

FY 09-10 Reconciliation of Request

LSSA

(New Format)



DEPARTMENT OF LAW

FY 2009-10 RECONCILIATION OF DEPARTMENT REQUEST

(2) Legal Services to State Agencies

Long Bill Line Item	Total Funds	FTE	General Fund	Cash Funds	Reappropriated Funds	Federal Funds
Legal Services to State Agencies						
Personal Services	\$17,377,012	213.2	\$0	\$1,000,000	\$16,377,012	\$0
FY 2008-09 Long Bill Appropriation (HB 08-1375)	\$8,104		\$0	\$0	8,104	\$0
SB 08-029 Architech Obtain Continuing Ed.	\$9,725		\$0	\$0	9,725	\$0
SB 08-152 Occupational Therapy	\$2,593		\$0	\$0	2,593	\$0
SB 08-153 Home Care Agencies by DPHE	\$54,066	0.5	\$0	\$0	54,066	\$0
SB 08-200 Proh. Against Discrimination	\$16,207	0.2	\$0	\$0	16,207	\$0
SB 08-219 Reg. of Massage Therapists	\$6,808		\$0	\$0	6,808	\$0
HB 08-1058 Uniform Athlete Agents Act	\$12,965		\$0	\$0	12,965	\$0
HB 08-1161 Mined Land Reclamation Brd	\$3,242		\$0	\$0	3,242	\$0
HB 08-1226 CPA from another state	\$38,896	0.3	\$0	\$0	38,896	\$0
HB 08-1227 PUC under the Sunset Law	\$9,801		\$0	\$0	9,801	\$0
HB 08-1257 Veh. with an overweight divisible	\$2,579		\$0	\$0	2,579	\$0
HB 08-1314 Gambling addiction counseling	\$3,890		\$0	\$0	3,890	\$0
HB 08-1325 Non-immigrant Agricultural	\$29,173	0.3	\$0	\$0	29,173	\$0
HB 08-1335 Finance Public School Facility	\$36,433	0.3	\$0	\$0	36,433	\$0
HB 08-1353 Easement in the State	\$648		\$0	\$0	648	\$0
HB 08-1383 Inactive Status for Nursing Lic.	\$1,616		\$0	\$0	1,616	\$0
SB 08-029 Annualization - Architech Obtain Continuing Ed.	\$2,593		\$0	\$0	2,593	\$0
SB 08-152 Annualization - Occupational Therapy	\$2,596		\$0	\$0	2,596	\$0
SB 08-153 Annualization - Home Care Agencies by DPHE	(\$43,252)	(0.4)	\$0	\$0	(43,252)	\$0
SB 08-200 Annualization - Proh. Against Discrimination	\$5,834		\$0	\$0	5,834	\$0
SB 08-219 Annualization - Reg. of Massage Therapists	(\$15,236)		\$0	\$0	(15,236)	\$0
HB 08-1058 Annualization - Uniform Athlete Agents Act	(\$7,779)		\$0	\$0	(7,779)	\$0
HB 08-1161 Annualization - Mined Land Reclamation Brd	\$29,172	0.3	\$0	\$0	29,172	\$0
HB 08-1226 Annualization - CPA from another state	\$0		\$0	\$0	-	\$0
HB 08-1227 Annualization - PUC under the Sunset Law	(\$9,801)		\$0	\$0	(9,801)	\$0
HB 08-1257 Annualization - Veh. with an overweight divisible	(\$2,579)		\$0	\$0	(2,579)	\$0
HB 08-1314 Annualization - Gambling addiction counseling	(\$1,945)		\$0	\$0	(1,945)	\$0
HB 08-1325 Annualization - Non-immigrant Agricultural	\$0		\$0	\$0	-	\$0
HB 08-1335 Annualization - Finance Public School Facility	(\$14,586)	0.0	\$0	\$0	(14,586)	\$0
HB 08-1353 Annualization - Easement in the State	(\$648)		\$0	\$0	(648)	\$0
HB 08-1383 Annualization - Inactive Status for Nursing Lic.	\$561,112	0.0	\$0	\$0	\$561,112	\$0
Prior Year Salary Survey	\$188,642	0.0	\$0	\$0	\$188,642	\$0
Prior Year Performance-based Pay	\$0	0.0	\$0	\$0	\$0	\$0
Vacancy Savings Reduction	\$0		\$0	\$0	\$0	\$0
FY 09-10 November 1 Request	\$18,307,881	214.7	\$0	\$1,000,000	\$17,307,881	\$0

DEPARTMENT OF LAW

FY 2009-10 RECONCILIATION OF DEPARTMENT REQUEST

(2) Legal Services to State Agencies

Long Bill Line Item	Total Funds	FTE	General Fund	Cash Funds	Reappropriated Funds	Federal Funds
Operating Expenses						
FY 2008-09 Long Bill Appropriation (HB 08-1375)	\$1,293,569	0.0	\$0	\$0	\$1,293,569	\$0
SB 08-029 Architect Obtain Continuing Ed.	\$900		\$0	\$0	900	\$0
SB 08-152 Occupational Therapy	\$1,081		\$0	\$0	1,081	\$0
SB 08-153 Home Care Agencies by DPHE	\$288		\$0	\$0	288	\$0
SB 08-200 Proh. Against Discrimination	\$6,007		\$0	\$0	6,007	\$0
SB 08-219 Reg. of Massage Therapists	\$1,801		\$0	\$0	1,801	\$0
HB 08-1058 Uniform Athlete Agents Act	\$756		\$0	\$0	756	\$0
HB 08-1161 Mined Land Reclamation Brd	\$1,441		\$0	\$0	1,441	\$0
HB 08-1226 CPA from another state	\$360		\$0	\$0	360	\$0
HB 08-1227 PUC under the Sunset Law	\$4,322		\$0	\$0	4,322	\$0
HB 08-1257 Veh. with an overweight divisible	\$1,089		\$0	\$0	1,089	\$0
HB 08-1314 Gambling addiction counseling	\$287		\$0	\$0	287	\$0
HB 08-1325 Non-immigrant Agricultural	\$432		\$0	\$0	432	\$0
HB 08-1335 Finance Public School Facility	\$3,241		\$0	\$0	3,241	\$0
HB 08-1353 Easement in the State	\$4,048		\$0	\$0	4,048	\$0
HB 08-1383 Inactive Status for Nursing Lic.	\$72		\$0	\$0	72	\$0
SB 08-029 Annualization - Architect Obtain Continuing Ed.	\$180		\$0	\$0	180	\$0
SB 08-152 Annualization - Occupational Therapy	\$288		\$0	\$0	288	\$0
SB 08-153 Annualization - Home Care Agencies by DPHE	\$289		\$0	\$0	289	\$0
SB 08-200 Annualization - Proh. Against Discrimination	(\$4,805)		\$0	\$0	(4,805)	\$0
SB 08-219 Annualization - Reg. of Massage Therapists	\$648		\$0	\$0	648	\$0
HB 08-1058 Annualization - Uniform Athlete Agents Act	\$180		\$0	\$0	180	\$0
HB 08-1161 Annualization - Mined Land Reclamation Brd	(\$865)		\$0	\$0	(865)	\$0
HB 08-1226 Annualization - CPA from another state	\$3,242		\$0	\$0	3,242	\$0
HB 08-1227 Annualization - PUC under the Sunset Law	\$0		\$0	\$0	-	\$0
HB 08-1257 Annualization - Veh. with an overweight divisible	(\$1,089)		\$0	\$0	(1,089)	\$0
HB 08-1314 Annualization - Gambling addiction counseling	(\$287)		\$0	\$0	(287)	\$0
HB 08-1325 Annualization - Non-immigrant Agricultural	(\$216)		\$0	\$0	(216)	\$0
HB 08-1335 Annualization - Finance Public School Facility	\$0		\$0	\$0	-	\$0
HB 08-1353 Annualization - Easement in the State	(\$1,621)		\$0	\$0	(1,621)	\$0
HB 08-1383 Annualization - Inactive Status for Nursing Lic.	(\$72)		\$0	\$0	(72)	\$0
FY 09-10 Base Request	\$1,315,566	0.0	\$0	\$0	\$1,315,566	\$0
FY 2009-10 NP#2: Vehicle Operating Increase	\$2,449		\$0	\$0	\$2,449	\$0
FY 2009-10 NP#3 DPA Postage Increase	\$4,052		\$0	\$0	\$4,052	\$0
FY 09-10 November 1 Request	\$1,322,067		\$0	\$0	\$1,322,067	\$0

DEPARTMENT OF LAW

FY 2009-10 RECONCILIATION OF DEPARTMENT REQUEST

(2) Legal Services to State Agencies

Long Bill Line Item	Total Funds	FTE	General Fund	Cash Funds	Reappropriated Funds	Federal Funds
Indirect Costs						
FY 2008-09 Long Bill Appropriation (HB 08-1375)	\$2,676,131	0.0	\$0	\$0	\$2,676,131	\$0
FY 09-10 November 1 Request	\$2,676,131	0.0	\$0	\$0	\$2,676,131	\$0
(2) Legal Services to State Agencies						
FY 2008-09 Total Appropriation (Long Bill plus Special Bills)	\$21,549,824	214.7	\$0	\$1,000,000	\$20,549,824	\$0
FY 2009-10 November 1 Request	\$22,306,079	214.7	\$0	\$1,000,000	\$21,306,079	\$0



Narrative

LSSA

Business & Licensing



I) BACKGROUND INFORMATION: BUSINESS AND LICENSING SECTION.

The Business & Licensing Section (B&L) has approximately fifty (50) attorneys, nine (9) legal assistants and eight (8) support staff. B&L represents regulatory boards, commissions, programs and other entities. Through B&L's representation, these clients are able to effectuate their goals of public protection.

There are five units in B&L: the Financial Unit, the Revenue Unit, the Public Utilities Commission Unit, the Registrations Unit, and the Real Estate Unit. B&L clients include the Department of Regulatory Agencies, the Department of Agriculture, the Department of Revenue, the staff of the Public Utilities Commission, and the Independent Ethics Commission. The attorneys also serve as conflicts counsel for other Units in the Attorney General's Office.

B&L is led by Deputy Attorney General Diana Black. Clients within B&L are primarily funded by licensure fees, with some general funding. Despite the diversity in client agencies, B&L utilizes a collaborative model across Units to promote efficiency, consistency, and excellent legal services for our clients.

Financial Unit: This Unit represents several Divisions within the Department of Regulatory Agencies, including the Divisions of Securities, Insurance, Banking and Financial Services. The Unit's attorneys also represent the Commissioners for each of these Divisions. Additionally, the Unit represents the Department of Agriculture and the Colorado State Fair. The Unit's attorneys serve as permanent conflicts counsel for several other state agencies, including the Mined Land Reclamation Board, the Civil Rights Commission and the Department of Personnel. In connection with this representation, Unit attorneys litigate enforcement actions in state District Court, initiate licensing actions in administrative court, assist in rulemaking, and provide general counsel advice to the client agencies. Additionally, this year, the Unit began representing the newly constituted Independent Ethics Commission which was established pursuant to Amendment 41, Ethics in Government.

In connection with its enforcement actions this year, the Unit's attorneys successfully and effectively recovered assets from securities violators and assured that those assets were returned to investors. Financial Unit attorneys also successfully defended one of the largest fines in Colorado history levied against an insurance company. Finally, the Unit's attorneys defended issues of first impression on appeal.

Revenue: The Revenue Unit represents all of the boards, sections and divisions of the Department of Revenue. Revenue has three lines of business: Taxation, Motor Vehicles and Enforcement. These divisions are responsible for enforcing the tax code, regulating gaming, racing, liquor, emissions, drivers, automobile dealers and sales people, conducting fair hearings and operating Colorado's ports of entry.

The Revenue team also represents the Boxing Commission, a DORA board, and the Property Tax Administrator, a division of the Department of Local Affairs. The Unit provides a wide variety of traditional legal services, from prosecuting cases before boards and district courts around the State and the U.S. District and Bankruptcy courts, to giving advice on rule making, contracts, legislation and personnel matters and to handling appeals in the appellate courts.

Public Utilities Commission: The Colorado Public Utilities Commission (PUC or Commission) regulates the rates, charges, services, and facilities of public utilities within the State of Colorado. Within B&L, the PUC Unit's primary responsibility is to represent Litigation Staff of the PUC in cases before the Commission itself.

Staff of the Commission consists of experts in fields including, but not limited to engineering, finance, and economics. When Staff enters an appearance and becomes a party to a proceeding, Staff is divided into Advisory Staff and Litigation Staff. Representation of Litigation Staff includes advising on a daily basis and representing them in cases before the PUC. Such cases include but are not limited to those in which public utilities seek to increase the rates charged to the public, including residential, commercial, and industrial customers as well as cases in which public utilities seek to either build new facilities or extend existing Colorado facilities.

The Unit also represents the PUC and its Commissioners in judicial review actions; in civil actions commenced by or against the PUC in state and federal courts (except civil actions for damages against the PUC and/or PUC Commissioners, which are litigated by attorneys in the Tort Litigation Unit); and in federal administrative proceedings before the Federal Communications Commission, Federal Energy Regulatory Commission, and the Surface Transportation Board.

Registrations Unit: The Registrations Unit represents the boards and programs responsible for licensing, disciplining and regulating a variety of professionals. These boards and programs are staffed by the Division of Registrations, within the Department of Regulatory Agencies. The professions regulated include accountants, acupuncturists, addiction counselors, architects, athletic agents, barbers, cosmetologists, chiropractors, dentists, electricians, engineers, land surveyors, hearing aid dealers, massage therapists, marriage and family therapists, midwives, nurses, nurse aides, nursing home administrators, occupational therapists, optometrists, outfitters, physicians, physical therapists, plumbers, podiatrists, pharmacists, psychologists, respiratory therapists, social workers, unlicensed psychotherapists, and veterinarians. The attorneys in the Registrations Unit represent the boards in disciplinary and license denial cases, and in injunctive actions against individuals who engage in unlicensed practice of the professions. In addition to prosecuting individual cases, the Unit's attorneys provide general counsel advice to the boards regarding legislative and policy matters, rulemaking and case analysis.

Real Estate Unit: The Real Estate Unit represents the Colorado Real Estate Commission, the Board of Real Estate Appraisers, the Director of the Division of Real Estate in her

implementation of the Mortgage Broker Program, and the Colorado Conservation Easement Commission. These programs are staffed by the Division of Real Estate, within the Department of Regulatory Agencies. This Unit enforces compliance with the law by prosecuting disciplinary actions against licensed professionals, by representing the programs in licensure denial actions, and by litigating subpoena enforcement and injunctive actions. The attorneys in this Unit also provide general counsel advice to the clients regarding legislative and policy matters, rulemaking and case analysis.

II) PRIOR YEAR LEGISLATION

Financial Unit

- House Bill -08-1407 amended, §§ 10-1-205 and 10-3-1108, sponsored by Representative Andrew Romanoff and Senator Ken Gordon, were enacted to increase civil penalties the Commissioner may impose upon insurance companies for violations of insurance laws in connection with market conduct examinations.
- House Bill -08-1228 amended § 10-2-801 sponsored by Representative Gwyn Green and Senator Ken Gordon, was enacted to permit the Commissioner to order restitution by an insurance producer, and amended § 10-3-105 to permit the Commissioner to order restitution by an insurance company, for acts by these parties for violations of the insurance laws of Colorado governing licensure or certificates of authority to engage in the business of insurance.

Revenue:

- House Bill -08-1353 Conservation easement corrections, sponsored by Madden, and Isgar - This bill adds requirements to verify the validity of a state income tax credit claimed by a tax payer for donating a conservation easement in the state. It also requires Revenue to give a post-enactment report about implementation of this act. (Also concerns the Real Estate AAGs.)
- House Bill -08-1127 Credit for hiring Developmentally Disabled persons, sponsored by Liston, Gibbs - Grants an income tax credit for taxpayers who hire employees with developmental disabilities after 1/1/09.
- House Bill -08-1110 Pine Beetle credit, sponsored by Witwer, Kopp - Grants an income tax deduction up to \$2,500 for a landowner's direct costs incurred in performing wildfire mitigation measures due to pine beetle infestations and tree kills.
- House Bill -08-1105 Art Gallery Liquor, sponsored by Frangas Sandoval - Art galleries are now permitted to serve alcoholic beverages under certain conditions.
- House Bill -08-1398 Severance tax, sponsored by Buescher, Johnson - Changes the method for appropriating the operational account of the severance tax trust

fund [not an appropriations bill]. It also changes the reserve requirement, requiring most transfers from the account to be made in three installments during a fiscal year, making the second and third transfers subject to proportional reduction if there are insufficient funds in the account to meet the reserve requirements at the end of the fiscal year, removing obsolete provision of law, and reducing an appropriation in the Long Bill as a result of such transfers.

- House Bill -08-1138 Fraud prevention in tax return preparation, sponsored by Borodkin, Isgar - Gives Revenue the authority to assess penalties against professional tax return preparers who understate tax liabilities for clients and authority to report accountants prepares to the Board of Accountancy
- House Bill -08-1225 increases the property tax exemption, sponsored by Rice and Williams - Increases the property tax exemption for business personal property for the period before 1/1/09 to \$2,500, to \$4,000 for 2010, to \$5,000 for 2011 and \$7,000 for 2013. The exemption adjusts by formula for years thereafter.
- House Bill -08-1269 the Second Pine Beetle exemption bill, sponsored by White and Gibbs - Gives a sales and use tax exemptions for the sale and use of wood from salvaged trees infested in Colorado by mountain pine beetles for 2008 to 2013 on the sale of such wood salvaged from tree.
- House Bill -08-1261 The aircraft tax exemption bill, Buescher, Bacon - Gives an exemption from sales tax on the sale of new or used aircraft to be removed from the state if the buyers House Bill -08-1034 corrects the exemption granted to gives an affidavit attesting to be a resident of another state.
- employers for leasing of employees, Sponsored by Garza, Hicks and Veiga - Clarifies that the leased employee tax credits goes to ANY employer whether or not that employee collects wage withholding taxes or SSA. This change makes it impossible to prevent fraud.
- Senate Bill -08- 082 Sunday Liquor sales, sponsored by Veiga and Jahn - Sealed containers of liquor can be sold on Sundays between 8 AM and midnight, except on Christmas Day.
- Senate Bill -08- 26 Slow igniting cigarettes, sponsored by Hagedorn and White - Cigarettes sold in Colorado now must meet specified standards for reduced ignition propensity
- Senate Bill 1-08- 88 Teen Tobacco Prevention Act, sponsored by Tupa and Massey - Sets standards intended to reduce the incidences of tobacco use by persons less than 18 years of age.

- Senate Bill -08- 176 Sunset reauthorization, sponsored by Taylor and White - Extends the Racing commission and statutes governing racing beyond their repeal date of April, 2008.
- Senate Bill -08-027 Limited Gaming License for slot machine sales, sponsored by Gibbs and Levy - Increases the license period from 1 year to 2 years for slot machine manufacturers, distributors and operators. Permits licensed retailers to obtain slots from one another with notice to the Gaming Division or from a licensed manufacturer or distributor only.

Public Utilities Commission:

- House Bill -08-1227, sponsored by Madden and Tapia renews the PUC until 2019. In addition, it: 1) gives the PUC authority to impose civil penalties on natural gas, electric, water, water and sewer, and telecommunications utilities; 2) eliminates the statutory rate cap imposed since 1995 on residential basic local exchange telecommunications service, requiring the PUC to consider specific factors in setting telecommunications carriers' rates for that service; 3) permits the PUC to engage in *ex parte* communications during rulemakings; and 4) after a taxicab service applicant for a certificate of public convenience and necessity demonstrates operational and financial fitness, the burden is shifted to parties opposing the application to demonstrate that the public convenience and necessity does not require granting the application.
- House Bill -08-1164, sponsored by Solano, Schwartz, allows the Public Utilities Commission to give consideration to the likelihood of new environmental regulation and the risk of higher future costs associated with the emission of greenhouse gases such as carbon dioxide when it considers utility proposals to acquire resources, and also to consider the benefits of using carbon dioxide for enhanced oil recovery or other uses.
- House Bill -08-1350, Madden, gives the PUC primary jurisdiction to adjudicate disputes between residential and/or commercial customers and a public utility regarding whether a renewable energy improvement interferes with a right held by a public utility.
- House Bill -08-1249, sponsored by Rice and Kester, makes the emergency (911) surcharge applicable to services provided by Voice-Over-Internet-Protocol.
- House Bill -08-1160, sponsored by Solano and Schaffer, requires cooperative electric associations to allow a customer's retail electricity consumption to be offset by the electricity generated from renewable energy resources.
- House Bill -087-1270, sponsored by Kerr and Tupa, prohibits real property restrictions on the installation or use of renewable energy generation devices.

- Senate Bill -08-184, sponsored by Romer and Levy, creates the Colorado Clean Energy Finance Program, overseen by the Governor's Energy Office.

Registrations Unit:

- House Bill -08-1058, the Uniform Athlete Agents Act, establishes a regulatory structure for those persons who negotiate or solicit, on behalf of a student athlete, a professional sports-services or endorsement contract. Such persons will now be required to possess a certificate of registration from the Division of Registrations, Department of Regulatory Agencies. They will be subject to regulatory oversight, including discipline where appropriate. As such, our attorneys will be assisting with rulemaking and litigation to ensure the new legislation. The primary sponsors of the bill were Representative McGihon and Senator Gordon.
- House Bill -08-1383, concerning creation of an Inactive Status for Nursing Licenses, and Making an Appropriation Therefor. This bill creates an inactive status for nursing licenses, but gives the Board of Nursing the discretion to deny an application for inactive status for a nurse who has engaged in an act or omission that constitutes grounds for discipline. It is anticipated that the new status will decrease legal costs to the Board and will create new options for nurses who do not wish to surrender their licenses but who may have a disability, addiction, or other reason to refrain from engaging in the practice of nursing. The primary sponsors of the legislation were Representative Roberts and Senator Tochtrop.
- Senate Bill -08-152, concerning the Regulation of Occupational Therapy, establishes the Occupational Therapy Practice Act requiring licensure of occupational therapists and occupational therapist assistants. The bill sets forth the criteria for licensure and sets forth the basis for disciplinary actions. Our attorneys will represent the program in disciplinary matters, injunctive actions, and will also provide advice relating to the promulgation of rules. The primary sponsors of the bill were Senator Tochtrop and Representative Gagliardi.
- Senate Bill -08-219, concerning Regulation of Massage Therapists. This bill repeals the Colorado Massage Parlor Code and establishes a licensing structure for the regulation of massage therapists. The bill sets criteria for licensure and provides for discipline for failure to comply with any of the provisions of the Act. The Business and Licensing Section will be responsible for providing legal counsel, in the form of rulemaking and prosecution if necessary, as the new program is implemented by the Division of Registrations, Department of Regulatory Agencies. The primary sponsors of the legislation were Senator Romer and Representatives McFadyen and Rice.

Real Estate Unit:

- House Bill -08-1353, Concerning Verification of State Tax Credits Associated Conservation Easements, establishes a regulatory structure for conservation easements for which a tax credit is claimed. Specifically, the bill establishes the Colorado Conservation Easement Oversight Commission (“Commission”) within the Division of Real Estate, Department of Regulatory Agencies (“Division”) which shall consist of nine members. Additionally, the bill requires that the Division establish and administer a certification program for IRS qualified organizations that hold conservation easements. The bill also requires that appraisers who conduct appraisals for conservation easements submit a copy of the appraisal, and related information, to the Commission for review. The Department of Law, specifically the Business and Licensing Section, will provide representation to the Commission in areas related to rulemaking, disciplinary actions against appraisers who have failed to comply with the law, as well as litigation related to the denial of certification for those entities who do not possess the applicable qualification or have otherwise violated the law. The primary sponsors of the bill were Representative Madden and Senator Isgar.

III) HOT ISSUES:

Medical Unit: The Independent Ethics Commission will begin hearing complaints and requests for opinions during this fiscal year.

Revenue Unit: Major lawsuits and court orders:

McLane Western v. Huber (McLane II) is a second challenge to the tobacco products tax by the same plaintiffs in a new tax period. Revenue won dismissal in the trial court and the case is pending the Court of Appeals on whether the prior decision in Revenue’s favor bars a subsequent challenge to the tax statutes in a new tax period, i.e., whether res judicata or collateral estoppel prevents relitigation of tax liability. McLane asserts that there is an equal protection violation in that more than one entity could be liable for the tax. In McLane I Revenue prevailed on McLane’s dormant commerce clause challenge to the tobacco products statutory scheme and cert was denied in the United States Supreme Court.

Colorado Mining Association v. Huber is a TABOR challenge to a tax formula for the severance of coal enacted in 1988. The Attorney General issued a formal opinion stating that Revenue should calculate and collect the tax according to the statutory formula. Revenue implemented that advice and issued a rule setting the tax rate for 2008. The tax rose from \$.54 to \$.76. The case is still in litigation

In re United Airlines and Sky West Airlines is a property tax case concerning state assessed tax that mostly would be apportioned to Denver. The parties are \$100 million apart on the valuation. This case is not yet set for hearing.

Issues recently receiving press coverage:

- Conservation easement tax fraud proposed ballot initiative to increase severance taxes.

Public Utilities Commission: The increased focus on and interest in renewable energy continues. Legislation passed in 2007 significantly increased the percentage of renewable energy Colorado utilities are required to generate or purchase, and also imposed requirements that gas and electric utilities develop and offer programs that encourage retail customers to participate in energy conservation. Based on the legislative directives, fiscal year 2007-2008 saw many Public Utility Commission decisions of first impression designed to carry out the legislative directives passed in 2007.

In addition, 2008 legislation (House Bill 08-1227) continued the Public Utilities Commission until 2019 and eliminated the statutory rate cap limiting the amount that could be charged for residential basic local exchange telecommunications service (that amount had been capped by statute since 1995).

Registrations Unit: The department attorneys assisted the Colorado State Board of Medical Examiners as it has implemented the Michael Skolnik Medical Transparency Act, section 12-36-111.5, C.R.S. This assistance has included development of rules, policies and procedures. The Medical Transparency Act became effective for new physician applicants on January 1, 2008, and it will apply to currently licensed physicians beginning in May of 2009.

The department attorneys also continued to work closely with the Board of Nursing to ensure successful implementation of the Multistate Nursing Compact, adopted by the General Assembly in 2006 pursuant to section 24-60-3201, C.R.S. *et seq.*

Real Estate: the mortgage crisis and the high rate of foreclosures occurring in Colorado, the Real Estate Team of the Business and Licensing Section has assisted with the implementation of the new Mortgage Broker Program. Specifically, the Mortgage Broker Licensing Act, found at § 12-61-901 *et seq.*, C.R.S. (“MBLA”), is a product of five bills signed into law in 2006 and 2007. Initially, in 2006, mortgage brokers were subject to a registration requirement without a distinct standard of practice. Subsequently, in 2007, four bills were signed into law which added a broad swath of affirmative requirements as well as prohibitions for those engaging in the practice of mortgage brokerage. These requirements and prohibitions fall loosely into two categories, the affirmative requirement of good faith and fair dealing, and the many prohibitions covering fraud and like practices. As mortgage brokers have been practicing without regulatory oversight, in some instances for decades, the industry has aggressively fought against the enforcement and implementation of the law, disputing decisions related to the denial of licensure or the imposition of discipline as well as initiating legal action to challenge subpoenas and the Director’s regulatory authority generally.

IV) WORKLOAD MEASURE:

WORKLOAD INDICATORS

With DORA's increased use of the Expedited Settlement Program, more straightforward cases have been settled with minimal attorney involvement. Consequently, the cases that have been referred to the Office of the Attorney General have been more complex and contentious. This year, DORA has requested that attorneys file or resolve cases within a one-year period of time. Our attorneys have responded to this goal without compromising their commitment to prioritize the most egregious cases and promote public protection. The current mortgage broker crisis has resulted in increased litigation surrounding the regulation of mortgage brokers and the authority of the Director of the Division of Real Estate to exercise her authority under the MBLA. Additionally, the establishment of the Mortgage Broker Program has required a significant amount of legal time to be allocated to the drafting and review of newly promulgated rules.

Workload Measure	Unit Revenue	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
Number of cases completed (hearing/trials and settlements)	Target		300		
	Actual	259	120*		
Number of pending cases	Target		400		
	Actual	541	209		

* The team closed officially 855 case files stored on our floor and sent them to archives between April 1, and May 30, 2008.

BUSINESS AND LICENSING CORE OBJECTIVES AND PERFORMANCE MEASURES

1. Financial Unit

Objective: Assure early attorney involvement in cases.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
Attorney Assignment to and initial review of cases within 48 hours of receipt of request for counsel	Benchmark	100%	100%	100%	
	Actual	100%	100%	100%	

Objective:

Provide training to Client Agencies where appropriate regarding:

- 1) the conduct of administrative hearings by the agencies, and
- 2) improvements of investigation techniques and information gathering.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
Unit attorneys provide training to the Department of Agriculture and the Division of Insurance on annual basis.	Benchmark	100%	100%	100%	
	Actual	100%	100%	100%	

2. Revenue Unit

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
In cases where Revenue statutes have not been interpreted by the Courts, Revenue attorneys assist with research and rule making, review the evidence used by Revenue to make its initial decisions and participate in negotiations to settle disputes before litigation.	Benchmark	95%	95%	95%	
	Actual	95%	95%		

Objective:

Assist Litigation Staff with management of discovery requests and responses.

Represent Revenue decision-makers, meeting the Court's/Board's timelines.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
In cases where Revenue is sued (a taxpayer, driver or licensee appeals a Revenue decision) upon service of the AG and Revenue cases are opened and answers are filed and trials or appeals are pursued.	Benchmark	95%	95%	95%	
	Actual	100%	100%		

Objective:

Training new Revenue managers regarding litigation timelines and recognizing legal issues that have wide implications, especially in taxation and licensure.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
Development of tax and licensure policies.	Benchmark	95%	95%	95%	
	Actual	100%	100%		

Objective:

Improve representation of Litigation Staff by increasing subject matter expertise.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
Develop an internal library of authorities on liquor, gaming, taxation, dealers and driver appeals law and bankruptcy.	Benchmark	95%	95%	95%	
	Actual	65%	65%		

3. Public Utilities Commission

Objective:

Assist Litigation Staff with early identification and development of issues to be presented at hearings.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
In cases where advice letters and applications have been filed with the PUC, upon receipt of direct testimony, set up and maintain regular meeting schedules with the client.	Benchmark	100%	100%	100%	
	Actual	100%	100%	100%	

Objective:

Assure early attorney involvement in all cases.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
Attorney assignment to cases within 48 hours of receipt of requests for counsel	Benchmark	100%	100%	100%	
	Actual	100%	100%	100%	

Objective:

Training Litigation Staff regarding: 1) the necessary documents which must be received by the PUC Unit to properly and efficiently process requests for counsel and generate intervention documents, and 2) how to properly prepare confidential testimony and exhibits to meet the requirements of Commission rules.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
Provide semi-annual in-house training to Litigation Staff.	Benchmark	100%	100%	100%	
	Actual	100%	100%		

4. Registrations and Real Estate Units

Objective:

Timely resolve cases referred by the Boards for disciplinary, licensure denial and injunctive action.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
Settle or file charges on 90% of all active cases referred to the OAG within one year of the date of referral.	Benchmark	90%	90%	90%	
	Actual	85%	99.25% Real Estate 88.38% Reg.		

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
Successfully close a minimum of 400 cases.	Benchmark	100%	100%	100%	
	Actual	100%	100%		

Objective:

Provide excellent legal services.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
Refine legal practices to develop increased consistency of legal opinions and processes between Boards in specified target areas.	Benchmark	80%	90%	90%	
	Actual	80%	90%		

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
Offer training to all Board staff and Board members regarding legal and ethical rights and responsibilities.	Benchmark	75%	90%	50%	
	Actual	75%	90%		

The Revenue Team Strategy:

Work is assigned immediately to the attorney with first line responsibility for a particular Revenue sub-grouping. If that AAG is unavailable then the backup AAG is one of three senior AAGs on the team [Attorneys that have previously represented that Revenue sub-group]. The client is contacted within one day and goals for each case are jointly set as soon as a client meeting can occur.

Motor vehicle appeals, legislation, record requests and rule opinions are shared all AAGs on a rotating basis, unless workload require adjustment.

The Enforcement Division Director and the AAGS assigned are working together to have consistent practices and procedures on granting/denying licenses and Board functioning and hearings for that line of business [Gaming/Dealer/Liquor/Racing].

The tax sub-groups are targeting repeat tax protesters. The AAGs assigned to this sub-group are sharing research and strategies among themselves and with Tort Litigation AAGs that have some of these cases. Also the paralegal is developing expertise in this area due to the rising numbers of these cases reaching the courts. All are seeking attorney fees and costs for Revenue to discourage these frivolous lawsuits.

The Bankruptcy AAG is entering an appearance in each case where Revenue is owed more than \$2,000 in delinquent taxes and opposing sales of the assets free and clear unless Revenue is not paid a portion of the tax at the start of the case.

Evaluation of Prior Year Performance:

The Revenue clients praised the work that the attorneys performed. The Revenue clients expressed appreciation for our representation. Overall, the responses received for the Revenue Unit from our clients merit a 95% approval rating.

Key workload indicators:

Revenue:

Individual and business bankruptcies have increased steadily, increasing the number of cases where Revenue needs to seek its tax in bankruptcy. This is a direct result of the housing and credit crisis.

PUC:

The frequency of complex case filings continues to increase.** As mentioned above, the interest in and focus on renewable energy continues, increasing the number of cases in which the PUC Unit attorneys are involved. For example, during the 2008 fiscal year, Public Service Company of Colorado (“PSCo”) filed five large, related dockets,

including its Energy Resource Plan (a filing which, pursuant to PUC rules, occurs four years) which projects its energy and demand requirements – and how those needs will be filled – through 2017. The results of the other proceedings, including PSCo’s 2008 Renewable Energy Standard Compliance Plan, its Renewable Energy Standard adjustment rider, and its Demand Side Management plan (to encourage energy conservation by retail customers), fed into the decision making process of the Energy Resource Plan.

In addition, due the increased cost of natural gas and electricity, the number of requests for rate increases filed by utilities has increased. For example, Public Service Company of Colorado (“PSCo”) filed rate cases approximately every three to four years. Since 2004, PSCo has filed at least one rate case (either gas or electric) annually.

**In fiscal year 2007, a total of 68 requests for counsel were received by the PUC Unit. In fiscal year 2008, 111 requests for counsel were received. Some of the increase can be attributed to legislation affecting the Transportation Section of the PUC in 2007, which was repealed in 2008.

Narrative LSSA State Services



100

100

100

100

I) BACKGROUND INFORMATION: STATE SERVICES SECTION.

The State Services Section consists of 35 attorneys, 8 legal assistants, four administrative assistants and one office manager. The legal work of the Section is diverse, ranging from providing advice on transactions and general operations to defending the constitutionality of state laws in federal or state court. In general, we protect children and people at risk. We also conserve the state's fiscal system by reviewing hundreds of state contracts and defending the State against claims typically involving the inadequacy of funding of various programs. The Section also gives legal advice to the statewide elected officials.

The Section is composed of the following units:

Human Services:

This Unit represents the Department of Human Services. Most of our work seeks to maintain the confirmation of a report of child abuse as determined by a County. The State handles administrative appeals of these County reports. On behalf of the Division of Child Care, we also bring licensure actions to revoke or discipline child care providers who harm children or do not follow requirements. We have one attorney stationed in Pueblo representing the Colorado Institute for Mental Health at Pueblo. The Department's many other programs also require legal representation.

Medicaid and Public Assistance:

The Unit represents the health programs of the Department of Public Health and Environment, including the division that licenses nursing home facilities. The Unit's main client is the Department of Health Care Policy and Financing that administers Medicaid and the Children's Basic Health Plan. Our representation includes eligibility issues, rate reimbursement appeals, collection of overpayments and amounts owed by third-party providers. The Unit also represents the self-sufficiency programs of the Department of Human Services.

Labor/Personnel and Administration:

This unit represents the Department of Labor and Employment, which involves mainly workers compensation, unemployment and petroleum storage tank monitoring and cleanup. In addition, the Unit does the legal work for the Department of Personnel and Administration, which including the Personnel Director, employee benefit programs, state buildings and purchasing. We also advise the State Controller and review hundreds of contracts annually for legal sufficiency.

The unit also includes an attorney who is coordinating the legal issues involved with the State's compliance with the federal Health Insurance Portability and Accountability Act (HIPAA), which requires certain health care providers to standardize their transactions and to observe strict privacy policies.

Education:

This Unit advises the State Board of Education and the Department of Education on a wide variety of issues, including charter school appeals, general policy questions, and teacher licensure cases. The Unit also provides general legal advice to the Department of Higher Education, the Commission on Higher Education and the state's public colleges and universities. The Unit regularly defends state education laws and the system of public school finance against constitutional challenges.

Public Officials/PUC.:

This Unit advises the three Public Utilities Commissioners and generally drafts the orders adopted by the PUC. The PUC Unit also represents the Commissioners and their Advisory Staff in hearings before the Commission and in cases appealed to state and federal courts. The other attorneys in the Unit provide legal advice to the Governor, Secretary of State (election law), the Dept. Local Affairs, the Department of Military Affairs, the State Auditor and the Colorado Lottery, and the Treasurer. The Unit handles constitutional challenges to some state laws and initiated measures adopted by the voters. They also represent the Judicial Department. Even judges get sued.

II) PRIOR YEAR LEGISLATION

Human Services

No significant legislation.

Medicaid/Public Assistance

SB 08-153 Home Health Care Regulation

Sponsors: BOYD--FERRANDINO.

This bill creates a licensing procedure and regulatory authority over Home Health Care providers within the Department of Public Health and Environment. The State Board of Health will promulgate rules to regulate this growing area of health care and the Medicaid and Public Assistance Unit will aid in drafting proposed regulations. In addition, the unit will act as counsel for the Department in actions to revoke or suspend home health care licenses.

Education

HB 08-1035 - Building Excellent Schools Today (“BEST”) Act - CONCERNING STATE FINANCIAL ASSISTANCE TO FINANCE PUBLIC SCHOOL FACILITY CAPITAL CONSTRUCTION, AND MAKING AN APPROPRIATION THEREFOR.

Sponsors: Romanoff, Groff and Schwartz

This bill authorizes the State to enter into lease-purchase agreements in conjunction with issuance of certificates of participation to provide financial assistance to school districts, boards of cooperative services and charter schools that have difficulty financing capital construction. The bill creates a new division within the Colorado Department of Education, imposes new obligations on the State Board of Education, and creates a new body known as the Public School Capital Construction Assistance Board. The new Board and the additional responsibilities imposed on the State Board of Education and the Department will require a substantial amount of legal support in terms of developing rules and procedures and providing on-going legal support and representation.

HB08-1204 - Facilities Schools - CONCERNING THE PROVISION OF PRESCHOOL THROUGH TWELFTH-GRADE EDUCATIONAL SERVICES TO STUDENTS WHO RECEIVE EDUCATIONAL SERVICES IN FACILITIES, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Sponsors: PENISTON--WILLIAMS

This bill creates the Facility School Unit as a new division within the Colorado Department of Education and creates a new Board known as the Facility Schools Board. The Facility Schools Board is to adopt curriculum standards and set graduation requirements for facility schools and to collaborate with and advise the Facility School Unit. The new Board and the new unit will require substantial legal support to develop rules and procedures and will require on-going legal support and representation.

HB08-1336 – Truancy Reporting - CONCERNING TRUANT STUDENTS IN THE KINDERGARTEN THROUGH TWELFTH GRADE PUBLIC EDUCATION SYSTEM, AND, IN CONNECTION THEREWITH, STANDARDIZING TRUANCY REPORTING AND EXPANDING THE RESOURCES AVAILABLE FOR SUPPORT SERVICES TO TRUANT STUDENTS.

Sponsors: CARROLL T.--SPENCE

This bill imposes new obligations on the State Board of Education concerning development of standardized truancy reporting. The bill requires the State Board to undertake rulemaking. It also creates new obligations for the Colorado Department of Education with respect to creating an on-line publicly accessible data base. These

aspects of the bill will require legal support in development and review and ongoing legal support and representation.

HB08-1317 – Interstate Compact on Educational Opportunity for Military Children - CONCERNING THE CREATION OF AN INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Sponsors: Looper, Gallegos, and Tapia

The bill authorizes the Governor to enter into an interstate compact on educational opportunity for military children to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by: facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district(s) or variations in entrance/age requirements; facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content or assessment; facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities; facilitating the on-time graduation of children of military families; providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact; providing for the uniform collection and sharing of information between and among member states, schools and military families under this compact; promoting coordination between this compact and other compacts affecting military children; promoting flexibility and cooperation between the educational system, parents, and the student in order to achieve educational success for the student. The bill requires legal support to the Commissioner of Education regarding participation in the State Council and reviewing rules for consistency with the Compact.

SB08-023 – Graduation requirements - CONCERNING THE ESTABLISHMENT OF MINIMUM REQUIREMENTS FOR GRADUATION FROM HIGH SCHOOL.

Sponsors: PENRY--WITWER

This bill requires the State Board of Education to establish minimum standards that each school district board of education shall satisfy or exceed in developing local high school graduation requirements, including a requirement that each student achieve passing grades for a certain number of years in certain subject matter areas; requires the State Board to establish a process for certification of a school district waiver for graduation innovation, by which a school district may be excused from complying with the minimum graduation standards requirement and by which a student may alternatively demonstrate proficiency in certain subject matter areas;

repeals the state graduation guidelines development council; and prohibits the State Board from waiving minimum standards for the development of high school graduation requirements. The bill will require legal support to the State Board of Education and the Department of Education in drafting and reviewing of rules, procedures, and guidelines and review of waiver requests.

HB08-089 – Early Intervening Service – CONCERNING EARLY INTERVENING SERVICES FOR STUDENTS

Sponsors:

This bill authorizes schools to provide early intervening services to students with disabilities. The bill requires the State Board of Education to adopt rules to identify the programs and activities that qualify as early intervening services and the allowable expenses related to those programs and activities. These aspects of the bill will require legal support in development and review of the rules and procedures.

SB08-206 –Higher Education Capital Construction - CONCERNING THE AUTHORITY OF THE STATE TO ENTER INTO LEASE-PURCHASE AGREEMENTS, AND, IN CONNECTION THEREWITH, AUTHORIZING LEASE-PURCHASE AGREEMENTS FOR A STATE JUSTICE CENTER AND A NEW COLORADO STATE MUSEUM, INCREASING CIVIL COURT FEES TO PAY COSTS ASSOCIATED WITH THE STATE JUSTICE CENTER PROJECT, AND AUTHORIZING TRANSFERS AND PAYMENTS FROM THE PORTION OF THE STATE HISTORICAL FUND NOT RESERVED FOR THE STATEWIDE GRANT PROGRAM TO PAY FOR THE COLORADO STATE MUSEUM, AND MAKING AN APPROPRIATION THEREFOR.

Sponsors: Shaffer, Penry, Carroll T. and Marostica

This bill provides for financing a new Colorado State Museum, administered by the State Historical Society, in part through lease-purchase agreements in connection with issuance of certificates of participation. The State Historical Society will require on-going legal support throughout the financing process and construction.

SB08-212 – Readiness Standards for Preschool - CONCERNING ALIGNMENT OF PRESCHOOL TO POSTSECONDARY EDUCATION, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Sponsors: Romer, Penry, Witwer and Scanlan.

This bill directs the State Board of Education to adopt school readiness standards for elementary and secondary education, to adopt assessments aligned to readiness standards, and directs the State Board of Education and the Colorado Commission on Higher Education to adopt postsecondary and workforce readiness standards. These aspects of the bill will require legal support in development and review of the standards.

Public Utilities Commission

HB08-1227 CONCERNING THE PUBLIC UTILITIES COMMISSION, AND, IN CONNECTION THEREWITH, CONTINUING THE PUBLIC UTILITIES COMMISSION UNDER THE SUNSET LAW, AND MAKING AN APPROPRIATION.

BY REPRESENTATIVE(S) Madden, Fischer, Frangas, Green, Kerr A., Labuda, Levy, Marostica, McFadyen, McGihon, Merrifield, and Solano; also SENATOR(S) Tapia.

As part of the PUC's Sunset Bill, several changes were made to statutes under the PUC jurisdiction. The most important are as follows. First and most high profile, the standards for the entrance of new taxi cab companies into the Denver Metro market were changed considerably. While the doctrine of regulated competition remains in force, the burdens of proof to justify a new entrant have been altered. For example, the applicant for a certificate of public convenience and necessity to operate a taxi cab has the initial burden to show that it is financially and operationally fit to provide the proposed service. If that burden is met, the intervenor(s) then has the burden to show that the application is detrimental to the public interest and does not satisfy the public convenience and necessity. The next change provides that the commissioners of the PUC may engage in ex parte communications in non-adjudicatory matter, which are defined as rule-making matters and discussions of pending legislation. The third significant change from HB08-1227 is that the PUC now has the authority to issue civil penalties against telecommunication, electric, gas, water and steam utilities, as well as its existing authority to issue civil penalties against transportation providers.

III) HOT ISSUES:

Human Services

- a. Colorado Benefits Management System ("CBMS") - Continued litigation and potential federal sanctions related to the timeliness of processing applications for Medicaid, food stamps, and other public assistance. This includes ongoing litigation that involves the Department of Human Services and Department of Health Care Policy and Financing.
- b. Child welfare, particularly child fatalities caused by abuse and neglect. These issues have been in the press recently.
- c. Developmental disabilities - waiting lists for services and definition of "developmental disability" are potentially subjects for litigation, though no suits have been filed to date.
- d. Food Stamp Sanctions of \$10 million and over \$3 million imposed by the federal government due to alleged over-issuances of food stamp benefits in the first two years of

operation of CBMS. This issue is the subject of ongoing negotiations between the State and the federal government.

Medicaid and Public Assistance

- a. Continue working on the CBMS settlement and related issues to avoid resumption of active litigation. This is the same item as a) above under Human Services.
- b. Defense of claim for attorneys' fees in connection with social security disability income benefits. Attorneys representing successful claimants have asserted that they are entitled to receive attorneys' fees and costs from the State for creating a benefit for the State. The case is set for trial in October, 2008.
- c. New licensing requirements for Home Health Agencies were passed in the last session. The unit will work with the Department of Health to promulgate rules and begin enforcement in this area.
- d. Defense of action challenging the Department of Health's ability to regulate air ambulance services will continue.
- e. Continue joint efforts with the federal government to pursue Medicaid benefit fraud.

Labor/Personnel and Administration and HIPAA

- a. The unit is working on issues arising from the Governor's Executive order on employee partnerships. This will involve research, general advice to the client, and negotiation of agreements.
- b. A lawsuit challenging Amendment 42, which ties the Colorado minimum wage to a non-existent index, has been filed.
- c. The unit is expecting that the Division of Labor will be challenged on immigration issues in connection with its enforcement efforts.
- d. The unit will be working with the newly-constituted Office of Information Technology to streamline the State's contracting and administration process in connection with information technology.
- e. The unit will be working with the Treasurer in connection with Certificates of Participation to generate revenue for capital construction in institutions of higher education and K-12 schools.

Education

- a. Litigation. These cases have significant potential impact and have received coverage in the press.

- *Colorado Christian University v. Baker*. The 10th Circuit struck down statutes prohibiting state funding to pervasively sectarian universities. Plaintiffs will receive their attorneys' fees and costs and their current demand is for approximately \$800,000.
- *Lobato v. State of Colorado*. The State prevailed in the trial court and the court of appeals against a challenge to the manner in which the state funds K-12 education. A petition for certiorari was recently granted by the Colorado Supreme Court.
- *Boulder Valley School District v. State Board of Education*. The District Court rejected a challenge to the Charter School Institute and its enabling legislation. The matter is on appeal.
- iv) *Ray v. Department of Higher Education*. A challenge under the Fair Campaign Practices Act to planning being done by the Department of Higher Education in connection with the possible enactment of Initiative 113. A motion to dismiss the case is pending.

b. The unit is working to implement the provisions of the BEST bill (HB08-1355) and is advising the Public School Capital Construction Advisory Board, which is charged with recommending grant awards under the statute.

Public Officials/PUC

a) Pending litigation – These lawsuits have been covered in the press.

i) *Sampson v. Coffman*. Plaintiffs are challenging the constitutionality of reporting requirements imposed on small issue committees by Campaign and Political Finance Amendment. The Court granted summary judgment for Plaintiffs on the narrow grounds that the requirements did not apply in this particular case. The State is determining whether to appeal the judgment.

ii) *Independence Institute v. Coffman*. The Independence Institute is challenging the reporting requirements imposed on multipurpose organizations by the Campaign and Political Finance Amendment. The State prevailed in the lower court and the case is pending before the Court of Appeals.

iii) *Denver Post v. Ritter*. The Denver Post is seeking access to the telephone billings issued for the Governor's private cell phone. The Governor has moved to dismiss the case. A hearing in the case is set for October 17, 2008.

iv) *Protect Colorado Jobs v. Coffman*. This case involves a challenge to the Fair Campaign Practices Act and particularly the requirements regarding issue committees. It is similar to the challenges in *Independence Institute* and *Sampson*. The case was recently filed.

b) The PUC is highly active in the current push regarding renewable energy and dealing with greenhouse gases. Through '07 legislative changes and amendments to the PUC rules, the PUC has taken the lead in the state to ensure that renewable energy sources such as wind, solar, concentrated solar, biomass, compressed air and other renewable sources become a larger part of energy utility resource portfolios.

c) The PUC is also one of two agencies charged with implementing the Governor's Renewable Energy and Greenhouse Gas Initiative that has set a goal of reducing greenhouse gases to 50% of 2005 levels by the year 2050. The PUC, along with the Department of Health and Environment are directed to implement decisions to assist in meeting this goal.

d) The PUC is also implementing legislative changes to require energy utilities to meet the 2020 requirement that 20% of their resource portfolios are to consist of renewable energy sources.

e) The PUC is also working to ensure energy savings from the demand side management perspective, requiring savings due to customer savings initiatives of approximately 800 megawatts by the year 2020.

f) The new law related to the entrance of taxi cabs into the Denver market will garner much attention during 2009. The legislation has charged the PUC with opening the market through a shift in the burden of proof as described in the section above.

IV) WORKLOAD MEASURE:

MEDICAID AND PUBLIC ASSISTANCE

Workload Measure	Unit	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY10 Request
Department of Health Care Policy and Financing					
Defense of the Department in litigation regarding the implementation of the Colorado Benefits Management System.			Obtaining a temporary order of settlement dependent upon the Department continuing to provide data regarding timely processing of claims.	Continue working with Department staff to improve deficiencies in claims processing performance.	
Defense of the Department in Administrative proceedings brought by recipients and providers claiming amounts due under Department programs – primarily state Medicaid.			The passage of the Federal Deficit Reduction Act of 2005 continues to require state implementation of complex regulations in the Medicaid system. Many of the federal requirements have increased the issues requiring Department representation by the unit in the Office of Administrative Courts.	Continue aggressively defending the Department in these actions.	

Workload Measure	Unit	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY10 Request
Recover funds expanded as a result of third parties' actions.	Amounts recovered		Total recoveries exceeded \$800,000.	Recover a minimum of \$800,000.	
Working with the Department's Program Integrity Unit to uncover and eliminate fraud in the Medicaid program.			The unit has been focusing on home health and durable medical equipment providers to insure that Medicaid reimbursement is for services actually rendered Medicaid clients.	Secure approval of Colorado as a state entitled to participate in a computer data match program will increase the Department's need for unit resources in this area for 2009 and the unit will continue to act with alacrity to withhold payments from providers where reliable evidence of fraud exists.	
Advise the Department in the rule-making and adoption process to keep the state in compliance with federal and state statutes in connection with the distribution of benefits.			The unit has actively worked on rule-making.	Continue advising the Department on rule-making and compliance issues.	
Colorado Department of					

Public Health and Environment					
Workload Measure	Unit	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY10 Request
Actions prosecuted to revoke or suspend licenses of Emergency Medical Technicians.	# of cases		18		
Prosecute licensing actions involving Home Health agencies licensed under the authority of the Department.			These agencies were not previously licensed. New legislation in the 2008 session now requires licensing.	Aid the Department in drafting and implementation of licensing rules regarding home health care providers and continue to represent the Department in other health facility licensing actions.	
Prosecute licensing actions involving Health facilities licensed under the authority of the Department.	# of cases		7		
Colorado Department of Human Services					
Defend the Department in a class action lawsuit challenging the Department's decision not to reimburse Supplemental Security Income recipients for attorneys fees incurred in seeking the federal benefit.			Aggressively defended the case and developed favorable expert testimony.	Defend the Department in the October, 2008 trial of the case and through any appeals.	

EDUCATION

Caseload trends:

Teacher licensure cases referred for charges have increased significantly. The unit continues to average 2-3 major constitutional cases each year.

Legislative Measures

The General Assembly enacted numerous laws affecting the State Board of Education's oversight responsibilities. Many will require additional rule-making, policy and procedure creation, and additional hearings and board meeting work. The legislature enacted bills authorizing capital construction funding for K-12 and higher education that will result in significant workload increases.

Ballot Initiatives

The institutions of higher education and other education clients are attempting to prepare for the potential passage of a number of ballot initiatives that, if passed, will impact their operations.

Workload Measure	Unit	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY10 Estimate
Teacher licensure cases handled	# of cases		61	65	68
Settlements Obtained	# of settlements		10	11	12
Closed cases	# of closed cases		19	20	21
New Cases Filed	# of cases		19		
Cases carried over to next FY (open and pending cases)	# of cases		42		

Objective: The Education Unit intends to increase the number of teacher licensure cases closed and settled by at least 10% each year for the next two years.

Strategy: In order to achieve the objective of a 10% increase from FY08-FY09, the unit has assigned an additional attorney to the prosecution of these cases.

Evaluation of Prior Year Performance; The Education Unit increased its filings in the Office of Administrative Courts by 19 over FY 2007.

Key Workload Indicators: The number of cases opened continues to increase. This number is based on the number of charges referred by the Colorado Department of Education.

PUBLIC UTILITIES COMMISSION

Workload Measure	Unit	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY10 Request
Prevail in appeals of PUC decisions in state and federal court	# of decisions.	Prevailed in 2 of 2 cases.	Prevailed in 2 of 2 cases.	Oral arguments pending in 2 cases.	
Provide on-going, comprehensive, timely and accurate legal assistance to the PUC regarding the PSCo's Electric Resource Planning Docket			We have met all deadlines in this matter and continue to substantively assist the PUC in its decision in this matter.	Continue to meet all deadlines and provide substantive assistance in any appeals of the PUC's decision in this matter.	
Provide on-going, comprehensive, timely and accurate legal assistance to the PUC regarding the requirements and follow-on dockets regarding the taxi cab certificate dockets.			We have met all deadlines in this matter and continue to substantively assist the PUC in its decision in this matter.	Continue to meet all deadlines and provide substantive assistance in any appeals of the PUC's decision in this matter.	
Provide comprehensive and timely legal assistance to the PUC regarding PSCo's Phase				This matter is scheduled to begin in	

<p>I electric rate case to be filed later this year, including legal research regarding use of test years to set rates, cross-exam of witnesses on behalf of Commissioners on legal issues regarding rate case, and preparation of PUC orders on the approved rates.</p>				<p>early 2009.</p>	
<p>Provide comprehensive and timely legal assistance to the PUC regarding PSCo resource planning application to be filed in 2009, including legal research regarding renewable statutory requirements, cross-examination of witnesses on behalf of the Commissioners, recommendations to Commissioners on legal issues regarding the resource planning application and preparation of PUC Orders on the application</p>				<p>This matter is scheduled to begin in 2009.</p>	
<p>Provide comprehensive and timely legal assistance to the PUC regarding the promulgation of rules regarding taxi cab applications and the process for imposition of civil penalties as a result of legislative changes from the 2008 legislative session.</p>				<p>Will begin drafting new rules in 2009.</p>	

LABOR/PERSONNEL AND ADMINISTRATION

**DEPARTMENT OF LABOR AND EMPLOYMENT,
DIVISION OF WORKERS COMPENSATION**

1. Worker's Compensation Enforcement

Objective: Pursue statutory fines against employers that fail to have WC insurance for their employees.

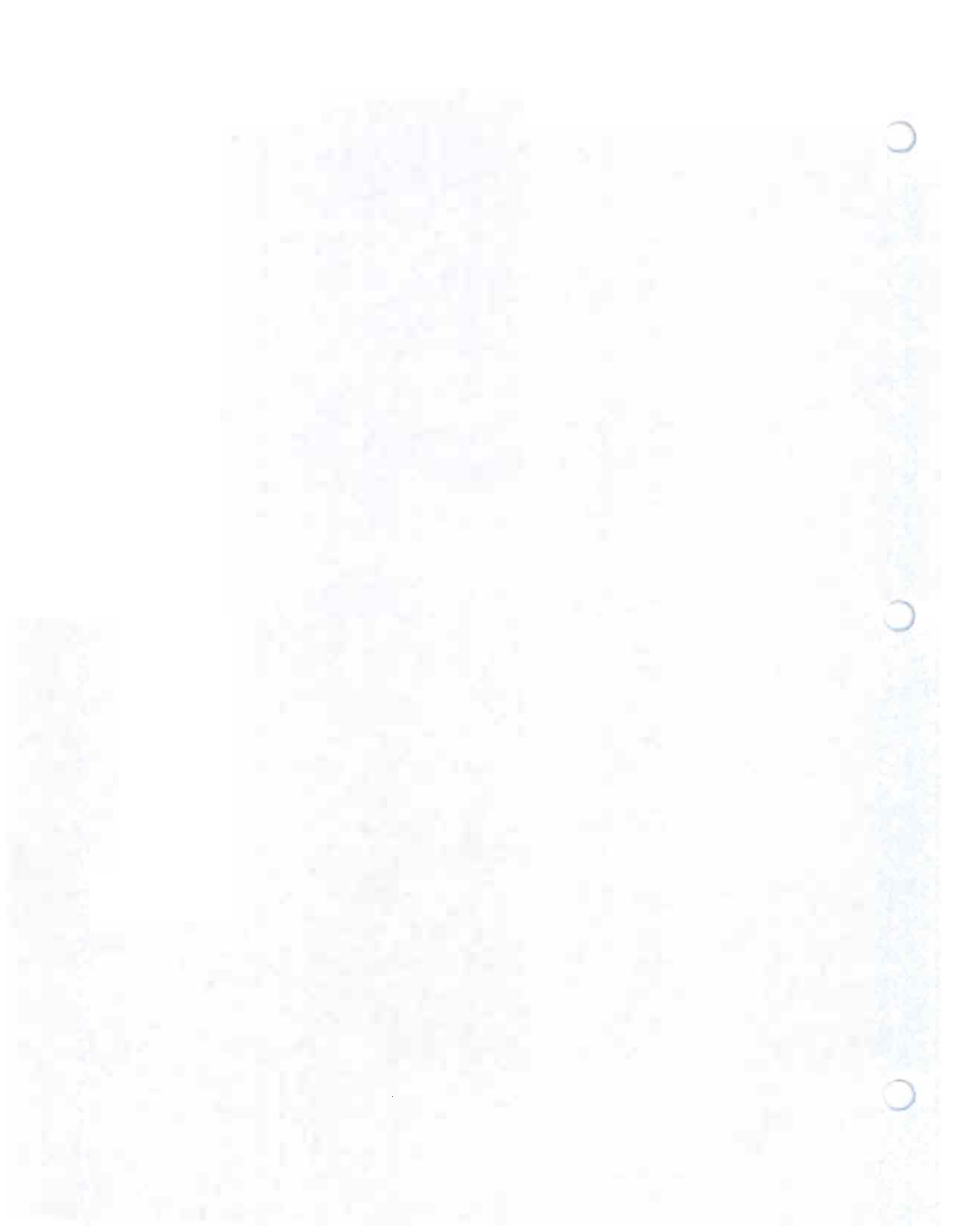
Performance Measure	Outcome	FY 07 Actual		FY 08 Actual		FY 09 Estimate		FY 10 Request	
		Incidents	Change	Incidents	Change	Incidents	Change	Incidents	Change
Number of cases filed.	New cases	97		115		150			
	Judgments	66		94		120			

	Outcome	FY 07 Actual		FY 08 Actual		FY 09 Estimate		FY 10 Request	
		Incidents	Change	Incidents	Change	Incidents	Change	Incidents	Change
Number of cases settled.	settlements	27		30		35			
	Cases to close businesses	9		12		15			

Performance Measure	Outcome	FY 07 Actual		FY 08 Actual		FY 09 Estimate		FY 10 Request	
		Incidents	Change	Incidents	Change	Incidents	Change	Incidents	Change
Total fines imposed and sent to collections.	Total fines sent to collections	\$651,165		\$1,029,700		\$1 M +			

Narrative
LSSA
Department of Public Safety





D) BACKGROUND INFORMATION

CRIMINAL JUSTICE SECTION DEPARTMENT OF PUBLIC SAFETY

One attorney is assigned to provide legal services and advice to the Colorado Department of Public Safety (CDPS) and the Colorado Peace Officer Standards and Training Board (P.O.S.T.).

The CDPS includes the Executive Staff and four divisions: Colorado Bureau of Investigation (CBI), Colorado State Patrol (CSP), Division of Criminal Justice (DCJ), and the Division of Fire Safety (DFS). The Department is responsible for the provision of law enforcement services, research, advice and oversight of the State of Colorado criminal justice system. In addition, approximately 90 statutory and administrative boards and commissions fall under the auspices of CDPS. The CDPS has approximately 1300 employees statewide. CDPS headquarters is at 700 Kipling Street, Denver, CO.

The P.O.S.T. Board is responsible for overseeing the education, training, and certification of Colorado's peace officers. The Board meets quarterly and is composed of 20 members, of which three are statutory (Colorado Attorney General-chair, FBI Special Agent in Charge- Denver Division, and Executive Director of CDPS). Seventeen members are appointed by the Governor to 3-year terms and include one local government representative, one member of the general public, 6 active sheriffs, 6 active chiefs of police, and 3 line-level peace officers serving at the rank of sergeant and below.

Primary Duties:

The provision of legal services to CDPS includes legal advice and representation covering a broad spectrum of issues arising from the responsibilities and functions of the Executive Director, staff, several divisions, and various boards and commissions. The intent of this legal representation is to review proposed agency actions to ensure legality and reduce the likelihood of future litigation.

Legal advice is provided to executive staff members on policy matters and personnel decisions. Examples of ongoing advice include statutory interpretations, coordination of legal matters with other lawyers, rulemaking hearings, open records requests, and legislative matters. Examples of litigation include numerous personnel board cases, district court cases throughout the state, appeals to the Colorado Court of Appeals, and federal district court.

Increasingly, the CDPS is involved in coordination and participation of law enforcement activities with other governmental entities. Oftentimes this requires drafting and approving a wide range of agreements including contracts, memoranda of understanding, and intergovernmental agreements with local, federal, and other state agencies.

II) PRIOR YEAR LEGISLATION: N/A

III) HOT ISSUES:

The most critical issue is the need for additional legal resources to meet the increasing functions and responsibilities of the CDPS as delegated by the Governor and the state legislature including the creation of task force commissions for policy development and the coordination of statewide law enforcement activities.

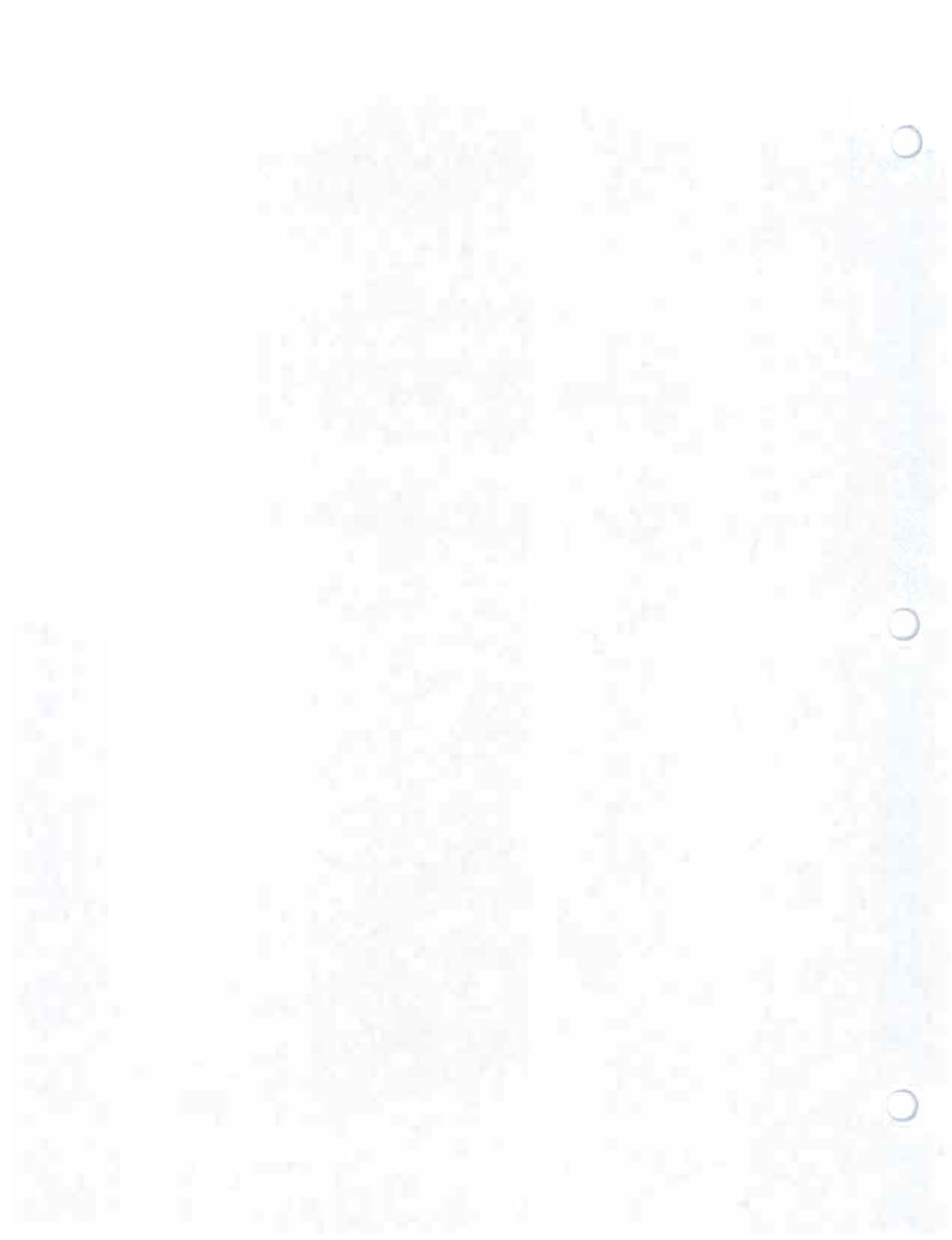
IV) WORKLOAD MEASURES:

This position is funded for one fulltime attorney position.

Workload Measure	Unit	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY10 Request
Trial Court Litigation	# of cases	2	6	8	10
Administrative Hearings	# of cases	6	12	20	30
EEOC Investigations	# of cases	2	3	3	5
Appellate Litigation.	# of cases	0	2	4	6
Court Interventions	# of appearances	10	25	40	50
Major Policy Issues	# of issues	3	15	30	50
Intergovernmental Agreements	# of agreements	4	10	15	20
Rulemaking Hearings	# of hearings	3	10	15	20
Major Client Meetings	# of meetings	30	100	150	200
General Requests for Legal Advice	# of requests	75	200	250	300

Narrative
LSSA
Litigation &
Employment Law





D) BACKGROUND INFORMATION: CIVIL LITIGATION AND EMPLOYMENT LAW.

The Civil Litigation and Employment Law Section of the Colorado Attorney General's Office employs 33 attorneys, 10 legal assistants, 6 administrative assistants and 1 office manager. The employees of the section defend state agencies, officials, and employees in litigation in courts throughout the state and in federal court and in administrative hearings. The section also acts as general counsel to the Division of Risk Management, the Colorado Dept. of Corrections (CDOC), the Parole Board, the Colorado Civil Rights Division (CCRD), the Colorado Transportation Commission, and the Colorado Dept. of Transportation (CDOT), providing quick and thorough legal advice regarding the many issues that arise on a daily basis. The Employment Personnel Section advises all state agencies regarding personnel matters.

The Section is divided into five units: Corrections, Tort Litigation, Transportation, Employment Tort, and Employment Personnel and Civil Rights. A brief description of each unit follows:

Corrections:

The members of this unit are responsible for the representation of the Department of Corrections, the Colorado State Board of Parole and all employees of those agencies in state and federal lawsuits including tort claims, claims of various constitutional violations, construction claims, requests for documents and appearances in court, challenges to sentences, appeals of internal discipline, environmental matters, religious practices, medical treatment claims, and prison conditions. The unit represents other agencies who are sued by inmates. The unit acts as a general service law firm to DOC except in the areas of personnel and contracts. The unit members give advice on a daily basis to representatives of DOC and the Parole Board on the many complicated issues that arise in a prison context. The attorneys provide advice regarding proposed legislation as well.

Tort Litigation:

The members of this unit defend the State of Colorado, its agencies, employees, entities, and officials in lawsuits seeking damages for personal injury and property damage and those brought pursuant to federal law, often claiming civil rights violations. The unit also provides day to day advice to the State Risk Management Division on questions of coverage, indemnity, settlements, and applicability of the Colorado Governmental Immunity Act. Members of this unit aggressively defend the state and seek to minimize the monetary liability of the state in a variety of law suits. The Risk Management cases handled by the Corrections Unit attorneys are included in the Workload Measures for the Corrections Unit.

Transportation:

The Transportation Unit acts as a general service law firm to CDOT and the Colorado Transportation Commission with the exception of personnel and tort matters. The members of the unit advise CDOT regarding a myriad of legal issues that arise. The unit prosecutes all condemnation actions and defends inverse condemnation actions and handles administrative actions. The unit also handles access control, highway beautification, billboard location disputes, and protests under the Procurement Code. The unit advises CDOT in construction matters and represents CDOT in construction arbitration and litigation. The unit also provides advice regarding environmental and real estate issues and defends and negotiates settlements in these areas. Members of the unit review, revise, and approve all CDOT contracts and assist in rulemaking and approval of regulations. The attorneys also review proposed legislation affecting CDOT.

Employment Tort:

The Employment Tort unit defends state agencies and employees in state and federal court employment litigation. The attorneys handle the cases from inception through appeal. The cases involve claims arising under a myriad of federal and state statutes, including Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Fair Labor Standards Act, the Equal Pay Act, the Age Discrimination in Employment Act, the state whistleblower act and other employment laws as well as federal civil rights laws. The Unit attorneys also provide advice and training to state agencies regarding employment law.

Employment Personnel and Civil Rights:

The Employment Personnel and Civil Rights Unit defends state agencies and employees in administrative hearings, hearings before the State Personnel Board, and before the appellate courts in matters involving employment grievances and hearings. The cases involve claims arising from the Colorado Constitution, the State Personnel System Act, the state Employee Protection (Whistleblower) Act, the Colorado Anti-Discrimination Act, related federal and state statutes and common law. Unit attorneys also provide advice and training to state agencies on issues such as hiring, managing and disciplining of employees and avoiding discrimination, violation of federal statutes such as the ADA, FMLA, FLSA, Title VII and retaliation charges.

This unit also provides legal advice to the Colorado Civil Rights Division within the Dept. of Regulatory Agencies in connection with CCRD's investigation of charges of employment, housing and public accommodations discrimination and cases brought based on those investigations. The unit prosecutes civil rights cases through all stages of appeal and defends challenges to the authority of the Commission. The unit reviews investigative files on charges in which the Director has determined probable cause. The unit also defends cases brought under the Subsequent Injury Fund and the Major Medical Insurance Fund by employees injured in the course and scope of employment with the state. These funds cover very limited claims.

II) PRIOR YEAR LEGISLATION

HB08-1382: Concerning Criminal Procedural Matters That Affect Convicted Persons (Carroll, Shaffer).

This bill requires the CDOC to honor any stipulation made by a prosecutor, or any finding by a judge, concerning whether a particular crime contained a factual basis for a sex offense. If no finding is made, the CDOC is to request a finding. If the court declines, the CDOC may make its own determination in a hearing to be presided over by an attorney. The Legislature did not appropriate any funds for the hiring of the attorney, instructing the CDOC to use cost savings allegedly obtained from no longer having to use staff as hearing officers.

SB08-14 Concerning Authorization for the Colorado Tolling Enterprise to Use an Administrative Toll Enforcement Process (Sen. Williams, Rep. Marostica, and others)

Authorized the Colorado Tolling Enterprise to shift HOT lane toll violations from Adams County Court to an administrative process. This bill was sponsored by State Judicial and supported by CDOT as a way to reduce the burden on the Adams County Court and reduce costs of pursuing toll violators.

SB08-41 Concerning the Ownership of Minerals Beneath Land Acquired by Governmental Entities (Sen. Cadman, Rep. Curry and others)

Requires that mineral rights be severed and not acquired by CDOT when it acquires land via condemnation (this applies only to land acquired via the condemnation process, which CDOT uses for only 5-10% of its land acquisitions).

SB-200: Expand Discrimination Prohibitions (Sen. Veiga, Rep. Judd)

Adds sexual orientation to fair housing and public accommodations laws (and various other laws). This may increase the number of cases referred by the Civil Rights Division for prosecution of discrimination based on sexual orientation.

III) HOT ISSUES:

1) Montez case

The class action lawsuit, Montez et. al. v. Ritter et. al., is still pending in the U.S. District Court. This is a case against the CDOC brought pursuant to the Americans with Disabilities Act and the Rehabilitation Act. The case was settled in 2003. The settlement included two major components: 1) offenders who believe they have been injured by discrimination against them by CDOC based on a disability were allowed to file individual claims for damages. These claims were handled by Special Masters appointed by the federal court. Over 1300 claims were filed which have now been resolved with the exception of less than 10 claims that still remain. The state paid under \$50,000 overall for these claims and the Division of Risk Management has paid for attorneys' fees and the Special Masters fees as well. 2) The CDOC

was given two years to come into compliance with the terms of the stipulation and then a two year monitoring period would begin. The CDOC has come into compliance regarding physical architectural changes but has not completed compliance with respect to programmatic, training, and disability determination issues. The compliance period has been extended twice, and the new date for compliance is May 1, 2009. The Division of Risk Management continues to pay attorneys fees to class counsel during this time. CDOC has made several changes and is working to meet the requirements by the deadline.

2) Local control of state transportation construction

The Transportation Unit is awaiting a decision on petitions for *certiorari* from the Colorado Supreme Court in lawsuits challenging local ordinances enacted pursuant to Areas and Activities of State Interest legislation (1041) that require CDOT to obtain local permits for construction of state transportation projects.

3) Affirmative action initiatives

Ballot initiatives affecting affirmative action programs are pending a decision by Colorado voters in November. Amendment 46 is the "anti-affirmative action" measure that would eliminate any preferential practices except as necessary to comply with federal court cases. Amendment 82, not yet certified for the ballot due to questions regarding valid signatures, is the "pro-affirmative action" measure which is a competing proposal. Presumably, if both pass, the measure with the most votes becomes effective. Both are constitutional measures. Both have the potential to impact CDOT's Disadvantaged Business Enterprises (DBE) program.

4) Governor's Office of Information Technology

The consolidation of the state's information technology functions into one department, the Governor's Office of Information Technology, has raised some personnel and procedural questions. Members of the Employment Personnel Unit are working with the Governor's staff to address these issues.

5) Partnership Agreements

Discussions are taking place between the Governor's office representative, state agencies, and the groups that have voted to come together to discuss partnership agreements with the agencies. A representative from Employment Personnel is attending meetings to consult on issues involving the State Personnel system.

6) Electronically Stored Information

The Employment Tort Unit continues to spearhead the effort to train and advise state agencies, their human resource and information technology professionals, and their counsel within the AG's Office on the obligations to preserve and disclose electronically-stored information. The requirement not to destroy evidence always existed but because of recent changes to the

Federal Rules of Civil Procedure the agencies' duties have become magnified and more certain, as have the penalties for failure to comply with the requirements.

7) Training

The Employment Tort and Employment Personnel Units continue to create and present training to state agencies on a myriad of employment and litigation issues. This past year several training sessions covering sexual harassment issues were given. Also, a full-day training session on employment issues and report writing was created for and presented to CDOT's investigators, as was a half-day session for CDOT's Executive Management Team on general employment issues. The Employment Tort unit will be working with CDOT to create a training program on employment issues for CDOT supervisors. In order to reach all of the supervisors, there will be 26 separate presentations throughout the state. The unit also will present training to other state agencies as requested.

8) FLSA

The Employment Tort Unit continues to regularly consult with and advise state agencies on FLSA matters. One specific area of difficulty is coordinating certain agency's computer systems so that they accurately record time worked, comp time, overtime, etc. The Unit consults with those agencies so that they can program the computer systems to comply with FLSA requirements.

IV) WORKLOAD MEASURES:

WORKLOAD INDICATORS

Corrections Unit

Workload Measure	Unit	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY10 Request
Number of new cases handled	Corrections	500 (401 inmate; 46 advice 63 Montez)	476 (305 inmate; 50 advice 94 Risk Management 27 Montez)	500	
Number of new cases assigned to outside counsel		6	7		
Billable Hours			17,783 (includes time spent by Montez attorneys which is billed to RM)		

Tort Litigation

Workload Measure	Unit	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY10 Request
Number of cases opened (does not include corrections or employment tort cases)	Tort Litigation	87 plus 11 monitor cases plus one case filed by the state as plaintiff	88 includes 6 monitoring cases plus one case filed to defend a statute from constitutional challenge	88	
Billable hours	Tort Litigation	14,394	15,406		
Savings to State from total cases (including settled and dismissed cases)		\$4,261,998	\$5,576,655	\$4,000,000	

Transportation

Workload Measure	Unit	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY10 Request
Number of New cases filed	Transportation	65	41	42	
Number of Pending cases		70	70	70	
Number of Trials		4	3	3	
Number of Contested Hearings		9	8		
Billable Hours			15,652.6	15,600	

Employment Tort

Workload Measure	Unit	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY10 Request
New cases and claims filed	Employment Tort	17 cases opened with 85 claims	16 new cases with 276 claims		
Cases and claims handled in-house		38 cases with 560 claims handled in house	37 cases with 722 claims handled in house		
Cases and claims handled by outside counsel		8 cases with 28 claims handled by outside counsel	4 cases with 13 claims handled by outside counsel		
Billable hours		11,280.6	12,104		

Employment Personnel

Workload Measure	Unit	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY10 Request
Number of Employment Personnel cases opened and number of cases handled	Employment Personnel	172 cases opened 372 cases handled	182 cases opened 280 cases handled	180 cases opened 300 cases handled	
Number of SIF and MMIF cases opened and number handled during the year		2 cases opened 3 handled	1 case opened 2 handled	1 case opened 2 cases handled	
Number of Civil Rights matters opened (including hearing worthiness analysis and probable cause sufficiency analysis)		52 cases opened 75 handled	32 cases opened 45 handled	35 cases opened 50 handled	
Billable hours .			16,802	17,000	

CORE OBJECTIVES AND PERFORMANCE MEASURES

CORRECTIONS UNIT CORE OBJECTIVES AND PERFORMANCE MEASURES

Objective 1: Limit the number of inmate suits which actually proceed to trial by preparing dispositive motions (dismissal or summary judgment) at the inception of the case, along with supportive briefs and affidavits.

Performance Measure	Outcome	FY 07 Actual		FY 08 Actual		FY 09 Estimate		FY 10 Request	
		Incidents	Change	Incidents	Change	Incidents	Change	Incidents	Change
Successful dispositive motion before discovery and/or trial	Benchmark	80%		80%		80%			
	Actual	87% (148 of 171 rulings)		(65% 130 of 199 rulings)					

Objective: 2. Prevail at hearing or trial on all suits brought against the CDOC, the Parole Board, or their employees. Prevail at hearing or trial on all suits brought by inmates against any state agency or state employee. [This objective excludes personnel and employment matters, which are handled by another unit]. [Settlements are also excluded].

Performance Measure	Outcome	FY 07 Actual		FY 08 Actual		FY 09 Estimate		FY 10 Request	
		Incidents	Change	Incidents	Change	Incidents	Change	Incidents	Change
Successful trial and hearing outcome	Benchmark	80%		80%		80%			
	Actual	92% (22-2)		80% (12-3)					

Objective 3: Prevail on all appeals of cases from the trial court. This number includes appeals to district court. It also includes appellate rulings from the courts of appeals and supreme courts in the state and federal systems. [It does not include CRCP 106 judicial reviews that were not dismissed but were ruled upon after review of briefs and certified records. See objective 4].

Performance Measure	Outcome	FY 07 Actual		FY 08 Actual		FY 09 Estimate		FY 10 Request	
		Incidents	Change	Incidents	Change	Incidents	Change	Incidents	Change
Number of appeals won	Benchmark	85%		85%		85%			
	Actual	92% (76-7)		96% (54-2)					

Objective: 4. Prevail on all appeals of prison disciplinary cases and other agency hearings from the agency to the district court.

Performance Measure	Outcome	FY 07 Actual		FY 08 Actual		FY 09 Estimate		FY 10 Request	
		Incidents	Change	Incidents	Change	Incidents	Change	Incidents	Change
Successful appellate outcome in prison disciplinary and administrative cases	Benchmark	85%		85%		85%			
	Actual	79% (60-16)		85% (46-8)					

Objective: 5. Settle cases for a reasonable amount when appropriate.

Performance Measure	Outcome	FY 07 Actual		FY 08 Actual		FY 09 Estimate		FY 10 Request	
		Incidents	Change	Incidents	Change	Incidents	Change	Incidents	Change
Successful settlements in appropriate cases	Benchmark	6 cases Savings \$300,000		4 cases Savings of \$100,000		5 cases Savings \$100,000			
	Actual	4 cases settled – savings of \$51,091. Demand: \$57,316. Settlement Amount: \$6225		2 cases settled. Savings: 1) multimillion demand. No money paid out 2) demand: \$495,000; settled for \$250,000; savings: \$245,000					

Objective: 6. Seek costs of care and attorneys fees from opposing party when appropriate; settle claims for attorney's fees against the state reasonably.

Performance Measure	Outcome	FY 07 Actual		FY 08 Actual		FY 09 Estimate		FY 10 Request	
		Incidents	Change	Incidents	Change	Incidents	Change	Incidents	Change
Amount of fees and costs ordered	Benchmark	Depends on cases		Depends on cases		Depends on cases			
	Actual	0		Obtained orders for attorneys' fees of \$8962.50 in 3 cases; paid \$107,580 in fees in 1 case: request was \$139,286; savings: \$31,706					

Objective: 7. Provide answers to requests for advice within 10 days of request. Provide written responses, including informal Attorney General Opinions, when requested [The target measure will be less than 100% because informal AGOs cannot and should not be given within 10 days.] Attend meetings at CDOC and Parole Board upon request. [Generally, at least once per week].

Performance Measure	Outcome	FY 07 Actual		FY 08 Actual		FY 09 Estimate		FY 10 Request	
		Incidents	Change	Incidents	Change	Incidents	Change	Incidents	Change
Advice given within 10 days of request	Benchmark	90%		90%		90%			
	Actual	99% (335-2)		99% (383-1)					

Objective: 8. File motions for protective orders or motions to quash in every case in which a party seeks privileged or confidential records or files. Represent the agency in any hearings on motions. Either succeed in having the subpoenas quashed in full after in camera review or at a minimum obtain protective orders so that no inmate or other third party may view the confidential material.

Performance Measure	Outcome	FY 07 Actual		FY 08 Actual		FY 09 Estimate		FY 10 Request	
		Incidents	Change	Incidents	Change	Incidents	Change	Incidents	Change
Motion for protective order filed and granted in whole or substantially in part	Benchmark	90%		90%		90%			
	Actual	100%		100%					

Objective: 9. Review proposed and pending legislation to determine effect on the CDOC and on the Parole Board within 3 days of request.

Performance Measure	Outcome	FY 07 Actual		FY 08 Actual		FY 09 Estimate		FY 10 Request	
		Incidents	Change	Incidents	Change	Incidents	Change	Incidents	Change
Review proposed and pending legislation and provide input within 3 days	Benchmark	100%		100%		100%			
	Actual	100%		100%					

Strategy: The unit continues to represent the Dept. of Corrections aggressively and successfully winning the vast majority of the cases through motions. The unit will continue to handle a high volume of cases and seek to resolve them early in the litigation. The First Assistant attends meetings at least weekly with the leadership team at CDOC to assist in the daily issues that arise in the prison setting. The attorneys provide training to CDOC representatives to help eliminate errors in administrative proceedings that could lead to litigation.

Evaluation of Prior Year Performance: The attorneys and support staff continue to provide excellent and thorough representation for the CDOC as reflected in the overwhelming positive results achieved in court. The need for additional prison space continues and CDOC continues to place prisoners out of state and in private prisons. The most recent statistics provided by the CDOC indicate that there are 22, 424 inmates, 213 offenders in YOS, and 9567 parolees as of June 30, 2007. That number reflects an annual growth of 7.9 % in FY07. The growth figures were 7.4% for FY 03, 5.5% for FY04, 5.3% for FY05, and 7.2 % for FY06. Continued annual growth of 5-7.5% can be expected. Nevertheless, the overall number of cases has shown a slight decline over the past two years. We believe that continued screening of cases, as required by the federal and state prison litigation reform acts, has helped. On the other hand, the complexity of the cases has increased. It is more difficult to resolve cases through early dispositive motions when those cases have survived judicial screening. Consequently, more time is spent in discovery.

Almost all of the individual Montez claims have been resolved by the Special Masters, although the special masters have recently assigned a few more cases for hearings. The CDOC has achieved compliance with the physical/architectural requirements of the settlement agreement but has still not come into compliance concerning programmatic and disability determinations. The compliance period has been extended twice – the latest deadline is May 1, 2009.

TORT LITIGATION CORE OBJECTIVES AND PERFORMANCE MEASURES

Objective: Aggressively and efficiently defend the state in tort and federal court cases and successfully represent clients in hearings and trials.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Number of motions to dismiss and Motions for Summary Judgment filed and won.	Benchmark	40	90%	90%	
	Actual	92% Won 35 out of 38; lost 2 md and 1 msj	97% Won 34 out of 35		

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Number of cases going to trial and number of defense verdicts	Benchmark	3/2 67%	3/2 67%	1/1	
	Actual	0 trials	0 trials		

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Amount of money saved by successful motions, appeals, court dismissal or voluntary dismissals by plaintiffs	Benchmark	\$1,000,000	\$2,000,000	\$2,000,000	
	Actual	\$2,785,867	\$3,806,702	*	

Objective: Obtain favorable rulings on appeal.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Number of favorable rulings on appeal	Benchmark	80%	80%	80%	
	Actual	80% Won 20; Lost 5	86% Won 19 Lost 3		

Objective: Settle cases favorably for the State.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Number of cases and claims settled and amount saved the State.	Benchmark	Target savings: \$700,000	\$800,000	\$1,000,000	
	Actual	\$1,476,131 Settled 30 cases for \$1,169,872 from demands of \$2,676,003; average paid: \$38,996	\$1,769,953 Settled 16 cases for \$1,306,300 from demands of \$3,076,253; average paid: \$81,643.75 This includes settlements of attorneys fees (\$796,000) from cases from other units (without these the average paid: \$39,254)		

Objective: Obtain voluntary dismissals from plaintiffs and court dismissals

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Number of voluntary dismissals and dismissals by the courts	Benchmark	10 voluntary	15 cases	15 cases	
	Actual	14 voluntary; 7 court dismissals	15 voluntary 16 court dismissals		

Objective: Obtain costs and attorneys' fees for the state in appropriate cases and resist requests for attorney fees in tort cases and monitoring cases.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Attorneys' fees ordered for the state in Risk Management cases and successful resistance to attorneys fees sought	Benchmark	\$30,000	\$15,000	\$25,000	
	Actual	\$2500	Obtained orders for \$34,361.56 in 7 cases Lost 3 requests for attorneys fees Defeated 3 requests for attorneys fees		

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Attorneys fees ordered to be paid by state in cases tort was monitoring for attorneys fees	Benchmark		Pay as little as possible in attorneys fees	Pay as little as possible in attorneys fees	
	Actual	5 monitoring cases resolved with no payment of fees; lost one request: \$17,000	8 monitoring cases resolved with no payment of fees; settled 3 requests Requesting: \$1,825,000 Settled for: \$796,000 Savings: \$1,029,000		

Objective: Seek petitions for certiorari when appropriate and resist petitions by opposing parties.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Petitions for certiorari defeated successfully and petitions granted when the state requests	Benchmark		Depends on the types of cases handled	Defeat 5 Petitions for Certiorari	
	Actual	2 petitions for certiorari were defeated successfully 1 petition granted successfully	Defeated 10 petitions for certiorari in cases state had won		

Strategy: The tort litigation unit continues to win most of the cases on motions to dismiss and summary judgment motions. The number of cases remained constant but fewer cases are proceeding to hearings or trials. The unit continues to save the state substantial amounts of money by settling cases favorably and winning them.

Evaluation of Prior Year Performance: The Unit has had a very successful year winning some very important cases such as Wilder v. Turner (Colorado State Patrol trooper) by convincing the 10th Circuit court to reverse a lower court judgment of over \$1,000,000) and Brown Retail Group v. CDOT (saving the state at least a million dollars in cleanup costs). The unit continues to win the majority of cases through motions to dismiss or motions for summary judgment. Some of the attorneys and staff participated in training sessions for state agencies.

TRANSPORTATION UNIT CORE OBJECTIVES AND PERFORMANCE MEASURES

Objective: Aggressively and effectively represent the Colorado Department of Corrections in litigation

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Resolve cases favorably for the State, including settlements	Benchmark	Save \$500,000	Save \$1,000,000	Save \$1,000,000	
	Actual	Resolved 12 condemnation cases Saved over \$6,000,000	Resolved 16 condemnation cases Saved \$1,756,522.		

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Represent CDOT successfully in the appellate courts	Benchmark			Win 3 appellate cases	
	Actual		Won 1 case in the 10 th Circuit saving the state over \$1,000,000 (with Tort Unit).. Lost two cases in the appellate courts involving an issue of local control vs. state control		

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
File motions to dismiss or for summary judgment	Benchmark			Win 5 motions to dismiss or for summary judgment	
	Actual		Won three motions for summary judgment		

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Proceed to hearing in appropriate cases	Benchmark			Win 80% of hearings	
	Actual		Won 2 court hearings; still waiting for decision in 1; won an agency hearing resulting in savings to CDOT of \$264,921		

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Pursue cases as plaintiff for defective workmanship	Benchmark			Seek payments for defective workmanship	
	Actual		Obtained \$314,000 for defective storm sewer pipe		

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Aggressively represent CDOT in construction litigation; resolve cases favorably	Benchmark			Resolve claims successfully for the state	
	Actual	27 claims on 15 projects were resolved resulting in a savings of over \$16,000,000.	Several claims were resolved involving construction projects on SH24 near Divide and the 24 Road Interchange in Grand Junction resulting in savings of over \$2,000,000		

Objective: Respond to all requests for legal advice from CDOT and the Transportation Commission in a concise, comprehensive and timely manner

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
All non-emergency requests are to be referred to an attorney within 5 days of receipt with a response date as established by the client	Benchmark	90%	90%	90%	
	Actual	90%	95%		

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Emergency requests are to be handled immediately and a response given within the time frame established by the client	Benchmark	100%	100%	100%	
	Actual	99%	100%		

Objective: Review, revise and approve all contracts to meet CDOT requirements

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Review between 400-500 contracts	Benchmark	450 Contracts	450 contracts	450 contracts	
	Actual	412 contracts	504 contracts		

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Review revise and approve CDOT contracts in less than 4 days on average (statewide average is four days)	Benchmark	4 days	4 days	3 days or less	
	Actual	3 days	Average: 1 day		

Objective: Review proposed and pending legislation for CDOT

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Review legislation within 5 days of receipt of request and provide input based on client need	Benchmark	5 days	5 days	5 days	
	Actual	100%	100%		

Objective: Attend all Transportation Commission and Tolling Enterprise Board meetings

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Attend all meetings of the Commission and Enterprise and provide advice as requested	Benchmark	100%	100%	100%	
	Actual	100%	100%		

Strategy: The Transportation Unit continues to represent CDOT aggressively in condemnation, billboard, contract, access, relocation, quiet title actions, and construction litigation. Construction claims continue to require a great deal of attorney time, and the unit will continue to defend them aggressively as well as seek compensation for defective work or contract violations. These are generally handled through an administrative resolution process so they are not typically reflected in the statistics for cases. A new administrative claims process is helping resolve some of these issues earlier in the dispute.

Evaluation of Prior Year performance: The attorneys and legal staff have continued to represent CDOT well in the various litigation matters that arose. There are fewer condemnation cases recently since T-Rex work has been completed. Construction claims continue to rise. CDOT attorneys have also been representing the Transportation Commission in hearings concerning fines for improper use of the new fast lanes and HOV lanes. In April 2008 the Colorado Supreme Court issued its decision in Brown Group Retail v. CDOT. The Court ruled that claims brought for groundwater contamination were either tort claims or could lie in tort and thus were barred by the failure of the plaintiff to comply with the CGIA. This was a nice victory for both the Transportation and Tort Litigation units. The Unit will continue its excellent work on behalf of CDOT.

EMPLOYMENT TORT UNIT CORE OBJECTIVES AND PERFORMANCE MEASURES

Objective: File early motions to dismiss and obtain dismissal of as many claims as possible at outset of litigation.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Number of motions to dismiss filed, number won and number of claims dismissed.	Benchmark	10 filed/8 win	6 filed/4 win	5 filed/4 win	
	Actual	5 filed. 5 decided - 4 granted in full, 1 granted in part. 19 claims dismissed	5 filed. 2 decided - both granted in full. 2 claims dismissed.		

Objective: File motions for summary judgment if appropriate and obtain judgment on as many claims as possible short of trial.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Number of motions for summary judgment filed, number won and number of claims dismissed.	Benchmark	6 filed/5 won	6 filed/5 won	6 filed/4 won	
	Actual	9 filed. 5 decided - 1 granted in full, 1 granted in part, 3 denied in full. 8 claims dismissed.	5 filed. 7 decided - 5 granted in full, 2 granted in part. 33 claims dismissed.		

Objective: Aggressively defend the state and its employees in trial.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Number of trials held, number won and number of claims won.	Benchmark	2 trials/2 wins	2 trials/2 wins	2 trials/2 wins	
	Actual	0 trials.	1 trial - won in full. 1 claim won.		

Objective: Obtain favorable rulings on appeal.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Number of appeals handled, number won and number of claims won.	Benchmark	6 handled/4 won	6 handled/4 won	6 handled/3 won	
	Actual	6 handled. 3 decided - all won in full. 4 claims won.	11 handled. 2 decided - both won in full. 14 claims won.		

Objective: Settle cases favorably for the State.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Number of cases and claims settled and amount saved the State.	Benchmark	15 cases settled / save as much as possible	10 cases settled / save as much as possible	8 cases settled / save as much as possible	
	Actual	9 cases settled - 47 claims settled. Requested amount was \$2,600,000 and paid amount was \$841,460. Saved: \$1,758,540	4 cases settled - 12 claims settled. Requested amount was \$1,100,000 and paid amount was \$307,500. Saved: \$792,500		

Objective: Save the State money by aggressively defending employment lawsuits.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Amount of money requested by plaintiffs compared to amount of money paid to plaintiffs.	Benchmark	\$2,000,000 saved	\$5,000,000 saved	\$5,000,000 saved	
	Actual	21 cases closed. Amount demanded in those cases was \$7,599,955. Amount paid was \$841,460. Saved: \$6,758,495	20 cases closed. Amount demanded in those cases was \$4,600,951. Amount paid was \$307,500. Saved: \$4,293,451		

Objective: Reduce litigation by developing and presenting training to state agencies on employment and litigation matters.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Number of training sessions held.	Benchmark	12 training sessions	12 training sessions	12 training sessions	
	Actual	14, including 2 in-house CLEs and mock trial at Risk Conf.	10, including full-day investigators' training at CDOT.		

Strategy:

Aggressively defend every employment lawsuit filed against the state, state agencies, or state employees in state or federal court. Create and present training to state agencies on how to manage employees and avoid litigation. Save the state as much money as possible by successfully defending cases and negotiating favorable settlements.

Evaluation of Prior Year Performance:

The Employment Tort Unit continues to be very successful in winning motions to dismiss, motions for summary judgment, trials and appeals. The Unit won every decision rendered last year, except for two motions for summary judgment in which they won every claim except for two. Last year only three cases were settled and the amount paid out was significantly lower than in previous years. The number of new cases remained steady from the previous year but the number of new claims for relief increased dramatically because of one new case alleging 23 separate claims for relief against 20 separate defendants, including 18 individual defendants sued in their individual capacities. The Unit continues to regularly advise state agencies on FLSA issues and provide training on all issues in order to prevent future litigation.

EMPLOYMENT PERSONNEL UNIT CORE OBJECTIVES AND PERFORMANCE MEASURES

Objective: Aggressively defend the state and its employees in State Personnel Board (SPB) hearings in disciplinary actions in which state employees suffered a loss in current base pay, status, or tenure.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Number of cases that went to mandatory hearing in front of State Personnel Board and results obtained	Benchmark	Win 70% of cases that go to hearing	Win 70% of cases that go to hearing	Win 70% of cases that go to hearing	
	Actual	90 mandatory hearing cases opened by SPB; 25 hearings Won 19-76% Modified 2; Lost 4	98 mandatory hearing cases opened by SPB; 17 hearings Won 15-88% Lost 2		

Objective: Oppose petitions for discretionary hearings in cases in which the employee does not have a right to a hearing, such as final agency grievance decisions.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Number of petitions that were briefed and number of cases won (hearing denied)	Benchmark	Win 85% of requests for discretionary hearings	Win 85% of requests for discretionary hearings	Win 85% of requests for discretionary hearings	
	Actual	82 petitions received by SPB 70 cases briefed Won 65 - 93% (hearings were denied) Of the 5 hearings granted, won 3 and 2 are pending	68 petitions received by SPB 42 cases briefed Won 32 - 76% (hearings were denied) Lost 10 petitions; of those, 6 settled, 1 loss, 2 pending and 1 voluntary dismissal		

Objective: Represent state agencies successfully in appeals to the State Personnel Board from decisions of Administrative Law Judges.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Number of SPB Employment Personnel (EP) appeals; number of successful rulings	Benchmark	Win 75% of appeals to SPB	Win 67% of appeals to SPB	Win 67% of appeals to SPB	
	Actual	9 appeals Won 6 - 67% Board reversed 3	7 appeals Won 5 - 71% Board modified or reversed 2		

Objective: Represent state agencies successfully in appeals from decisions of State Personnel Board to Colorado Court of Appeals.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Number of appeals to the Court of Appeals; number of successful appeals	Benchmark	Win 75% of appeals to Court of Appeals	Win 50% of appeals to Court of Appeals	Win 50% of appeals to Court of Appeals	
	Actual	6 appeals Won 3 - 50% Lost 3	4 appeals Won 2 - 50% Lost 2		

Objective: Dispose of EP cases short of hearing through motions or settling cases that should be settled for a reasonable amount.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Number of cases dismissed on motion	Benchmark	Win motions in 20% of cases set for hearing	Win motions in 25% of cases set for hearing	Win motions in 25% of cases set for hearing	
	Actual	95 cases set for hearing; 24 - 25% dismissed on motion	98 cases set for mandatory hearing; 23-23% dismissed on motion		

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Number of cases settled	Benchmark	Settle 50% of cases set for hearing	Settle 50 % of cases set for hearing	Settle 50% of cases set for hearing	
	Actual	95 cases set for hearing; 54 - 57% settled	98 cases set for hearing 59 - 59% settled		

Objective: Provide training to state agency supervisors and managers to assist them in avoiding liability and providing more effective performance management.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Present training sessions to state agencies, managers, and supervisors	Benchmark	15 sessions	15 sessions	15 sessions	
	Actual	17 sessions to 14 agencies	18 sessions to 14 agencies		

Objective: Safeguard state money in the Subsequent Injury Fund (SIF) and Major Medical Insurance Fund (MMIF) and ensure the statutory and legal propriety of lost wage and medical benefits paid to injured workers from those Funds.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Aggressively pursue motions to dismiss or for summary judgment in appropriate cases and defend motions successfully	Benchmark	Win 80% of motions	Win 80% of motions	Win 80% of motions	
	Actual	0 motions filed	0 motions filed		

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Aggressively represent the state in SIF and MMIF hearings and trials	Benchmark	Win 75% of hearings or trials	Win 75% of hearings or trials	Win 75% of hearings or trials	
	Actual	One case went to hearing; cases settled after hearing	One case went to hearing; case lost		

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Represent SIF and MMIF successfully in appeals	Benchmark	Win 80% of appeals	Win 80% of appeals	Win 80% of appeals	
	Actual	0 appeals	0 appeals		

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Settle SIF and MMIF cases as appropriate	Benchmark	Settle cases to save the state money	Settle cases to save the state money	Settle cases to save the state money	
	Actual	Settled 3 cases, 1 with no money from MMIF; 1 with MMIF receiving \$5000 for subrogation of claim; 1 settled for \$105,000K from SIF, wanted \$150,000; saved \$45,000	No cases settled		

Objective: Provide timely, current and complete legal advice to the Colorado Civil Rights Division of the Dept. of Regulatory Affairs.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Research, prepare and submit legal memoranda on transactional questions and "cutting edge" legal issues to CCRD within 30 days of each request	Benchmark	100%	100%	100%	
	Actual	100%	100%	100%	

Objective: Provide timely, current and complete legal analysis and opinions on the hearing worthiness of cases referred by the CCRD.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Analyze each investigative file, research the legal questions raised, prepare and submit memorandum to the CCRD and the Colorado Civil Rights Commission within 30 days of receipt of such request	Benchmark	100%	100%	100%	
	Actual	100% 39 files referred and reviewed for hearing worthiness	100% 15 files referred and reviewed for hearing worthiness		

Objective: Vigorously prosecute all cases of employment, housing and public accommodation discrimination in administrative and court proceedings in which the Colorado Civil Rights Commission issued a formal complaint.

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Aggressively pursue and conclude all phases of litigation including discovery, hearings, trials and appellate briefs and arguments; incorporate ADR as appropriate	Benchmark	100%	100%	100%	
	Actual	4 complaints set for hearing; 3 settled; one case removed to federal court	9 complaints set for hearing; 5 settled; 1 withdrawn; 1 removed to federal court; 2 pending		

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Successfully represent CCRD in appeals	Benchmark	Win 75% of appeals	Win 75% of appeals	Win 75% of appeals	
	Actual	0 appeals	0 appeals		

Performance Measure	Outcome	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY 10 Request
		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
Settle cases favorably for charging party when appropriate	Benchmark	5 cases	5 cases	5 cases	
	Actual	3 employment cases settled: \$8,000 plus training; \$7,000 and \$29,000	6 cases settled for a total of \$40,000 plus training		

Strategy: This past year, the unit attorneys all began to handle cases for the Civil Rights Commission rather than having only two attorneys handle these as in the past. This has allowed more attorneys to become familiar with civil rights litigation and has provided more assistance to the agency. The agency has begun doing some of its own reviews for hearing worthiness so the unit is getting fewer referrals for these reviews.

The unit continues to be very successful in resolving employment issues early on or in winning cases at hearing or on appeal. The unit is presenting training to more agencies than it has in the past and is getting more requests for advice which should assist in reducing litigation.

The Civil Rights Division is increasing its initial review of cases which has resulted in fewer cases being referred; however, we expect that cases may increase with new legislation prohibiting discrimination based on sexual orientation.

The SIF and MMIF cases will continue to decline until there are no more.

Evaluation of Prior Year Performance: The attorneys and support staff continue to represent the state aggressively and to achieve fair and just results for the state. There have been some contentious disciplinary matters which have required thoughtful preparation and careful analysis. Primary among these was the termination of the contract for the Director of Emergency Preparedness after additional information was revealed concerning the applicant's background. The matter went to hearing and the attorneys successfully defeated the claims of discrimination and breach of contract.

The unit continues to provide training to agencies and state employees. This training is instrumental in helping to reduce litigation. Human Resources personnel are also calling for advice frequently which is also helpful in reducing litigation.

Narrative
LSSA
Natural Resources &
Environment



D) BACKGROUND INFORMATION: NATURAL RESOURCES AND ENVIRONMENT SECTION (LSSA).

Introduction to the Natural Resources and Environment Section

The Natural Resources and Environment Section currently has 37 lawyers, 9 legal assistants, and 4 support staff. These dedicated employees protect and defend the interests of the State and its citizens in all areas of natural resources law and environmental law. The Section is made up of seven units that represent and advise state agencies and boards that regulate and oversee the development, use and conservation of Colorado's natural resources and the quality of Colorado's environment.

Environmental Quality Unit

The Environmental Quality Unit represents the divisions and commissions of the Colorado Department of Public Health and Environment (CDPHE) that are responsible for improving and protecting our state's air and water resources. The Unit also represents the divisions of CDPHE that are charged with radiation control and consumer protection. Specifically, the Unit provides legal counsel to the Executive Director's Office, the Air Quality Control Commission, the Air Pollution Control Division, the Consumer Protection Division, the Laboratory and Radiation Services Division, the Water Quality Control Commission, the Water Quality Control Division, the Water and Wastewater Facility Operators Certification Board, the Office of Administration, the Office of Policy and Public/Private Initiatives and Uranium Special Projects. The Unit also provides representation to the Governor's Office of Energy Conservation.

The attorneys in the Environmental Quality Unit provide general legal advice as well as representation in administrative and judicial proceedings, rule-making hearings, enforcement actions, and legislative proposals. They help to ensure that the State's businesses and citizens comply with applicable environmental requirements, and they bring enforcement actions against those who do not comply.

Water Conservation Unit

The Water Conservation Unit provides legal counsel and representation in water rights and administration matters to the Department of Natural Resources, including the Executive Director's Office, the Colorado Water Conservation Board ("CWCB"), the Division of Wildlife ("Wildlife"), the Division of Parks and Outdoor Recreation ("Parks") and the State Land Board ("SLB"). The Unit also provides legal counsel and representation in water matters to the Department of Transportation ("DOT"), the Department of Corrections ("DOC") and any other state agency or official that requests water rights advice or representation. Water matters are appealed directly from Water Court to the Supreme Court, and the Unit generally has several matters pending before the Supreme Court at any given time. The Unit represents and counsels various boards and commissions, and their staff under each agency. The Unit handles transactional work

for each agency, including negotiating and drafting documents for acquisitions and protection of water rights for the CWCB, Wildlife and Parks. The Unit helps draft contracts for hundreds of millions of dollars in loans and grants from the CWCB to ditch companies, water conservation districts, municipalities and other water users.

In addition to general legal advice, the unit assists the CWCB with various hearings before the Board, trials and appeals, promulgation of rules and regulations, drafting and reviewing CWCB loan and grant contracts, and negotiating and drafting documents for acquisitions and protection of water rights for the CWCB. The Unit helps the CWCB Water Supply Planning and Finance Program to: (1) arrange low-interest loans to enable the construction of water resource projects or the purchase of water rights; (2) finance other specialized water studies and projects; 3) aid in the construction of new reservoirs and rehabilitation of existing structures including dams, diversions, pipelines, pump stations and irrigation channels; and (4) fund feasibility studies for possible new construction projects, and processes. Specifically, the unit aids the client in drafting the contracts associated with such loans, grants and studies, and loan repayments.

Water Resources Unit

The Water Resources Unit provides legal counsel and representation in water rights legal and administration matters to the Division of Water Resources of the Department of Natural Resources. The Unit represents the directors, board members, and staffs of the State and Division Engineers, the Colorado Groundwater Commission, and the Board of Examiners for Water Well Contractors. The Unit has an active caseload of approximately 600 proceedings, including water court litigation proceedings regarding applications for new water rights, changes to existing water rights, and plans for augmentation; administrative and water court proceedings concerning objections to well permit issuances and denials; water court and administrative enforcement actions to curtail illegal water uses; declaratory judgment actions challenging water rights administration decisions by the State Engineer; and other water rights related matters. Because Water Court decisions are appealed directly to the Colorado Supreme Court, the Unit also typically has several matters pending before the Supreme Court at any given time. In addition to assisting the Division of Water Resources with litigation enforcement matters, the Unit also provides general legal advice to the Division with respect to the Division's administrative decision and responsibilities so as to ensure efficient and effective water rights administration.

Resource Conservation Unit

The attorneys and legal assistants in the Resource Conservation Unit provide legal assistance and representation to entities within the Department of Natural Resources ("DNR"), including the Oil and Gas Conservation Commission, the Mined Land Reclamation Board, the Colorado Coal Mine Board of Examiners and the Division of Reclamation, Mining and Safety. These clients within DNR implement and enforce numerous statutorily created programs including regulation of reclamation of land that has been mined and regulation of oil and gas operations. The activities performed by attorneys in the Resource Conservation Unit include general legal advice to and

representation of the Executive Director's Office and divisions, boards and commissions of DNR in administrative and judicial hearings, trials, and appeals; promulgation of rules and regulations; defense of litigation filed against the agencies (other than tort and personnel actions, in which case the Resource Conservation Unit attorneys may serve as "second chair" to attorneys in the Litigation Section or Employment Section, respectively); prosecution of enforcement actions; general advice and counsel in permitting; and advice on legislative proposals.

State and Trust Lands

The attorneys and legal assistants in the State and Trust Lands Unit provide legal assistance and representation to state officials and agencies within the Department of Natural Resources ("DNR"), including the Wildlife Commission and the Division of Wildlife, the Parks Board and the Division of Parks and Outdoor Recreation, the Colorado Geological Survey, and the State Board of Land Commissioners and its administrative staff.

Unlike most agencies, Wildlife, Parks and the State Land Board are essentially cash funded agencies that generate their own revenues to support their statutorily mandated responsibilities and mandated activities. Representation of these agencies is similar in many respects to representation of corporate business entities and, as such, raises issues frequently not presented by other state agencies.

Wildlife is a TABOR enterprise funded entirely by the sale of hunting and fishing license fee revenues, federal fish and wildlife funds, and funds made available to it by the GOCO Trust Fund. Parks receives a minor amount of general funds (15%) and is otherwise funded by the sale of parks passes and permits, federal park and recreation funds and funds made available to it by the GOCO Trust Fund. The State Land Board serves as the trustee for the lands granted the state in public trust to support K-12 education and its trust management activities are supported by revenues generated by the trust assets.

Solid & Hazardous Waste & CERCLA Litigation Unit

This Unit represents the Hazardous Materials & Waste Management Division of CDPHE ("HMWMD") regarding the storage, treatment and disposal of solid and hazardous waste. Advice includes civil law enforcement, regulatory, and transactional matters. The Unit ensures that contaminated sites are promptly and thoroughly cleaned up by those responsible for the contamination, and pursues enforcement actions when appropriate. The Unit also advises HMWMD regarding EPA-lead CERCLA or "Superfund" cases and ensures that the State's point of view on those CERCLA sites is taken into account. Finally, the Unit provides legal advice to the Petroleum Storage Tank Committee, which oversees reimbursement of cleanup costs that are covered under the Petroleum Storage Tank Fund (essentially a state insurance program).

II) PRIOR YEAR LEGISLATION

Most of these bills require the Section to provide legal assistance in promulgating new rules or amending existing rules to comply with the new statutory mandates. Several of the bills will require additional legal representation for appeals and new workload engendered by the increased regulation and enforcement.

HB 08-1099 authorized the Water Quality Control Commission, rather than the State Board of Health, to hear appeals of penalties imposed for violations of Colorado's drinking water regulations.

HB 08-1280 provides certain protection to water rights owners who loan or lease their water to the Colorado Water Conservation Board ("CWCB") for instream flow use pursuant to section 37-92-102(3), C.R.S. The bill assures water rights owners that leasing water to the CWCB for instream flow use will not result in a reduction of the historic consumptive use credit of the water right and will not result in an abandonment of that water right. ISF Rules will be revised in order to establish criteria for the Board to evaluate loans and leases of water under the revised statutory provisions.

HB 08-1346 (CWCB's Water Projects Bill) establishes section 37-60-123.7, C.R.S. which provides a \$1,000,000 annual appropriation from the Construction Fund to the CWCB for the costs of acquisitions of water for instream flow use. Staff proposed a draft financial policy (Policy 19) to implement the Board's expenditure of these funds. The policy clarifies the types of costs for acquisitions that the funds may be applied to and sets forth the information Staff must present when requesting the Board authorize funds for an acquisition of water for ISF use.

HB 08-1161 made all uranium mines designated mining operations ("DMOs"). As a DMO, every uranium mine must now comply with all reclamation requirements generally applicable to mining operations plus added requirements for a DMO, most notably submitting an environmental protection plan. In addition, if a DMO intends to build an environmental protection facility (a pond, dam or anything that will hold acid mine drainage, toxic or acidic chemicals or materials), Division of Reclamation, Mining, and Safety must certify each stage of construction. These mines may still request an exemption from DMO status as provided in the Mined Land Reclamation Act. HB 1161 also requires in situ uranium mines to certify that there are no existing violations and describe 5 in situ uranium mines that demonstrate the ability of the applicant to conduct such a mine without leakage; conduct a baseline site characterization and a plan for ongoing monitoring of affected land, surface water and groundwater; and restore water to WQCC standards or pre-mining baseline water quality or better.

SB 08-228 increased the potential information available about prospecting operations. All information in a Notice of Intent to conduct prospecting is now public except for information relating to the nature, size or location of the mineral deposit and proprietary or trade secret information. This bill requires the Division to post the public information on its website.

HB 08-1414 requires all oil and gas exploration and production aqueous wastes, also known as “produced waters,” to be disposed of in evaporation impoundments that feature fabricated (synthetic) liners, and meet minimum set-back requirements. Existing evaporation impoundments would be given 2 years from the date effectuating regulations are passed to retrofit with synthetic liners. HMWMD will propose compliant regulations as part of a general impoundment regulations overhaul.

SB 08-037 allows HMWMD to impose environmental notice restrictions where property owners choose to clean up environmental contamination to a level protective of some but not all uses. The notice restriction, recorded with the land, can prohibit uses of the property which would not be protective of human health or the environment. This bill dove-tails with existing authority to require environmental covenants, but allows the HMWMD more flexibility. Model language and guidance will need to be developed to effectuate SB 08-037, and regulatory changes may be needed as well.

III) HOT ISSUES:

Ozone State Implementation Plan

In 2007, the greater Denver metro area and the North Front Range violated the 1997 National Ambient Air Quality Standard for ground-level ozone (.08 parts per million). Elevated ground-level ozone can damage lungs, aggravate breathing disorders, and cause chest pain, coughing, throat irritation and congestion. The area in question includes Adams, Boulder, Broomfield, Denver, Douglas, and Jefferson Counties, as well as portions of Larimer and Weld Counties. Colorado is now obligated to submit to the U.S. Environmental Protection Agency (EPA) a proposed plan to achieve compliance with the standard. The Regional Air Quality Council, the North Front Range Transportation and Air Quality Planning Council, and the CDPHE have coordinated to prepare a proposed plan. The Air Quality Control Commission will conduct a public hearing on the proposed plan in December 2008. The Commission will then certify a plan to the Legislative Council by January 15, 2009. This plan must be submitted to the EPA no later than July 1, 2009. If Colorado fails to submit a satisfactory attainment plan, the EPA may impose sanctions as well as a federal implementation plan.

Water Court Committee

During the past year, the Supreme Court, complying with a directive from the Governor, convened a Water Court Committee to address the following issues: the increasing expense to litigate water court cases; the burdensome length of time from filing an application to obtaining a decree; and that courts are overburdened and understaffed to meet the volume of water cases.

The final report issued by this Committee in August 2008 made several recommendations that will create a direct and significant impact to the Water Conservation Unit. The Committee recommended new rules to speed up the court process, require additional,

more stringent legal and expert documentation, and a faster timetable that would require resolution of most cases within a year of the filing. It is expected that most of the recommendations by this Committee will be endorsed by the Governor and adopted through the statute and rules processes. These proposed changes will directly affect the workflow of the Unit's personnel and their ability to respond to the accelerated requirements of an already heavy caseload. It is possible that additions to staff may be necessary in order to comply with the expected new rules and regulations governing water court matters.

Suit against Department of Defense to Push For Chemical Weapons Destruction

The Department of Defense has stalled destruction of hundreds of thousands of mustard agent weapons stored at the Pueblo Chemical Depot. The weapons are hazardous wastes. Storage of hazardous wastes is prohibited and HMWMD seeks an injunction requiring treatment of the weapons by 2017, a date also established by Congress. DoD has resisted on the grounds that it has insufficient money to comply, and may question Colorado's authority over the aging mustard agent weapons.

Hazardous Waste Disposal Facility Radiation Control Licensing and Hazardous Waste Permitting

Adams County objects to CDPHE's Permit and License allowing low-activity radioactive materials to be disposed of at the Clean Harbors Deer Trail facility in far-eastern Adams County. The County's appeal is groundless in terms of technical merit or health risk, and turns on a county's right to question State decisions relegated to a State agency by statute. The recently-licensed radioactive materials are far less dangerous than the hazardous wastes the facility was built to safely manage. Nonetheless, a total of five lawsuits have spun out of the issue, one of which goes to trial in late 2008. Two more will be decided by the Colorado Supreme Court in 2009. Although a defendant in most of the actions, in mid-2008 HMWMD sued Adams County for misuse of a funds meant to off-set impacts from the CHDT facility. Political efforts to resolve the various suits have failed and protracted litigation is likely.

IV) WORKLOAD MEASURES

Environmental Quality Unit

The attorneys in the Environmental Quality Unit provide general legal advice as well as representation in regulatory, administrative and judicial proceedings, enforcement actions, and legislative proposals. This includes representing clients in meetings, rule-making hearings, and adjudicatory hearings before (among other entities) the Air Pollution Control Division, Air Quality Control Commission, Water Quality Control Division, Water Quality Control Commission, the Water and Wastewater Facility Operators Certification Board, the Laboratory and Radiation Services Division, the Public Utilities Commission, the Board of Health, and various state and federal courts. As just one example, the attorneys prepare for and attend approximately thirty-six meetings of various boards and commissions annually.

The attorneys assist the air and water divisions in obtaining and maintaining delegation from the EPA to administer the state counterparts of corresponding federal environmental programs. They ensure that adoption, implementation and enforcement of the state's environmental programs are consistent with state and federal requirements, and defend any challenges to such programs. The attorneys are regularly involved in prominent issues of statewide importance, including such matters as clean streams, rivers and lakes, safe drinking water and clean air (including addressing ozone and regional haze).

The Unit's attorneys have a regular caseload of enforcement actions. The attorneys seek to ensure compliance with environmental programs through creative, non-punitive means, as well as through traditional enforcement methods. In addition to traditional cash penalties, the attorneys help to negotiate supplemental environmental projects, which can be used to reduce cash penalties and improve the environment.

In the regulatory arena, the attorneys help to draft and to negotiate clear, effective and efficient regulations and legislation on behalf of their clients. They review proposed legislation to ensure that it is consistent with existing laws and regulations.

In recent years the CDPHE has experienced an increase in workload relating to many of the state's environmental programs, including air quality, water quality, and radiation control. Such workload increases have included large-scale rulemakings, such as oil and gas, ozone, regional haze and mercury regulations in the air arena, and new temperature and ammonia standards, permitting regulations and oil and gas issues in the water arena. There has also been an increase in litigation (both in court and administrative) concerning challenges to CDPHE permitting decisions, such as with respect to air construction permits, radioactive materials licenses, and water treatment plant site approvals. This trend has required the DOL to spend additional time assisting the client to develop and defend its decision-making record. A recent increase in major federal environmental legislation and litigation, particularly in the air quality arena, will require additional legal resources as CDPHE makes changes to its corresponding state program. Due to the increased workload, the unit added an additional attorney in fiscal year 2007-08.

Water Conservation Unit

The Water Conservation Unit assists the CWCB, Wildlife, Parks, State Land Board, Department of Transportation, Department of Corrections and Department of Education in acquiring, maintaining and protecting water rights. The CWCB has approximately 251 active cases, Parks has approximately 72 active cases, and Wildlife has approximately 98 active cases. The remaining clients combined have approximately 12 cases this year. This year, the unit resolved approximately 30 cases. The unit has 10 trials scheduled for 2009. In order to meet expectations of the above goal, Unit personnel undertake the following: evaluate water rights portfolio and recommend and assist in implementing advisable actions; identify and resolve problems concerning existing water rights through stipulated settlements or litigation; pursue changes of water rights or applications for new water rights as directed by the client; protect clients water rights and access easements

from 3rd parties; represent and assist client agencies in administrative proceedings and hearings and advise staff in preparing for such meetings; assist CWCB staff in developing and obtaining Controller approval of standard loan contract and revisions; assist CWCB staff in resolving issues related to loans and grants and in developing loan programs and procedures; provide comprehensive legislative history research for client agencies, and other complex legal research, including drafting legal memos and opinions; advise Parks staff regarding water and water rights acquisitions for new State parks; assess the quality and viability of prospective acquisitions, negotiate specific terms of purchase and negotiate and draft transactional documents; and advise Division of Wildlife staff regarding water and water rights acquisitions for Wildlife parks; and assess the quality and viability of prospective acquisitions, negotiate specific terms, negotiate and draft transactional documents, providing guidance through the due diligence process.

Water Resources Unit

As population increases, water users continue to place additional demands on Colorado's water supply. This trend has resulted in and will continue to result in a steadily increasing number of water rights applications for new water rights, changes of water rights, and plans for augmentation. In addition, as the water supply grows tighter, an escalating number of water users concerned about the effects of new water rights applications on existing water supply are filing statements of opposition to these new water rights applications, resulting in an increased number of complicated, difficult, expensive and time consuming water court litigations. As the administrative agency responsible for administering new water rights and preventing new water rights applications from injuring existing water users, the primary client of the Water Resources Unit, the State Engineer's Office, has been and increasingly will be required to spend additional resources in these water court related matters. Moreover, the State Engineer's Office's efforts to protect existing water rights from injury resulting from these applications continue to be met with more resistance from water rights applicants, requiring more complex and difficult negotiations. Accordingly, Assistant Attorneys General representing the State Engineer's Office will continue to be required to accept responsibility for a larger and more complex caseload.

Attorneys are expected to demonstrate competency in all areas of water law sufficient to meet and exceed the demands of the State Engineer's Office. Each attorney will be required to participate in monthly meetings with the State Engineer's Office, at which meetings each Assistant Attorney General will be required to demonstrate mastery of the legal and technical issues raised by their respective assignments. In addition, each Assistant Attorney General will be required to develop specialized knowledge in one area of water law. Each Assistant Attorney General will demonstrate this mastery by preparing and presenting a Continuing Legal Education class regarding that area of law. The

attorneys are responsible for supervising a caseload of at least 100 active matters and enforcing water rights matters for the seven Water Divisions.

Resource Conservation Unit

Attorneys in the Resource Conservation Unit represent the Division of Reclamation, Mining and Safety in administrative hearings held monthly before the Mined Land Reclamation Board. Attorneys advise and assist the Division in preparing for administrative hearings and represent the Division at prehearing conferences and at the hearings. These administrative hearings can range from small hearings with a few people involved to time consuming hearings in which numerous parties (operator, objectors, etc) and complex issues (water quality, legal right to enter) are involved. In the upcoming fiscal year, we anticipate having complex hearings on applications concerning Battle Mountain Inc. (proposed land application of water affected by mining operation), Cripple Creek and Victor permit amendment (expansion of heap leach operation) and PowerTech (in situ uranium).

In addition, attorneys in this unit represent the Division in litigation such as the High Country Citizens' Alliance case and at times represent both the Division and the Board such as in the Asarco bankruptcy case and the *Colorado Mining Association and Summit County* case, now pending in the Colorado Supreme Court. The attorneys also assist the Division in drafting proposed regulations for rulemaking hearings. This year the Mined Land Reclamation Board intends to hold a rulemaking proceeding to implement House Bill 1161, Senate Bill 229 and Senate Bill 169. The attorneys will help the Division draft proposed regulations to present to the Board and will represent the Division in all the proceedings related to the rulemaking. Resource Conservation Unit attorneys also provide day-to-day verbal and written advice and representation to the Division on a variety of legal issues and matters. Cases range from simple legal questions to complex legal issues. In addition, attorneys in this unit act as legal advisor to the Oil and Gas Conservation Commission including in monthly administrative hearings. Such position includes the big rulemaking hearing the Commission has been holding on implementation of House Bill 1341 and House Bill 1298. The attorneys also represent the Commission in litigations which will include any lawsuits filed in connection with the rulemaking. Further, as with the Division of Reclamation, Mining and Safety, the attorneys provide day-to-day verbal and written advice and representation to the Commission on a variety of legal issues and matters. Cases may range from simple legal questions to very complex issues.

Lastly the attorneys work with the Division and Commission to set priorities for legal services based on workload, need, and budget constraints. The average yearly number of matters for which legal services are provided by this Unit runs in the hundreds.

The Division of Reclamation, Mining and Safety continues to see a substantial increase in its need for legal advice especially concerning proposed molybdenum and uranium development. Such development will ultimately result in reclamation permit applications

being filed with the Division and hearings being held on such applications before the Mined Land Reclamation Board.

The prospect of oil shale development has required advice and counsel on a number of legal issues, and attendance at numerous federal and state agency coordination meetings. Uranium development has so far been focused on the upcoming hearings concerning the reactivation of four Cotter mines and on a possible in situ uranium operation in Weld County. A number of regulatory issues have arisen, and will likely continue to arise, in regard to uranium development. These regulatory issues have required and will continue to require legal advice and counsel. Given the increase in demand for molybdenum, the Division will likely see increased activity in mining of this mineral in addition to oil shale and uranium. Accordingly, there will be a parallel increased need for legal services.

As to the Oil and Gas Conservation Commission, the trend of issuing record breaking numbers of applications for permits to drill will most likely continue this year. In addition, the General Assembly passed five bills affecting the constituency and charge of the OGCC. The Oil and Gas Conservation Act now specifically requires the Commission to consider the environment and wildlife in its decisions. The Commission has been holding and will continue to hold rulemaking hearings to implement these new laws. Based on these new laws, required rule-making and the record breaking business of the OGCC, there is likely to be a considerable increase in the Commission's need for legal services.

State and Trust Lands Unit

The attorneys in the State and Trusts Lands Unit are assigned to and act as general counsel to and work directly with their client agencies – the Wildlife Commission, the Parks Board and the State Land Board – to appropriately plan and meet the demand for legal services based on workload and budget constraints. Case loads for all client agencies continue to increase and generally exceed legal service budgets and attorneys work directly with their client agencies to establish priorities within those budgets. Due to the specialized nature of their client agencies, all of which are primarily revenue generating entities and not primarily regulatory in nature, legal services are provided by attorneys on a daily and otherwise on-going basis and not generally on an individual request basis. In many instances such services are provided informally in person or through telephone consultations. Assigned attorneys attend, represent and assist the Wildlife Commission, the Parks Board and the State Land Board in establishing policies and program direction during their monthly meetings and then assist the staff of the client agencies in their implementation of those policies and programs and general management of the revenue generating assets of the client agencies. The provision of legal services is given in a manner intended to avoid legal challenge to or litigation regarding the activities of the client agencies. However, any litigation that is filed is handled by the attorney assigned to representing the client agency in a timely and effective manner.

Hazardous & Solid Waste Unit

This Unit represents the HMWMD in a wide variety of civil matters. The Unit's attorneys promptly review draft administrative orders to ensure that they are within the client's authority to issue and enforce. In addition, the Unit represents the related rule-making body, the Solid & Hazardous Waste Commission, to ensure that it complies with applicable statutory and regulatory procedural requirements, and gives precise legal advice to the Commission when needed. The Unit also handles civil and administrative litigation and assists the client in formulating litigation strategy, amassing evidence, preparing witnesses, and appearing in administrative, trial and appellate courts. The client has continued its recent trend of increasing litigation, especially relating to solid waste enforcement. Attorneys in the Unit assist in hazardous and solid waste rulemakings; the Solid Waste Regulations will be completely revised and re-promulgated over the next several years. Over the last three years, an average of 56 new matters were assigned to Unit attorneys. Over the same time period the number of matters in litigation has grown five-fold.

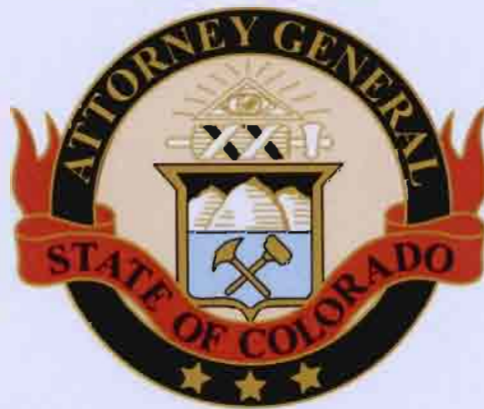
Oil & gas drilling brine waste facilities accounted for a disproportionate share of resources, requiring three civil actions and several unilateral orders. Violations have included forged laboratory reports, direct release of solid wastes to surface water bodies, failure to characterize contaminant plumes, unauthorized expansion, and refusal to pay applicable tipping fees. We have successfully concluded several actions and are preparing for one other not yet filed. Tire disposal and recycling facilities have also been problematic, accounting for two civil actions and appearance in a related bankruptcy matter. The waste tire facilities pose special risks from lightning-sparked fire; our efforts have focused on requiring financial assurance for closure and fire mitigation risk. The waste tire facility cases are complex in that the facilities are in bankruptcy, so negotiations are conducted between the State and groups of parties with conflicting interests. We have obtained preliminary injunctions at both sites, risks have been mitigated and we look forward to a successful transition to new and more responsible owners.

In addition to these solid waste cases, the Unit currently represents HMWMD in two hazardous waste cleanup cases, both of which are being litigated on administrative and judicial fronts; one of them is a parallel criminal / civil proceeding. Although usually prosecutorial, the HMWMD has found itself as a defendant in several matters. Recently, the Unit successfully defended new asbestos-in-soil regulations from a facial attack by the U.S. Air Force. Three years ago, Adams County appealed a hazardous waste Permit and a radioactive materials License issued by HMWMD to Clean Harbors Dear Trail (CHDT); the five lawsuits stemming from the effort to allow CHDT to accept low-activity radioactive materials.

Narrative

LSSA

Consumer Protection



I) BACKGROUND INFORMATION: OFFICE OF CONSUMER COUNSEL SECTION.

This Unit provides full legal services to the Office of Consumer Counsel (“OCC”), a type 1 agency within the Colorado Department of Regulatory Agencies, and the Utility Consumers’ Board. By statute, the OCC is charged with representing the public interest and specific interests of residential, small business, and agricultural consumers in proceedings before the Colorado Public Utilities Commission (“PUC”). Such advocacy most often involves matters relating to proposed changes in electric, gas, and telephone utility rates and services. In addition, the Unit represents the OCC in federal regulatory proceedings affecting Colorado consumers’ rates and services. See Legal Services to State Agencies for Program Summary.

II) PRIOR YEAR LEGISLATION

The Colorado Legislature in 2006, 2007 and 2008 passed the following legislation affecting energy regulation in Colorado:

HB 06-1281, Concerning the Establishment of a Program to Demonstrate the Use of Breakthrough Advanced Coal Technology to Promote Low-Emitting Coal-Fueled Electricity Generation;

SB 07-022, Concerning the Authority of the Public Utilities Commission to Consider the Needs of Low-Income Households When Setting Utility Rates for Energy;

HB 07-100, Concerning Measures to Ensure the Adequacy of Colorado’s electric Transmission Infrastructure, and, in Connection Therewith, Requiring Utilities to Designate Energy Resource Zones and Authorizing Expedited Cost recovery for the Construction of Transmission Facilities;

HB 07-1037, Concerning Measures to Promote Energy Efficiency, and Making an Appropriation Therefore;

HB 07-1281, Concerning Increased Renewable Energy Standards; and

HB 08-1164, Concerning the Advancement of New Solar Energy Technologies.

HB08-1227, Concerning the Public Utilities Commission, and, in Connection therewith, Continuing the Public Utilities commission under the Sunset Law

III) HOT ISSUES (for the OCC)

Governor Ritter, in November 2007, issued his Colorado Climate Action Plan, A Strategy to Address Global Warming. As a result of the Governor's Climate Action Plan, the above referenced legislation, and the PUC's rulemaking dockets to implement the legislation, the OCC has been heavily involved in numerous proceedings involving these issues. The largest of these dockets was Public Service Company of Colorado's ("Public Service") 2007 Colorado Resource Plan which identifies its electric resource needs through the year 2015. Utility resource need filings are made every 4 years but because of the rapid changes in the energy arena, Public Service is going to file another resource plan in 2009.

Public Service's electric resource needs for the 2007 Colorado Resource Plan were affected by the PUC's decisions in other dockets, which included Demand Side Management, Renewable Energy Resources, Interruptible Service Option Plan and various transmission plan applications. HB 07-1037 required the PUC to develop rules for natural gas and electric demand side management programs to develop natural gas and electric savings targets. Electric resource needs will be reduced by the implementation of these conservation measures. HB 07-1281 revised the electric resource standards by requiring electricity to be generated, for utilities under the PUC's jurisdiction, from eligible energy resources in the following amounts: 3% for the year 2007, 5% for the years 2008 through 2010, 10% for the years 2011 through 2014, 15% for the years 2015 through 2019 and 20% for the year 2020 and thereafter. (Municipal utilities and cooperative electric associations have smaller requirements.) The maximum retail rate impact to comply with these standards is 2% of the total electric bill annually for each customer. HB06-1281 (codified at 40-2-123) provides incentives for utilities to consider the use of "new clean energy and energy-efficient technologies" for its electric generation portfolio. For generation that qualifies as a 123 Resource, the utility is allowed to collect approved costs through a separate rate rider. The proceedings involving all of the above referenced legislation will be ongoing for many years.

Because of the rising energy costs, SB 07-022 was passed to assist low-income households who are having problems paying their utility bills. The first proposed pilot project to implement this legislation has been filed by Public Service with the PUC and will be decided later on in 2008.

IV) WORKLOAD MEASURE (for the OCC)

Workload Measure	Unit	FY 07 Actual	FY 08 Actual	FY 09 Estimate	FY10 Request
Achieve customer savings that at least equal the OCC's annual appropriation		3004% \$73,155,866	1870% \$43,228,113		
Percent of rate proceedings in which the OCC participated on behalf of consumers		100%	100%	100%	100%

OCC

Performance Measure	Outcome	FY 07 Actual		FY 08 Actual		FY 09 Estimate		FY 10 Request	
		Incidents	Change	Incidents	Change	Incidents	Change	Incidents	Change
Number of cases OCC participates	Benchmark	60		60					
	Actual	80		89					

Strategy: The Office of Consumer Counsel ("OCC") unit represents the Office of Consumer Counsel and therefore represents residential, small commercial and agricultural customers before the Public Utilities Commission.

Evaluation of Prior Year Performance: Because the cases the OCC unit participates is based on the filings done by electric, natural gas and telephone utilities, the OCC has no control on the number of cases worked on. However, by reviewing the savings chart above, the OCC has saved utility customers millions of dollars.

Key Workload Indicators: The key workload factor is the amount of customer savings. The number can fluctuate each year because it depends on the number and type of cases filed by utilities. For example, there are potentially more savings in years that a utility or multiple utilities file rate case cases.

FY 09-10
Budget
Schedules 2, 3 and 4
LSSA



SCHEDULE 2 - PROGRAM SUMMARY

Department of Law	LEGAL SERVICES TO STATE AGENCIES											
	Actual FY 07		Actual FY 08		Approp FY 09		Estimate FY 09		Request FY 10			
Item	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
PERSONAL SERVICES	16,096,817	188.7	17,682,126	195.3	19,819,145	214.8	18,307,881	214.7	-	-	18,307,881	214.7
General Fund	-	-	-	-	-	-	-	-	-	-	-	-
General Fund Exempt	123,870	-	-	-	-	-	-	-	-	-	-	-
Cash Fund	945,000	-	1,000,000	-	1,000,000	-	1,000,000	-	1,000,000	-	1,000,000	-
Reappropriated Funds	15,027,947	-	16,682,126	-	18,819,145	-	17,307,881	-	17,307,881	-	17,307,881	-
OPERATING EXPENSES	1,836,471	-	2,068,525	-	2,364,401	-	1,322,067	-	1,322,067	-	1,322,067	-
General Fund	-	-	-	-	-	-	-	-	-	-	-	-
General Fund Exempt	51,952	-	-	-	-	-	-	-	-	-	-	-
Cash Fund	-	-	-	-	-	-	-	-	-	-	-	-
Reappropriated Funds	1,784,519	-	2,068,525	-	2,364,401	-	1,322,067	-	1,322,067	-	1,322,067	-
INDIRECT COST ASSESSMENT	2,109,083	-	2,454,469	-	2,676,131	-	2,676,131	-	2,676,131	-	2,676,131	-
General Fund	-	-	-	-	-	-	-	-	-	-	-	-
Cash Fund	-	-	-	-	-	-	-	-	-	-	-	-
Reappropriated Funds	2,109,083	-	2,454,469	-	2,676,131	-	2,676,131	-	2,676,131	-	2,676,131	-
GRAND TOTAL	20,042,372	188.7	22,205,120	195.3	21,607,967	214.8	22,306,079	214.7	22,306,079	214.8	22,306,079	214.7
General Fund	-	-	-	-	-	-	-	-	-	-	-	-
General Fund Exempt	175,822	-	-	-	-	-	-	-	-	-	-	-
Cash Funds	945,000	-	1,000,000	-	1,000,000	-	1,000,000	-	1,000,000	-	1,000,000	-
Reappropriated Funds	18,921,550	-	21,205,120	-	20,607,967	-	23,859,677	-	21,306,079	-	21,306,079	-
Federal Funds	-	-	-	-	-	-	-	-	-	-	-	-

SCHEDULE 3 - PERSONAL SERVICES PROGRAM DETAIL

Department of Law Item	Actual FY 07		Actual FY 08		Approp FY 09		Estimate FY 09		Request FY 10	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
I. POSITION DETAIL										
Deputy Attorney General	441,134	3.9	477,086	4.0			496,872	4.0	496,872	4.0
Assistant Deputy Attorney General	119,712	1.0	131,646	1.0			135,528	1.0	135,528	1.0
First Assistant Attorney General	2,105,343	21.9	2,334,003	22.8			2,419,548	23.0	2,419,548	23.0
Senior Assistant Attorney General										
Assistant Attorney General II	3,591,126	43.3	3,568,970	39.7			3,915,864	42.3	3,915,864	42.3
Assistant Attorney General I	4,468,133	64.4	5,378,454	73.1			6,345,216	85.3	6,345,216	85.3
Attorney I										
Legal Assistant II	1,572,289	28.8	1,732,400	30.8			1,865,390	31.3	1,865,390	31.3
Legal Assistant I	152,280	3.9	122,550	3.0			127,104	3.0	127,104	3.0
Program Assistant I	33,120	1.0	34,608	1.0			36,384	1.0	36,384	1.0
Office Manager I	185,412	4.0	196,739	4.0			207,804	4.0	207,804	4.0
IT Technician II	14,515	0.3								
IT Technician I			15,167	0.3			17,219	0.3	17,219	0.3
Administrative Assistant III	224,578	5.9	208,635	5.4			238,068	6.0	238,068	6.0
Administrative Assistant II	310,744	10.3	318,438	10.1			391,896	12.0	391,896	12.0
TOTAL POSITION DETAIL	13,218,386	188.7	14,518,697	195.3			16,196,893	213.2	16,196,893	213.2

SCHEDULE 3 - PROGRAM DETAIL

Department of Law	Item	Actual FY 07		Actual FY 08		Approp FY 09		Estimate FY 09		LEGAL SERVICES TO STATE AGENCIES	
		Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
	(I.A) CONTINUATION FTE SALARY COSTS										
	(Permanent FTE by position)	13,218,386	188.7	14,518,697	195.3					16,196,893	213.2
	Continuation Salary Subtotal									16,196,893	213.2
	(I.B) OTHER PERSONAL SERVICES										
	PERA on Continuation Subtotal	1,322,849		1,440,554						1,643,985	
	Medicare on Continuation Subtotal	175,205		194,194						234,855	
	Non-Base Building Performance Awards									37,729	
	Part-Time/Temporary Salaries	233,785		210,391						20,000	
	Contractual Services	121,747		128,438						1,033	
	Overtime Pay	19,129		286						50,000	
	Termination/Retirement Payouts	54,548		45,007							
	Sick Leave Payouts			31,343							
	Unemployment Compensation			6,781							
	Transfer to Secretary of State										
	Other	16,622		23,050							
	Special Bills										
	SB 08-029 Architech Obtain Continuing Ed.					8,104	-	8,104		8,104	-
	SB 08-152 Occupational Therapy					9,725	-	9,725		9,725	-
	SB 08-153 Home Care Agencies by DPHE					2,593	-	2,593		2,593	-
	SB 08-200 Proh. Against Discrimination					54,066	0.5	54,066		54,066	0.5
	SB 08-219 Reg. of Massage Therapists					16,207	0.2	16,207		16,207	0.2
	HB 08-1058 Uniform Athlete Agents Act					6,808	-	6,808		6,808	-
	HB 08-1161 Mined Land Reclamation Brd					12,965	-	12,965		12,965	-
	HB 08-1226 CPA from another state					3,242	-	3,242		3,242	-
	HB 08-1227 PUC under the Sunset Law					38,896	0.3	38,896		38,896	0.3
	HB 08-1257 Veh. with an overweight divisible					9,801	-	9,801		9,801	-
	HB 08-1314 Gambling addiction counseling					2,579	-	2,579		2,579	-
	HB 08-1325 Non-immigrant Agricultural					3,890	-	3,890		3,890	-
	HB 08-1335 Finance Public School Facility					29,173	0.3	29,173		29,173	0.3
	HB 08-1353 Easement in the State					36,433	0.3	36,433		36,433	0.3
	HB 08-1383 Inactive Status for Nursing Lic.					648		648		648	
	Subtotal:					235,130	1.6	235,130		235,130	1.6
	Reappropriated Funds					235,130		235,130		235,130	
	Long Bill Appropriation					17,377,012	213.2				

SCHEDULE 3 - PROGRAM DETAIL

Department of Law Item	LEGAL SERVICES TO STATE AGENCIES									
	Actual FY 07 Total Funds	FTE	Actual FY 08 Total Funds	FTE	Approp FY 09 Total Funds	FTE	Estimate FY 09 Total Funds	FTE	Request FY 10 Total Funds	FTE
Annualization of Legislation										
SB 08-029 Architech Obtain Continuing Ed.								1,616		
SB 08-152 Occupational Therapy								2,593		
SB 08-153 Home Care Agencies by DPHE								2,596		
SB 08-200 Proh. Against Discrimination								(43,252)		(0.4)
SB 08-219 Reg. of Massage Therapists								5,834		-
HB 08-1058 Uniform Athlete Agents Act								(15,236)		
HB 08-1161 Mined Land Reclamation Brd								(7,779)		
HB 08-1226 CPA from another state								29,172		0.3
HB 08-1227 PUC under the Sunset Law								-		-
HB 08-1257 Veh. with an overweight divisible								(9,801)		
HB 08-1314 Gambling addiction counseling								(2,579)		
HB 08-1325 Non-immigrant Agricultural								(1,945)		
HB 08-1335 Finance Public School Facility								-		-
HB 08-1353 Easement in the State								(14,586)		-
HB 08-1383 Inactive Status for Nursing Lic.								(648)		-
Subtotal:								(54,015)		(0.1)
Reappropriated Funds	15,162,271	188.7	16,598,741	195.3			18,409,057		18,307,881	214.7
Subtotal -										
(I.C.) PERSONAL SERVICES										
SUBTOTAL= A+B										
(I.D.) POTS EXPENDITURES										
Health/Life/Dental	697,910		842,379		999,681		999,681			
Salary Survey	[788,130]		[604,749]		[561,112]		[561,112]			
Performance Awards			[217,748]		[235,803]		[235,803]			
Short Term Disability	14,803		18,658		20,339		20,339			
SB-04.257 A.E.D.	97,964		170,531		249,805		249,805			
SB 06.235 S.A.E.D.			35,761		117,341		117,341			
Other:			150							
[] Indicates a Non-add										
(I.E.) BASE PERSONAL SERVICES= C+D										
General Fund	15,972,947	188.7	17,666,220	195.3			19,796,223		18,307,881	214.7
General Fund Exempt										
Cash Funds	945,000		1,000,000				1,000,000		1,000,000	
Reappropriated Funds	15,027,947		16,666,220				18,796,223		17,307,881	
(I.F.) DIFFERENCE= II.I.E.										
								0		

SCHEDULE 3 - PROGRAM DETAIL

Department of Law	Item	Actual FY 07		Actual FY 08		Approp FY 09		Estimate FY 09		LEGAL SERVICES TO STATE AGENCIES	
		Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
	<i>HB 08-1383 Inactive Status for Nursing Lic.</i>										
	Roll Forward from Previous FY	123,870		45,612					648		
	Roll Forward to Subsequent FY	(45,612)		(22,922)					22,922		
	Year End Transfers										
	Overexpenditures (Reversions)										
	Lapsed Appropriation Cash Funds	(950,007)		(797,248)							
	Lapsed Appropriation Cash Funds Exempt										
	Lapsed Appropriation Reappropriated Funds										
	Other										
	Allocated POTS										
	Salary POTS	786,543		822,233					796,915		
	Health/Life/Dental	677,514		800,567					999,681		
	Short Term Disability	14,683		18,244					20,339		
	SB 04.257 A.E.D.	101,449		172,668					249,805		
	SB 06.235 S.A.E.D.			37,000					117,341		
	Pots Subtotal	1,580,189		1,850,712					2,184,081		
	Reconciled Total	16,096,818	199.9	17,682,126	205.7				19,819,145	214.8	
		16,096,817	188.7	17,682,126	195.3	17,612,142	214.8	19,819,145	18,307,881	214.7	
	II. PERSONAL SERVICES REQUEST										
	TOTAL										
	General Fund	-		-		-		-	-		
	General Fund Exempt	123,870		-		-		-	1,000,000		
	Cash Funds	945,000		1,000,000		1,000,000		1,000,000	1,000,000		
	Reappropriated Funds	15,027,947		16,682,126		16,612,142		16,612,142	17,307,881		
	Federal Funds	-		-		-		-	-		

SCHEDULE 3 - OPEF NG PROGRAM DETAIL

Department of Law Item	Actual FY 07				Actual FY 08				Approp FY 09				Estimate FY 09				Request FY 10			
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE		
OPERATING EXPENSES																				
1930 - Purchased Services - Litigation	94,340		85,477														91,049			
2170 - Waste Disposal Services	1,852		5,295														5,200			
2220 - Building Grounds Maintenance	5,003		15,342														7,000			
2230 - Equipment Contract Maintenance	792		2,279														2,000			
2231 - ADP Equip Maint/Repair Services	19,465		18,632														22,000			
2232 - Software Upgrades	122,562		165,839														180,000			
2240 - Motor Vehicle Repair/Maintenance	276		78														250			
2251 - Rental/Lease Motor Pool Veh	6,497		8,219														10,000			
2252 - Leased Vehicle - Variable	29,696		24,278														35,000			
2253 - Rental of Equipment	301		217														350			
2255 - Rental of Building	590,078		653,723														14,000			
2258 - Parking	11,010		10,260														120			
2259 - Parking Fee Reimbursement	32		29														550			
2510 - In State Travel	187		368														1,200			
2511 - IS Common Carrier Fares	377		403														9,000			
2512 - IS Personal Travel Per Diem	7,155		7,100														5,500			
2513 - IS Pers Vehicle Reimbursement	2,960		4,337																	
2514 - IS State Owned Aircraft	236																			
2530 - Out of State Travel	704		899														1,400			
2531 - OS Common Carrier Fares	5,533		4,021														7,500			
2532 - OS Personal Travel Per Diem	9,031		10,496														14,000			
2533 - OS Pers Vehicle Reimbursement	247																			
2630 - Comm Service Div of Telecom	121,865		127,514														155,000			
2631 - Comm Svcs from Outside Sources	5,254		5,514														10,000			
2641 - Other ADP Billing	184,885		206,813														225,000			
2660 - Insurance	28,150		27,900																	
2680 - Contract Printing	81,114		87,462														110,000			
2681 - Photocopy Reimbursement			129														250			
2820 - Other Purchased Services	8,230		19,161														25,000			
2830 - Office Moving-Pur Services	8,600																			
2831 - Storage-Purchase Services	399		120														200			
3110 - Other Supplies and Materials	294																			
3112 - Automotive Supplies	22,277		21,377														25,000			
3115 - DP Supplies	8,101		81,385														85,000			
3116 - Purchased/Leased Software	8																			
3117 - Educational	32,259		25,695														35,000			
3120 - Books & Subscriptions	35,936		42,506														50,000			
3121 - Office Supplies			40,090														45,000			
3123 - Postage																				

SCHEDULE 3 - OPERATING PROGRAM DETAIL

Department of Law	Item	LEGAL SERVICES TO STATE AGENCIES										
		Actual FY 07 Total Funds	FTE	Actual FY 08 Total Funds	FTE	Approp FY 09 Total Funds	FTE	Estimate FY 09 Total Funds	FTE	Total Funds	FTE	
	3124 - Printing	39,020					30,000				30,000	
	3128 - Non-Capitalized Equipment	3,805		747			-				-	
	3131 - Non-Capitalized Building Materials	74,736		119,221			-				-	
	3132 - Non Capitalized IT Purchases	90,106		24,221			-				-	
	3140 - Non-Capitalized IT - PC's	21,034		4,651			-				-	
	3141 - Non-Capitalized IT Servers	31,107		4,915			-				-	
	3143 - Non-Capitalized IT Other			42,906			-				-	
	4110 - Losses			500			-				-	
	4140 - Dues & Memberships	36,736		31,579			45,000				45,000	
	4151 - Interest - Late Payments			176			-				-	
	4180 - Official Functions			2,356			2,000				2,000	
	4220 - Registration Fees	13,471		22,492			30,000				30,000	
	6210 - ADP Equipment			23,425			-				-	
	6214- IT Other- Direct Purchase	21,803		10,998			15,000				15,000	
	6224- Other Furn & Fixtures- Direct Purch.	6,996		9,516			-				-	
	6480 - Other Cap. Equipment-Lease Furn						-				-	
	OPERATING EXPENSE SUBTOTAL	1,784,519		2,000,659		1,293,569	1,293,569				1,293,569	
	General Fund						-				-	
	General Fund Exempt						-				-	
	Cash Funds						-				-	
	Reappropriated Funds	1,784,519		2,000,659		1,293,569	1,293,569				1,293,569	
	FY10 DECISION ITEMS											
	NP #2 Operating Vehicle Increase											2,449
	Reappropriated Funds											2,449
	NP #3 DPA Central Services Postage Inc											4,052
	Reappropriated Funds											4,052
	ROLLFORWARDS											
	General Funds Exempt	51,952		67,866			-				-	
	Reappropriated Funds	51,952		67,866			-				-	
	SPECIAL BILLS											
	SB 08-029 Architech Obtain Continuing Ed.					900	900				900	900
	SB 08-152 Occupational Therapy					1,081	1,081				1,081	1,081
	SB 08-153 Home Care Agencies by DPHE					288	288				288	288
	SB 08-200 Proh. Against Discrimination					6,007	6,007				6,007	6,007
	SB 08-219 Reg. of Massage Therapists					1,801	1,801				1,801	1,801

SCHEDULE 3 - OPEF NG PROGRAM DETAIL

Department of Law	LEGAL SERVICES TO STATE AGENCIES											
	Actual FY 07		Actual FY 08		Approp FY 09		Estimate FY 09		Request FY 10			
Item	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
HB 08-1058 Uniform Athlete Agents Act			756		756		756		756		756	
HB 08-1161 Mined Land Reclamation Brd			1,441		1,441		1,441		1,441		1,441	
HB 08-1226 CPA from another state			360		360		360		360		360	
HB 08-1227 PUC under the Sunset Law			4,322		4,322		4,322		4,322		4,322	
HB 08-1257 Veh. with an overweight divisible			1,089		1,089		1,089		1,089		1,089	
HB 08-1314 Gambling addiction counseling			287		287		287		287		287	
HB 08-1325 Non-immigrant Agricultural			432		432		432		432		432	
HB 08-1335 Finance Public School Facility			3,241		3,241		3,241		3,241		3,241	
HB 08-1353 Easement in the State			4,048		4,048		4,048		4,048		4,048	
HB 08-1383 Inactive Status for Nursing Lic.			72		72		72		72		72	
Subtotal:			26,125		26,125		26,125		26,125		26,125	
Reappropriated Funds			-		-		-		-		-	
Potted Operating Expenses												
Workers' Compensation					35,515		35,515					
Leased Vehicle Expense					20,797		20,797					
Capital Complex Lease Space					627,964		627,964					
Lease Space					21,576		21,576					
IT Asset Maintenance					330,598		330,598					
Office Suite Upgrade					-		-					
ADP Capital Outlay					8,257		8,257					
Total					1,044,707		1,044,707					
Reappropriated Funds					1,044,707		1,044,707					
Annualization of Legislation												
SB 08-029 Architech Obtain Continuing Ed.											180	
SB 08-152 Occupational Therapy											288	
SB 08-153 Home Care Agencies by DPHE											289	
SB 08-200 Proh. Against Discrimination											(4,805)	
SB 08-219 Reg. of Massage Therapists											648	
HB 08-1058 Uniform Athlete Agents Act											180	
HB 08-1161 Mined Land Reclamation Brd											(865)	
HB 08-1226 CPA from another state											3,242	
HB 08-1227 PUC under the Sunset Law											-	
HB 08-1257 Veh. with an overweight divisible											(1,089)	
HB 08-1314 Gambling addiction counseling											(287)	
HB 08-1325 Non-immigrant Agricultural											(216)	
HB 08-1335 Finance Public School Facility											-	
HB 08-1353 Easement in the State											(1,621)	
HB 08-1383 Inactive Status for Nursing Lic.											(72)	

SCHEDULE 3 - OPERATING PROGRAM DETAIL

Department of Law

LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 07		Actual FY 08		Approp FY 09		Estimate FY 09		Request FY 10	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
Subtotal:										
Reappropriated Funds									(4,128)	(4,128)
OPERATING EXPENSE TOTAL:										
General Fund	1,836,471		2,068,525		1,319,694		2,364,401		1,322,067	
General Fund Exempt	-		-		-		-		-	
Cash Funds	51,952		-		-		-		-	
Reappropriated Funds	1,784,519		2,068,525		1,319,694		2,364,401		1,322,067	
Operating Expense Reconciliation										
Long Bill Appropriation	812,182		903,656							
Supplemental SB07-168	102,154									
Supplemental HB08-1290										
Special Bills -										
HB06-1222 Supplemental										
SB05-117 Supplemental										
S05-155 Regulation of Medication Admin										
HB05-1126 Reg Transport of Waste Tires										
HB05-1130 Ele Monitoring of Contro Subst										
HB05-1227 Entifies Lic for Place of Child										
SB06-20 Nurse License Compact	3,437									
SB06-114 Swine Bill	-									
SB06-230 RX Wholesale	9,624									
HB06-1046 Regulation of Private Occ. Sch/	3,652									
HB06-1085 Moneys in the Bldg. Reg.Fund	860									
HB06-1161 Regulation of Mortgage Broker	8,593									
HB06-1257 Noise Mitigation along Highway	1,000									
HB06-1274 Regulation of Pesticide Appl.	25,351									
HB06-1344 Colo Domestic Partner Benefits	11,295									
HB06S-1017 Empl. Verification Requiremer	1,128									
SB 07-025 Sexual Orient. Employmnt. Disc.			16,943							
SB 07-041 Public Sch Facilities Equity			1,695							
SB 07-083 Uniform Election Code			5,930							
SB 07-085 Protect Consumer Real Estate			13,554							
SB 07-107 License Landscape Architects			14,571							
SB 07-123 Reg. of Mechanical Convey.			4,880							
SB 07-137 Regulation of Plumbers			14,232							
SB 07-196 Health Information Tech			4,066							
SB 07-203 Mortgage Loan Transcations			19,766							
SB 07-210 Ethics Committee			40,662							

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SCHEDULE 3 - OPERATING PROGRAM DETAIL

Department of Law	LEGAL SERVICES TO STATE AGENCIES										
	Item	Actual FY 07 Total Funds	FTE	Actual FY 08 Total Funds	FTE	Approp FY 09 Total Funds	FTE	Estimate FY 09 Total Funds	FTE	Request FY 10 Total Funds	FTE
SB 07- 215 Online Learning				15,249							
SB 07- 216 Mortgage Loan Fraud				16,152							
SB 07- 261 Colo Econ Dev/Paying Staff				1,500							
HB 07- 1037 Energy Efficiency				6,777							
HB 07- 1065 Motor Carriers for Crim. History				2,169							
HB 07- 1228 Fuel Corp				813							
HB 07-1322 Mortgage Fraud Prevention				39,533							
HB 07- 1331 Medical Transparency				2,711							
HB 08- 1335 Finance Public School Facility				-							
HB 08- 1396 Impact of the Canterbury Tunnel				-							
SB 08-029 Architech Obtain Continuing Ed.								900			
SB 08-152 Occupational Therapy								1,081			
SB 08-153 Home Care Agencies by DPHE								288			
SB 08-200 Proh. Against Discrimination								6,007			
SB 08-219 Reg. of Massage Therapists								1,801			
HB 08-1058 Uniform Athlete Agents Act								756			
HB 08-1161 Mined Land Reclamation Brd								1,441			
HB 08-1226 CPA from another state								360			
HB 08-1227 PUC under the Sunset Law								4,322			
HB 08-1257 Veh. with an overweight divisible								1,089			
HB 08-1314 Gambling addiction counseling								287			
HB 08-1325 Non-immigrant Agricultural								432			
HB 08-1335 Finance Public School Facility								3,241			
HB 08-1353 Easement in the State								4,048			
HB 08-1383 Inactive Status for Nursing Lic.								72			
Allocated POTS:											
Vehicle Lease Payments	10,675		10,281					20,797			
Capital Complex Lease Space	572,619		614,454					627,964			
Lease Space	18,337		20,901					21,576			
Worker's Compensation	31,471		27,935					35,515			
IT Asset Maintenance	304,172		297,675					330,598			
Office Suite Upgrade								-			
Building Wiring & Security Upgrades	20,660		26,900					8,257			
ADP Capital Outlay								-			
Year-End Transfer	51,952		78,325					-			
Rollforward from previous FY	(78,325)		-					-			
Rollforward to Subsequent FY											
Overexpenditure/(Reversion)											
Lapsed Appropriation Cash Funds Exempt	(74,366)										

SCHEDULE 3 - OPERATING PROGRAM DETAIL

Department of Law

LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 07		Actual FY 08		Approp FY 09		Estimate FY 09		Request FY 10	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
Lapsed Appropriation Reappropriated Funds			(196,415)							
Other	1,836,471		2,068,534				2,364,401			
TOTAL					2,676,131		2,676,131		2,676,131	
INDIRECT COST ASSESSMENT										
General Fund	2,109,083		2,454,469		2,676,131		2,676,131		2,676,131	
Cash Funds	2,109,083		2,454,469		2,676,131		2,676,131		2,676,131	
Reappropriated Funds	2,109,083		2,454,469		2,676,131		2,676,131		2,676,131	
INDIRECT COST ASSESSMENT TOTAL										
General Fund	2,109,083		2,454,469		2,676,131		2,676,131		2,676,131	
Cash Funds	2,109,083		2,454,469		2,676,131		2,676,131		2,676,131	
Reappropriated Funds	2,109,083		2,454,469		2,676,131		2,676,131		2,676,131	
Indirect Cost Assess. Reconciliation										
Long Bill Appropriation	2,109,083		2,458,442				2,676,131			
Lapsed Appropriation Reappropriated Fund	-		(3,973)							
Other	2,109,083		2,454,469				2,676,131			
TOTAL										
GRAND TOTALS LSSA (PS, OP, IND)										
General Fund	20,042,372	188.7	22,205,120	195.3	21,607,967	214.8	24,859,677	214.8	22,306,079	214.7
General Fund Exempt	-		-		-		-		-	
Cash Funds	175,822		-		-		-		-	
Reappropriated Funds	945,000		1,000,000		1,000,000		1,000,000		1,000,000	
TOTAL	18,921,550		21,205,120		20,607,967		23,859,677		21,306,079	

SCHEDULE 4 - SOURCE OF FINANCING - DIRECT REVENUES

Department of Law	Item	Fund Number	LEGAL SERVICES TO STATE AGENCIES				
			Actual FY 2007	Actual FY 2008	Approp FY 2009	Estimate FY 2009	Request FY 2010
Schedule 3 Total							
General Fund			20,042,372	22,205,120	21,607,967	24,859,677	22,306,079
General Fund Exempt			-	-	-	-	-
Cash Funds			175,822	-	-	-	-
Reappropriated Funds			945,000	1,000,000	1,000,000	1,000,000	1,000,000
Federal Funds			18,921,550	21,205,120	20,607,967	23,859,677	21,306,079
			-	-	-	-	-
CASH FUNDS							
Various Sources of Cash						1,000,000	1,000,000
Fringe Benefits							
Estate Revenue			4,564	15			
Florence State Nursing Home			3,782	1,187			
Trinidad State Nursing Home			2,589	187			
Colo State VA Center-Homelake							
Walsenburg State Nursing Home			42				
Rifle State Nursing Home			148				
Service Director of Nursing Homes			712	387			
PERA							
Colorado Access Network			1,751	13,383			
Colorado Student Loan Program			10,941	28,677			
Student Obligation Bond Authority			16,764	11,655			
Correctional Industries			3,562	522			
Auraria Higher Education Ctr-Tabor Enterp			12,279	29,785			
State Fair Authority			23,319	18,591			
Revenue - Lottery			442,506	524,184			
Division of Wildlife-Enterprise			2,631	2,390			
Cumbres & Toltec RR			14,659	30,882			
Diability Insurance Trust			1,340	13,726			
SVC-State VA Center - Fitzsimmons			62,225	56,328			
AHEC			88,410	120,836			
State Board of Agriculture			5,911	6,392			
DOAG/Brand BD			68,154	43,193			
School of Mines			75,356	27,283			
UNC			118,463	78,980			
Adams State College			46,450	17,417			
Metro State College							

SCHEDULE 4 - SOURCE OF FINANCING - DIRECT REVENUES

Department of Law	Item	Fund Number	LEGAL SERVICES TO STATE AGENCIES					
			Actual FY 2007	Actual FY 2008	Approp FY 2009	Estimate FY 2009	Request FY 2010	
Law - Ref K.			13,019	9,326				
General Assembly (GA)			3,889	19,705				
Labor & Employment			479,232	567,361				
Local Affairs			116,338	198,647				
Military Affairs			1,656	1,082				
Natural Resources			2,112,677	2,340,800				
Personnel			249,518	343,350				
Risk Management			2,328,974	2,608,625				
Public Safety			143,873	145,705				
Regulatory Agencies			5,761,053	6,544,589				
Revenue			616,863	761,570				
Revenue - Gaming			117,124	141,349				
Secretary of State			335,668	297,603				
State Fair								
Transportation			1,110,279	1,208,884				
Treasury			38,700	53,266				
Rollforward								
Capital Construction Expenses								
Transfer to Fund Litigation Mgmt Fund in FY04								
Reversion of Excess Earnings to GF (CFE)								
Underearned Revenue								
Subtotal Reappropriated Funds			19,014,234	21,170,756			23,859,677	21,306,079

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