in separate legislation for the purchase of legal services from the Department of Law. The fiscal impacts of the above bills on each department's need for legal services in subsequent fiscal years are reflected in the annual Long Bill appropriations at the top of the table. This table excludes acts that included appropriations impacting other divisions within the Department of Law.

*JBC Staff Budget Briefing: FY 2013-14  
Staff Working Document - Does Not Represent Committee Decision*

**Appendix G: FY 2012-13 Appropriations for the Purchase of Legal Services from the Department of Law, by Agency**

Department/ Line Item	Hours Per Appropriation/ Fiscal Note	General Fund	Cash Funds	Reappropriation Funds	Federal Funds	Non-appropriated Sources	Total Client Agency Funds
<b>Agriculture</b>							
Commissioner's Office and Administrative Services, Legal Services	4,653.0	\$114,912	\$229,532		\$15,000		\$359,444
Colorado State Fair, Program Costs	180.0		13,905				13,905
Agriculture - Total	4,833.0	114,912	243,437	0	15,000		373,349
<b>Corrections</b>							
Management, Executive Director's Office Subprogram, Legal Services	15,298.0	1,141,591	40,180				1,181,771
<b>Education</b>							
Management and Administration, Administration and Centrally-Appropriated	4,900.0	214,910	148,165	15,450	0		378,525
<b>Governor</b>							
Office of the Governor, Special Purpose, Legal Services (general)	1,451.0						
Office of the Governor, Special Purpose, Legal Services (Lobato)	3,600.0						
Subtotal	5,051.0	390,190			17,768		390,190
Governor's Energy Office, Legal Services	230.0						17,768
Office of Information Technology, Management and Administration of OIT, Legal Services	489.0			37,775			37,775
Governor - Total	5,770.0	390,190	0	37,775	17,768		445,733
<b>Health Care Policy and Financing</b>							
Executive Director's Office, General Administration, Legal Services and Third Party Recovery Legal Services	13,592.0	355,006	169,986		524,990		1,049,982
<b>Higher Education</b>							
Department Administrative Office, Legal Services	448.0		9,550	25,058			34,608
Estimated legal services purchased by institutions	13,006.0					1,004,714	1,004,714
Higher Education - Total	13,454.0	0	9,550	25,058	0	1,004,714	1,039,322
<b>Human Services</b>							
Executive Director's Office, General Administration, Legal Services	18,439.0	1,183,252	174,606	13,611	52,944		1,424,413
<b>Judicial Branch</b>							
Courts Administration, Central Appropriations, Legal Services	2,204.0	170,259					170,259
Independent Ethics Commission, Legal Services	900.0	69,525					69,525
Judicial - Total	3,104.0	239,784	0	0	0		239,784
<b>Labor and Employment</b>							
Executive Director's Office, Legal Services	7,905.0		271,545	0	339,116		610,661
Division of Workers' Compensation, Major Medical Insurance and Subsequent Injury Funds, Major Medical Legal Services	100.0		7,725				7,725
Division of Workers' Compensation, Major Medical Insurance and Subsequent Injury Funds, Subsequent Injury Legal Services	350.0		27,038				27,038
Labor - Total	8,355.0	0	306,308	0	339,116		645,424

*JBC Staff Budget Briefing: FY 2013-14*  
*Staff Working Document - Does Not Represent Committee Decision*

**Appendix G: FY 2012-13 Appropriations for the Purchase of Legal Services from the Department of Law, by Agency**

Department/ Line Item	Hours Per Appropriation/ Fiscal Note	General Fund	Cash Funds	Reappropri. Funds	Federal Funds	Non-appropriated Sources	Total Client Agency Funds
<b>Law</b>							
Law - Total	0.0	0	0	0	0	0	0
<b>Legislative Branch</b>							
General Assembly, Legal Services	188.0	14,523					14,523
<b>Local Affairs</b>							
Executive Director's Office, Legal Services	1,790.0	125,719	6,364	1,277	4,918		138,278
<b>Military and Veterans Affairs</b>							
Executive Director and Army National Guard	110.0	8,498					8,498
<b>Natural Resources</b>							
Executive Director's Office, Legal Services	45,410.0	850,052	2,565,896	40,324	51,651		3,507,923
H.B. 12-1330	40.0		3,028				3,028
State Board of Land Commissioners - Lowry Range Lawsuit	3,600.0					278,100	278,100
Natural Resources - Total	49,050.0	850,052	2,568,924	40,324	51,651	278,100	3,789,051
<b>Personnel and Administration</b>							
Executive Director's Office, Department Administration, Legal Services	2,563.0	138,771	9,464	49,757			197,992
Division of Human Resources, Risk Management Services, Legal Services	31,860.0			2,461,185			2,461,185
Constitutionally Independent Entities, Personnel Board, Legal Services	330.0	25,493					25,493
Personnel and Administration - Total	34,753.0	164,264	9,464	2,510,942	0	0	2,684,670
<b>PERA</b>							
Estimated legal services purchased by PERA	29.0					2,240	2,240
<b>Public Health and Environment</b>							
Administration and Support, Administration, Legal Services	28,427.0			2,195,986			2,195,986
Hazardous Materials and Waste Management Division, Administration, Legal Services	2,222.0		116,032	386	55,234		171,652
Hazardous Materials and Waste Management Division, Contaminated Site Cleanups and Remediation Programs, Rocky Flats Legal Services	139.0				10,738		10,738
Public Health and Environment - Total	30,788.0	0	116,032	2,196,372	65,972		2,378,376
<b>Public Safety</b>							
Executive Director's Office, Administration, Legal Services	2,163.0	0	0	167,092	0		167,092
<b>Regulatory Agencies</b>							
Executive Director's Office and Administrative Services, Legal Services	104,340.0	156,586	7,669,419	89,339	144,921		8,060,265
H.B. 12-1300	30.0		2,271				2,271
H.B. 12-1303	220.0		16,656				16,656
H.B. 12-1311	305.0		23,092				23,092
Regulatory Agencies - Total	104,895.0	156,586	7,711,438	89,339	144,921		8,102,284

*JBC Staff Budget Briefing: FY 2013-14  
Staff Working Document - Does Not Represent Committee Decision*

**Appendix G: FY 2012-13 Appropriations for the Purchase of Legal Services from the Department of Law, by Agency**

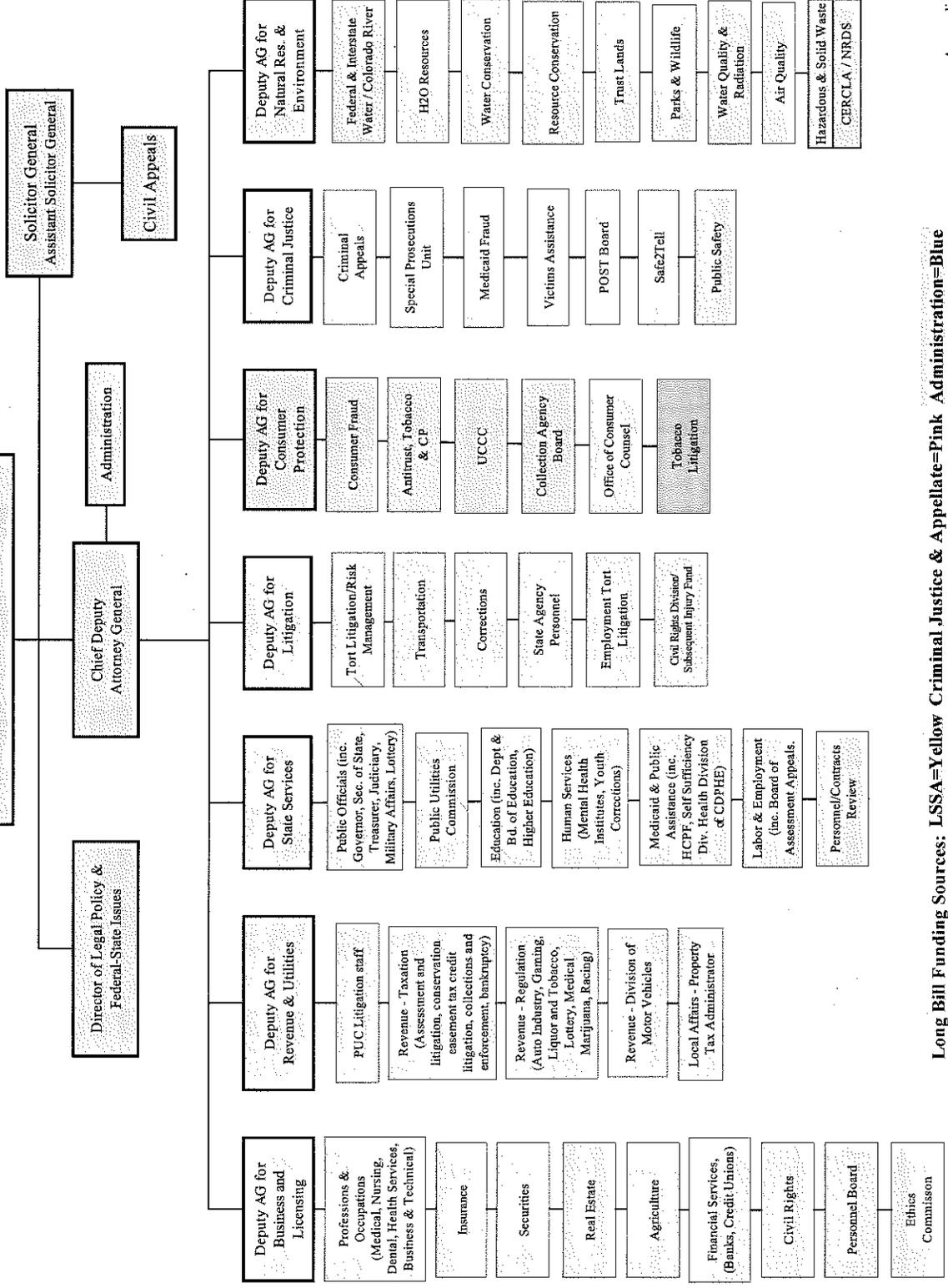
Department/ Line Item	Hours Per Appropriation/ Fiscal Note	General Fund	Cash Funds	Reapprop. Funds	Federal Funds	Non- appropriated Sources	Total Client Agency Funds
<b>Revenue</b>							
Executive Director's Office, Legal Services (includes Gaming and Lottery)	38,842.0	2,161,598	838,947	0	0	0	3,000,545
<b>State</b>							
Administration, Legal Services	7,118.0		549,866				549,866
<b>Transportation</b>							
Administration	6,580.0		508,305				508,305
Construction, Maintenance, and Operations	9,852.0		761,067				761,067
Transportation - Total	16,432.0		1,269,372				1,269,372
<b>Treasury</b>							
Administration, Legal Services	575.0	22,210	22,210				44,420
<b>GRAND TOTAL</b>	<b>374,478.0</b>	<b>7,143,095</b>	<b>14,184,849</b>	<b>5,097,240</b>	<b>1,217,280</b>	<b>1,285,054</b>	<b>28,927,518</b>
		24.7%	49.0%	17.6%	4.2%	4.4%	100.0%
Legislation Other Than Long Bill	595.0	0	45,047	0	0	0	45,047
<b>LONG BILL ONLY</b>	<b>373,883.0</b>	<b>7,143,095</b>	<b>14,139,802</b>	<b>5,097,240</b>	<b>1,217,280</b>	<b>1,285,054</b>	<b>28,882,471</b>
		24.7%	49.0%	17.6%	4.2%	4.4%	100.0%

**JBC Staff Budget Briefing: FY 2013-14**  
**Staff Working Document - Does Not Represent Committee Decision**

**Appendix H: Hours of Legal Services Provided, by Agency (FY 2002-03 to FY 2012-13)**

DEPARTMENT	Hours of Legal Services Provided to State Agencies, by Agency											FY 12-13 (Approp./ Estim.)
	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	
Regulatory Agencies	81,783	81,668	82,080	81,361	84,589	90,369	98,008	99,427	100,781	95,895	104,895	
Natural Resources	37,809	36,857	35,944	38,521	37,763	40,010	41,237	43,305	44,614	43,856	49,050	
Revenue	11,050	10,532	10,079	8,943	11,133	12,630	12,789	12,836	23,227	37,466	38,842	
Personnel and Administration	35,934	35,840	37,923	39,831	38,261	41,171	34,711	31,710	35,295	34,336	34,753	
Public Health and Environment	24,061	23,782	21,794	24,462	23,608	26,495	28,816	28,245	27,320	29,745	30,788	
Human Services	19,258	17,776	19,477	20,663	20,416	19,849	21,072	21,015	19,639	18,862	18,439	
Transportation	18,080	16,151	16,002	17,159	16,467	16,902	18,242	15,846	14,894	15,143	16,432	
Corrections	17,082	15,863	17,875	15,508	13,830	11,748	14,619	18,647	14,619	13,337	15,298	
Health Care Policy and Financing	14,945	13,260	12,300	11,642	11,132	10,249	11,682	10,147	10,982	11,885	13,592	
Higher Education	11,610	10,283	10,747	11,549	11,475	10,142	13,402	13,114	12,879	13,002	13,454	
Labor and Employment	9,307	7,788	7,086	7,144	7,125	7,926	8,338	8,169	8,881	9,406	8,355	
State	1,507	2,258	2,490	3,034	4,963	4,125	3,066	4,187	5,058	6,645	7,118	
Governor	1,193	3,210	3,326	1,509	1,718	1,268	2,653	6,442	15,003	9,292	5,770	
Education	3,099	3,014	3,147	4,792	4,827	4,786	5,712	4,610	4,080	3,685	4,900	
Agriculture	3,302	3,148	3,365	3,079	3,460	4,315	4,501	4,129	3,841	4,712	4,833	
Judicial Branch	4,201	4,084	3,588	3,990	2,838	2,698	2,949	2,458	1,700	2,145	3,104	
Public Safety	2,067	1,946	1,966	1,971	2,040	1,953	2,146	1,682	2,161	3,856	2,163	
Local Affairs	1,999	1,598	2,248	1,427	1,671	2,462	980	1,917	1,657	1,493	1,790	
Treasury	642	188	1,190	576	599	756	1,220	1,675	1,635	2,186	575	
Legislative Branch	138	247	179	225	55	264	152	106	98	66	188	
Military and Veterans Affairs	64	15	100	107	24	15	43	131	510	124	110	
PERA	21	13	38	27	10	5	13	29	2	2	29	
Law	13	12	17	521	289	249	227	77	154	0	0	
<b>GRAND TOTAL</b>	299,165	289,529	292,959	298,041	298,291	310,387	326,576	329,907	349,029	357,139	374,478	
Annual change	(3,346)	(9,636)	3,430	5,082	250	12,096	16,189	3,331	19,122	8,109	17,339	
Annual % change	-1.1%	-3.2%	1.2%	1.7%	0.1%	4.1%	5.2%	1.0%	5.8%	2.3%	4.9%	

**Colorado  
Attorney General  
John Suthers**



Long Bill Funding Sources: LSSA=Yellow Criminal Justice & Appellate=Pink Administration=Blue

Natural Resources & Water Rights=Light Green Consumer Protection=Orange Special Purpose=Purple