

JOINT BUDGET COMMITTEE



STAFF BUDGET BALANCING FY 2020-21

DEPARTMENT OF LAW

JBC WORKING DOCUMENT - SUBJECT TO CHANGE
STAFF RECOMMENDATION DOES NOT REPRESENT COMMITTEE DECISION

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CONTENTS

Summary of Staff Budget Balancing Recommendations for Long Bill	1
① Legal Services Rate	2
➔ Reduce Tobacco Litigation Appropriation.....	2
➔ Reduce MTCF Appropriations to POST	3
➔ R2 Administration Section Support	4
➔ BA1 POST Job Task Analysis	5
➔ R3 Data security and privacy.....	6
Summary of Other Recommendations and Options if Deeper Cuts are Required	8
➔ Reduce the Consumer Protection and Antitrust Unit by 3.7 FTE.....	8
➔ Eliminate CORA and OML Appropriation.....	9
➔ Reduce 1.0 FTE in the Office of Community Engagement	10
➔ Reduce Appellate Unit by 2.5 FTE.....	10
➔ Reduce Special Prosecutions Unit by 4.1 FTE.....	11
➔ Reduce the Federal Interstate and Water Unit by 1.9 FTE.....	12
➔ Eliminate Deputy District Attorney Training Funding.....	13
➔ Eliminate remaining MTCF for POST.....	13
20.0 Percent Reduction Option.....	15
➔ Reduce the Consumer Protection and Antitrust Unit by 11.5 FTE.....	15

HOW TO USE THIS DOCUMENT

The **first section** of this document includes a summary table showing:

- Committee action on Long Bill appropriations through March 16, 2020; and
- Staff recommended changes to Long Bill appropriations, assuming that General Fund appropriations in FY 2020-21 must be kept at approximately the same level as FY 2019-20 to bring the budget into balance. This recommendation is based on the Legislative Council Staff March 16, 2020, revenue forecast, assumes that the statutory General Fund reserve will be increased in FY 2020-21 as proposed by the Governor, and assumes that only the federal increase in the Medicaid matching funds rate will be available to help cover shortfalls.

The table is followed by descriptions of each change recommended by staff.

A **second section** of the document (if applicable) summarizes staff recommendations that require statutory changes. This may include appropriation reductions that cannot be implemented without a statutory change, changes that affect the amount of available General Fund (e.g., a transfer from a cash fund), or any other items that are not captured in the Long Bill appropriations table. The recommendations in the second section are also based on the assumption that General Fund appropriations in FY 2020-21 must be kept at approximately the level of FY 2019-20 to bring the budget into balance.

A **third section** of the document includes additional staff recommendations and options for the Committee to consider if deeper cuts are required. For purposes of this section, staff has assumed additional reductions of 10.0 to 20.0 percent in General Fund appropriations and transfers will be required to bring the budget into balance in FY 2020-21.

SUMMARY OF STAFF BUDGET BALANCING RECOMMENDATIONS FOR LONG BILL

DEPARTMENT OF LAW						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
FY 2019-20 APPROPRIATION						
SB 19-207 (Long Bill)	\$90,145,714	\$18,497,361	\$17,626,348	\$51,667,911	\$2,354,094	500.4
HB 20-1250 (Supplemental)	0	29,379	0	0	(29,379)	0.0
Other legislation	2,220,784	220,412	62,129	1,938,243	0	13.1
TOTAL	\$92,366,498	\$18,747,152	\$17,688,477	\$53,606,154	\$2,324,715	513.5
FY 2020-21 RECOMMENDED APPROPRIATION						
FY 2019-20 Appropriation	\$92,366,498	\$18,747,152	\$17,688,477	\$53,606,154	\$2,324,715	513.5
Annualize prior year budget actions	2,692,646	689,725	223,501	1,724,920	54,500	0.7
Annualize prior year legislation	898,715	(118,841)	575,967	435,873	5,716	3.9
Centrally appropriated line items	691,480	204,710	71,517	410,815	4,438	0.0
Indirect cost assessment	609,228	(58,791)	718,314	(59,717)	9,422	0.0
R2 Administration section support	353,274	0	0	353,274	0	3.0
Non-prioritized request items	301,831	(1,442)	(3,504)	306,528	249	1.6
R3 Data security and privacy	266,219	131,147	135,072	0	0	1.9
BA1 POST job task analysis	150,000	0	150,000	0	0	0.0
Technical adjustments	9,168	(174,152)	0	183,339	(19)	1.0
SUBTOTAL - JBC ACTION AS OF 3/16/20	\$98,339,059	\$19,419,508	\$19,559,344	\$56,961,186	\$2,399,021	525.6
Reduce tobacco litigation appropriation	(650,000)	0	(650,000)	0	0	0.0
Reduce MTCF appropriation to POST	(500,000)	0	(500,000)	0	0	0.0
Reverse R2 Administration Section Support of DOL	(330,624)	0	0	(330,624)	0	(3.0)
Reverse BA1 POST job task analysis	(150,000)	0	(150,000)	0	0	0.0
Reduce R3 Data security and privacy	(131,147)	(131,147)	0	0	0	(0.9)
TOTAL	\$96,577,288	\$19,288,361	\$18,259,344	\$56,630,562	\$2,399,021	521.7
INCREASE/(DECREASE)	\$4,210,790	\$541,209	\$570,867	\$3,024,408	\$74,306	8.2
Percentage Change	4.6%	2.9%	3.2%	5.6%	3.2%	1.6%

Note: Changes to staff recommendations for common policy items, including salary survey and provider rates, will be addressed in statewide policy packets.

LEGAL SERVICES RATE

JBC ACTION AS OF 3/16/20: The Committee approved a blended legal services rate of \$106.32, based on Committee actions on common policies and the Department of Law. This is the rate charged to client agencies for the provision of legal services. These funds are reflected in the Department of Law as reappropriated funds in the Legal Services to State Agencies division. Of these reappropriated funds, approximately 25 percent of funds originate as General Fund.

Balancing actions, such as the elimination of salary survey, are likely to reduce the legal services rate, leading to General Fund savings. *While the Committee has not yet taken any balancing actions*, the Department has provided an estimated savings based on the assumption that decision items, including salary survey, will no longer be approved. Should those actions be taken, there would be an estimated \$303,510 General Fund savings through the reduced legal services rate.

REDUCE TOBACCO LITIGATION APPROPRIATION

JBC ACTION AS OF 3/16/20: The Committee approved \$750,000 cash funds from the Tobacco Settlement Defense Account in FY 2020-21 for tobacco litigation.

RECOMMENDATION: Staff recommends the Committee reduce the appropriation for the Tobacco Litigation line item by \$650,000 cash funds, for a total appropriation of \$100,000 cash funds.

ANALYSIS:

Key Considerations: No immediate health, life, or safety impact/ Does not affect vulnerable population

Other Items of Note: The Tobacco Settlement Defense Account receives a percentage of Tobacco Master Settlement Agreement revenues, pursuant to the MSA allocation formula. Litigation needs have diminished since the signing of the 2018 agreement update. As a result, appropriations have been reduced and the fund balance in the account has grown. Staff will make an additional recommendation related to any excess fund balance during the discussion of Tobacco Master Settlement Agreement and Amendment 35 revenues, which will be presented to the Committee following the forecast on May 12.

Additional Background:

This line item supports the costs of outside counsel (Hale, Westfall, LLP) and other arbitration-related expenses. Department attorneys helped develop and continue to assist the non-participating manufacturer (NPM) enforcement program that is operated by the Department of Revenue. The Department of Law's efforts are essentially "on trial" before the arbitrators; attorneys from the Department of Law are likely to be called to testify during the arbitration proceeding. Thus, the Department is required to utilize outside counsel.

When the tobacco Master Settlement Agreement (MSA) was signed in 1998, participants recognized that the extra costs that the settlement imposed on participating manufacturers would place them at a competitive disadvantage when compared with manufacturers who have not joined the agreement. In an effort to level the playing field, the agreement required states to enact "qualifying statutes" that force NPMs to make payments into escrow accounts that are comparable to what they would have

paid had they participated in the agreement. House Bill 99-1208 added the qualifying statute to Colorado law. The MSA requires states to "diligently enforce" their qualifying statutes. If certain preconditions are met, states that do not diligently enforce the qualifying statutes may receive reduced settlement payments.

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

For FY 2019-20, the appropriation was reduced by \$300,000 cash funds to reflect reduced litigation needs resulting from a 2018 settlement. However, 2004 arbitration is still proceeding for other states. There is a chance that non-diligent state may raise a claim against Colorado as part of those proceedings, in which case the Department of Law may need outside counsel.

→ REDUCE MTCF APPROPRIATIONS TO POST

JBC ACTION AS OF 3/16/20: The Committee approved an appropriation of \$6.1 million cash funds for the Peace Officer Standards and Training Board Support line item, including the BA1 POST Job Task Analysis decision item. Of this amount, \$1,036,766 is from the Marijuana Tax Cash Fund (MTCF).

RECOMMENDATION: Staff recommends a reduction to the POST Board line item of \$500,000 cash funds from the Marijuana Tax Cash Fund.

Staff also recommends an associated fund source change for the Department of Public Safety (DPS). Currently, the DOL reappropriates \$150,000 to the Colorado State Patrol Training Academy. Staff is recommending that this be directly appropriated to DPS as cash funds rather than reappropriated from the DOL. The JBC staff analyst for the Department of Public Safety, as well as the Departments of Law and Public Safety, are in support of the fund source change. This would not change the level of funding for DPS.

ANALYSIS:

Key Considerations: No immediate health, life, or safety impact/Does not affect vulnerable population.

Other Items of Note: The program has had significant reversions in prior fiscal years. For FYs 2016-17 through 2018-19, the POST line item reverted an average of \$467,683 cash funds from the Peace Officer Standards and Training Board Support line item. POST Board Cash Fund revenues are sufficient to cover the total appropriation with a MTCF reduction.

Additional Background:

The P.O.S.T. Board was established as a result of the enactment of federal legislation requiring equal protection by jurisdictions that receive federal funding [Title VII of the Rehabilitation Act of 1973]. The P.O.S.T. Board consists of 24 appointed members, including the Attorney General, the Executive Director of the Colorado Department of Public Safety, the Special Agent in charge of the Denver Division of the Federal Bureau of Investigation, as well as representatives of local government, sheriffs, chiefs of police, peace officers, and the general public.

The P.O.S.T. Board is responsible for ensuring statewide consistency in the qualifications and training for peace officers. The Board thus certifies peace officers appointed by state and local law enforcement agencies, regulates peace officer training academies, and facilitates on-going training for all state peace officers by disbursing grants and providing training sessions specifically developed by the P.O.S.T. Board and staff [see Section 24-31-301 *et seq.*, C.R.S.]. Since FY 2014-15, the P.O.S.T. Board has received funding from two major sources:

- The P.O.S.T. Board Cash Fund, which consists of fees paid by applicants seeking certification as well as a \$1.00 vehicle registration fee (S.B. 14-123 raised the vehicle registration fee from \$0.60 to \$1.00 for FY 2014-15 and subsequent years), supports the P.O.S.T. Board and provides the majority of funding for the line item (\$5.3 million in FY 2017-18). In FY 2017-18, the General assembly added \$500,010 to support on-line training programs for peace officers statewide.
- Pursuant to S.B. 14-215, the Marijuana Tax Cash Fund, supported by taxes on marijuana, supports law enforcement training programs related to marijuana, including advanced roadside impaired driving enforcement training and drug recognition expert training. Senate Bill 14-215 appropriated \$1,168,000 and 1.0 FTE to the P.O.S.T. Board for such expanded training efforts in FY 2014-15, and that level was continued in the FY 2015-16 Long Bill. H.B. 15-1367 provided additional funding (\$200,000 General Fund from the Proposition AA Refund Account) to support the P.O.S.T. Board's marijuana-related activities in FY 2015-16. To align with ongoing needs, the FY 2016-17 appropriation reduced the marijuana-related training appropriation to \$750,000, which was continued in the FY 2017-18 appropriation. For FY 2018-19, \$286,766 was included as part of a decision item to consolidate marijuana appropriations in POST.

→ R2 ADMINISTRATION SECTION SUPPORT

JBC ACTION AS OF 3/16/20: The Committee approved \$330,624 reappropriated funds and 3.0 FTE in FY 2020-21 for additional staffing in the Administration Section.

RECOMMENDATION: Staff recommends the Committee not approve the R2 request, and reduce the appropriation for the Department by the amount previously approved.

ANALYSIS:

Key Considerations: New program (not yet fully implemented or new proposal for FY 2020-21)/ Refinance, so no program impact/ No immediate health, life, or safety impact/ Does not affect vulnerable population

Other Items of Note: This request is for reappropriated funds and drives an expected \$0.62 increase to the legal services rate. Approximately 25.0 percent of legal services payments originate as General Fund. Denying this request will result in a small General Fund savings.

Additional Background:

The Administration Section in the Department of Law includes the Department's Human Resources, Financial Services, and Operations and Budget units. These units are funded by departmental indirect costs to support the centralized services the units provide. Each of these units have experienced a significant increase in workload over the past decade, primarily due to new legislation and budget actions. In the past ten years, the Department's total budget has grown by over 100 FTE and \$40.5 million. During this time, there has not been an associated increase in the FTE that support the central office services.

The Department is requesting an FTE in each of the units listed above:

- 1.0 Purchasing Agent V for the Financial Service Unit
- 1.0 Budget Analyst III for the Operations and Budget Unit
- 1.0 HR Specialist V for the Human Resources Unit

→ BA1 POST JOB TASK ANALYSIS

JBC ACTION AS OF 3/16/20: The Committee approved \$150,000 cash funds from the P.O.S.T. Board Cash Fund in FY 2020-21 to conduct a Job Task Analysis (JTA) for Colorado peace officers.

RECOMMENDATION: Staff recommends the Committee not approve the BA1 request, and reduce the appropriation for the Department by the amount previously approved.

ANALYSIS:

Key Considerations: New program (not yet fully implemented or new proposal for FY 2020-21)/No immediate health, life, or safety impact

Other Items of Note: The POST Board Cash Fund currently has a fund balance of about \$1.1 million. Some of the fees that generate revenue into the fund are at levels set by the POST Board for training materials and certification exams. However, about 96 percent of the revenue comes from a \$1.00 vehicle registration fee. The Colorado Constitution restricts the use of any vehicle registration fees for a use other than the construction, maintenance, and supervision of the state's highways. Should the Committee deny this request, the \$150,000 will simply remain in the fund, and cannot be used for other balancing purposes. Additionally, these funds cannot be transferred to the General Fund because of the Constitutional restrictions.

Additional Background:

The Peace Officers Standards and Training (POST) Board is statutorily responsible for the approval, inspection, and regulation of all basic and reserve peace officer training programs, including the development of academy curriculum, instruction methodology training programs, and skills training programs.

In 2015, the POST Director requested an outside review of the POST program in order to determine if POST was meeting industry standards to provide recommendations for improvement. The review, conducted by the International Association of Directors of Law Enforcement Standards and Training (IADLEST), was completed in 2016. The report provided 11 final findings (with associated recommendations), which provided the foundation for the POST's strategic plan. That plan identified

29 specific strategies, including the provision of a Job Task Analysis, or JTA. The POST staff and board have been working to address the recommendations included in the report, including a budget request submitted (and approved) for FY 2017-18 to add 3.0 additional FTE. Of the 29 strategies identified, only two are not in process or completed, including the JTA.

The last time a Job Task Analysis, or JTA, was conducted was in 1993. While there is not an industry standard for the frequency of a JTA, the reviewer (IADLEST) recommends that a JTA be conducted every four to five years. With this request, the DOL would hire a vendor to perform a JTA on small, medium, and large law enforcement agencies in both urban and rural communities. The analysis would identify essential tasks performed in those agencies and assist with the development of an updated and legally defensible curriculum.

While the Department believes that the current curriculum is good, there could be a need to update the curriculum to better reflect the evolution of the law enforcement role since the last analysis in 1993. Using the data received from the JTA, POST intends to rewrite the academy curriculum and update training techniques to include problem based, experiential, and blended learning philosophies. The current instruction technique is heavily focused on lecture and test taking. An updated approach could include discussion-based and scenario-based learning. POST believes this will increase problem-based decision making capability, emotional intelligence, critical thinking, and interpersonal communication.

At the POST Board's quarterly meeting in September 2019, the Board voted to support the concept of the JTA, as well as the submittal of a budget request. The Department cites the support of the Board as crucial to the project, as the development of a new curriculum would impact training at every one of the 350 plus law enforcement agencies in the state.

→ R3 DATA SECURITY AND PRIVACY

JBC ACTION AS OF 3/16/20: The Committee approved an appropriation of \$266,219 total funds, including \$131,147 General Fund and \$135,072 cash funds, and 1.9 FTE, to enhance the Consumer Protection Section's investigation and enforcement efforts in the area of data security and privacy.

RECOMMENDATION: Staff recommends the Committee eliminate the General Fund included in the request. The cash funds (\$135,072 and 1.0 FTE) are for information only, as they are custodial dollars.

ANALYSIS:

Key Considerations: New program (not yet fully implemented or new proposal for FY 2020-21)/No immediate health, life, or safety impact

Other Items of Note: The General Assembly cannot appropriate custodial dollars. However, the Department of Law could choose to finance the requested General Fund FTE with Consumer Protection custodial dollars.

Additional Background:

House Bill 18-1128 (Protections for Consumer Data Privacy) requires entities that own, maintain, or license personal identifying information to disclose a security breach impacting 500 or more Colorado

residents to the Attorney General within 30 days of an breach. The Attorney General is authorized to investigate and prosecute the breach upon receipt of this notice.

At the time of the writing of the fiscal note for the bill, the Department suggested an “indeterminate” fiscal impact, as the DOL was unable to reasonably estimate the number of complaints that might be received. As a result, the following section was included in the final fiscal note:

Department of Law/Attorney General's Office. This bill increases workload in the Consumer Protection Section of the Department of Law, also known as the Attorney General's Office, to receive data breach notifications from covered and governmental entities that experience a breach of data. Because data breach notices are currently provided to the department on a voluntary basis, it is assumed that this workload increase will be minimal and can be accomplished within existing appropriations. Workload also increases to investigate and prosecute data breach computer crimes. The number of crimes requiring investigation is unknown and it is assumed the department will request an increase in appropriations through the annual budget process, if needed.

The Department has received over 120 data breach notices since the reporting obligation went into effect in September 2018, and expects this number to continue to increase. The Department indicates that this increase is due to a number of factors, including an increasing incidence of data breaches, increased consumer complaints related to data breaches, and a need for more aggressive enforcement. The Department reports that enforcement efforts have not been expanded greatly over the past year due to a lack of dedicated resources. Current investigations are being managed by diverting resources from other areas.

In response, the Department is requesting the addition of a 1.0 FTE Senior Assistant Attorney General and a 1.0 FTE IT professional. These positions would be filled with staff with specialized expertise in computer science and data security. Investigations tend to be complex and require technical expertise in computer science and computer forensics to determine the nature and scope of a given breach. Having staff with technical expertise will further facilitate such investigations. In addition to supporting enforcement efforts, the positions will work to provide education to consumers and businesses on best practices for cybersecurity. Further, the Department plans to increase investigative and enforcement efforts around data privacy. The Department estimates that 70.0 percent of the workload will be put toward enforcement, and 30.0 percent toward education.

The Department proposes funding the attorney (non-classified) FTE with General Fund and the IT professional (classified) FTE with custodial funds. This aligns with practice for funding other staff in the Unit. The Department believes it is important to fund attorney positions with General Fund because they believe it provides for greater integrity and public confidence in the Consumer Protection section by attorneys basing their work on public interest and statutory directives, and not financial or budgetary pressures. Additionally, the Department is requesting that these positions be hired above the minimum salary (at the minimum of the second quartile for the attorney and at the 75% quartile of the range for the IT Professional).

SUMMARY OF OTHER RECOMMENDATIONS AND OPTIONS IF DEEPER CUTS ARE REQUIRED

10.0-20.0 PERCENT REDUCTION SCENARIOS

Staff recommends that the Committee consider the following options based on a scenario in which General Fund appropriations and transfers must be reduced by 10.0-20.0 percent (or revenue increased by an equivalent amount) in FY 2020-21.

The Department's base General Fund appropriation in FY 2019-20 was \$18,747,152.

- A 10.0 percent reduction would be (\$1,874,715).
- A 20.0 percent reduction would be (\$3,749,430).

BUDGET BALANCING: 10.0 PERCENT REDUCTION				
FY 2020-21 EXPENSE	BILL? Y/N	NET GF IMPACT	OTHER FUNDS	FTE
Reduce the Consumer Protection and Antitrust Unit by 3.7 FTE	N	(\$427,898)	\$0	(3.7)
Eliminate CORA/OML appropriation	N	(101,717)	0	(1.0)
Reduce 1.0 FTE in the Office of Community Engagement	N	(56,175)	0	(0.9)
Reduce Appellate Unit by 2.5 FTE	N	(173,796)	0	(2.5)
Reduce Special Prosecutions Unit by 4.1 FTE	N	(563,750)	0	(4.1)
Reduce the Federal Interstate and Water Unit by 1.9 FTE	N	(212,698)	0	(1.9)
Eliminate Deputy District Attorney Training Funding	Y	(350,000)	0	0.0
Eliminate remaining MTCF for POST	N	0	(536,766)	0.0
Total		(\$1,886,034)	(\$536,766)	(14.1)

To reach a 20.0 percent reduction, all items in the above table are included, and additional reductions are recommended for the Consumer Protection and Antitrust Unit.

BUDGET BALANCING: 20.0 PERCENT REDUCTION				
FY 2020-21 EXPENSE	BILL? Y/N	NET GF IMPACT	OTHER FUNDS	FTE
Reduce the Consumer Protection and Antitrust Unit by 11.5 FTE	N	(\$2,171,120)	\$0	(11.5)
Total		(\$2,171,120)	\$0	(11.5)

➔ REDUCE THE CONSUMER PROTECTION AND ANTITRUST UNIT BY 3.7 FTE

JBC ACTION AS OF 3/16/20: The Committee approved an appropriation of \$3,957,873 total funds, including \$2,040,267 General Fund, and 36.1 FTE.

RECOMMENDATION/OPTION: Staff recommends reducing the Consumer Protection and Antitrust Unit by 3.7 FTE and \$427,898 General Fund. The DOL anticipates reducing this line by 3.0 Assistant Attorney General (AAG) FTE and 1.0 Senior AAG FTE. One of the AAG positions is currently vacant. The General Assembly cannot appropriate custodial dollars. However, the Department of Law could choose to finance the requested General Fund FTE with Consumer Protection custodial dollars.

ANALYSIS:

Key Considerations: Refinance opportunity/ No immediate health, life, or safety impact

Additional Background:

This line item supports two units that enforce provisions of the Colorado Consumer Protection Act [Section 6-1-101, *et seq.*, C.R.S.]. The Consumer Fraud Unit investigates and prosecutes traditional consumer protection matters such as fraudulent trade, and false advertising practices in a variety of areas, such as automobile repossession, health clubs, and manufactured homes. This unit also brings cases under the Charitable Solicitations Act and the Motor Vehicle Repair Act. With respect to Colorado cases, the Attorney General shares enforcement responsibilities with locally elected District Attorneys. In addition, the staff in this unit also participate in national or multi-state enforcement activities with their counterparts in Attorney General offices in other states and with the Federal Trade Commission.

The Antitrust, Tobacco, and Consumer Protection Unit handles several specialized consumer protection provisions, including enforcement violations of the No-Call List Act [Section 6-1-901, *et seq.*, C.R.S.] and all of the consumer protection laws designed to address mortgage and foreclosure rescue fraud¹. This unit is also responsible for exercising the Attorney General's exclusive jurisdiction to enforce civil and criminal provisions of the Colorado Antitrust Act [Article 4 of Title 6, C.R.S.]. This unit thus investigates and prosecutes price fixing, bid rigging, and mergers that would unreasonably restrain fair competition. This unit also participates in merger reviews in conjunction with the Federal Trade Commission where the industry at issue implicates statewide interests of concern to Colorado. Finally, pursuant to Section 24-31-402, C.R.S., this unit is responsible for enforcing the tobacco Master Settlement Agreement (MSA) and related tobacco laws [Section 39-28-201, *et seq.*, C.R.S.]. This unit thus monitors compliance with the numerous MSA injunctive terms and ensures that Colorado's interests are protected under the payment calculation provisions. This unit works with the Department of Revenue to enforce escrow payment obligations of non-participating tobacco manufacturers.

Finally, this line item currently supports the Deputy Attorney General for the Consumer Protection section.

→ ELIMINATE CORA AND OML APPROPRIATION

JBC ACTION AS OF 3/16/20: The Committee approved an appropriation of \$101,717 General Fund and 1.0 FTE for FY 2020-21.

RECOMMENDATION/OPTION: Staff recommends eliminating \$101,717 General Fund and 1.0 FTE. This is the total appropriation for the CORA and OML Attorney line item.

ANALYSIS:

Key Considerations: No immediate health, life, or safety impact/Does not affect vulnerable population

¹ The Department of Regulatory Agencies is responsible for handling licensing and disciplinary issues, while this Department handles false advertising and litigation issues.

Additional Background:

The General Assembly created this line item in FY 2015-16 to support an attorney dedicated to enhancing the Department's expertise with respect to the Colorado Open Records Act (CORA) and Open Meetings Law (OML). The position is specifically focused on CORA and OML legal issues and compliance to provide centralized expertise within the Department and to facilitate other agencies' CORA and OML compliance.

→ REDUCE 1.0 FTE IN THE OFFICE OF COMMUNITY ENGAGEMENT

JBC ACTION AS OF 3/16/20: The Committee approved an appropriation of \$941,963 total funds, including \$749,254 General Fund, and 9.0 FTE for the Office of Community Engagement.

RECOMMENDATION/OPTION: Staff recommends a reduction of \$56,175 General Fund and 0.9 FTE. This would eliminate a marketing and social media position within the Safe2Tell team in the Office of Community Engagement.

ANALYSIS:

Key Considerations: No immediate health, life, or safety impact/Does not affect vulnerable population

Additional Background:

Created in FY 2015-16, this line item supports statewide community engagement efforts, including 2.0 FTE added in the FY 2015-16 appropriation to lead a newly created Office of Community Engagement as well as 5.0 FTE dedicated to the Safe2Tell program (which had been funded as a separate line item prior to FY 2015-16). The office is charged with improving relationships with partner organizations and agencies regarding domestic violence prevention, consumer protection outreach and education, safe communities and safe schools, and anti-human trafficking efforts.

The Safe2Tell program provides students and the community with a means to anonymously report information concerning unsafe, potentially harmful, dangerous, violent, or criminal activities – or the threat of these activities – to appropriate law enforcement and public safety agencies and school officials. Safe2Tell also makes presentations to students and communities around the state to educate youth about the dangers of the “Code of Silence” which often keeps children from telling authorities of potential dangers. The appropriation includes \$15,000 cash funds from the Safe2Tell Cash Fund, from payments by school districts and other entities requesting educational materials from the Safe2Tell program. Beginning in FY 2017-18, the appropriation also includes \$19,750 total funds (including \$17,250 General Fund and \$2,500 cash funds from the Domestic Violence Fatality Review Board Cash Fund) to support the Colorado Domestic Violence Fatality Review Board created in S.B. 17-126 (Domestic Violence Fatality Review Board).

→ REDUCE APPELLATE UNIT BY 2.5 FTE

JBC ACTION AS OF 3/16/20: The Committee approved an appropriation of \$4,626,092 total funds, including \$4,122,275 General Fund, and 42.6 FTE in FY 2020-21 for the Appellate Unit line item.

RECOMMENDATION/OPTION: Staff recommends a reduction of \$173,796 General Fund and 2.5 FTE (1.0 AAG and 1.5 Fellows). The AAG position is currently vacant. This recommendation would eliminate the Fellow positions on September 30.

ANALYSIS:

Key Considerations: No immediate health, life, or safety impact

Additional Background:

This unit handles criminal appeals for the Department, representing the prosecution when a defendant challenges his/her felony conviction before the state appellate court or the federal courts. Most of the cases handled by this unit are in the Colorado Court of Appeals, with the remainder in the Colorado Supreme Court and the federal courts. This unit also prepares a weekly digest summarizing published cases to ensure that Appellate Unit attorneys and prosecutors throughout the state are informed about developments in criminal law and procedure.

→ REDUCE SPECIAL PROSECUTIONS UNIT BY 4.1 FTE

JBC ACTION AS OF 3/16/20: The Committee approved an appropriation of \$4,656,738 total funds, including \$2,272,075 General Fund and 38.8 FTE in FY 2020-21 for the Special Prosecutions Unit.

RECOMMENDATION/OPTION: Staff recommends a reduction of \$563,750 General Fund and 4.1 FTE. This option eliminates a Criminal Investigator position. Under this option, the DOL would move a Criminal Investigator and part of an attorney position to open positions in the Medicaid Fraud Control Unit and move 2.0 attorney positions to other positions in the Legal Services to State Agencies division.

ANALYSIS:

Key Considerations: No immediate health, life, or safety impact/Does not affect vulnerable population

Additional Background:

This unit investigates and prosecutes crimes in a number of areas, under the general authorization of Section 24-31-105, C.R.S., and other specific provisions of statute. This unit prosecutes cases through direct filings as well as the use of the statewide grand jury. This line item is supported by General Fund, cash funds, and reappropriated funds.

General Fund supports the investigation and prosecution of a wide range of crimes and activities, including:

- *Complex Crimes and Multi-jurisdictional Cases* – These cases would be difficult or impossible for local law enforcement personnel to pursue because local units lack the authority to investigate and prosecute crimes that occur outside of their jurisdiction. This includes a wide variety of criminal activity including: racketeering; domestic terrorism; identity theft; large check and credit card fraud schemes; methamphetamine rings; auto theft rings; mortgage and bank fraud; tax fraud; and human trafficking cases.
- *Criminal Activity by Gangs* – These are cases brought under the Colorado Organized Crime Control Act (which is similar to federal racketeering laws).

- *Environmental Crimes* – These cases involve environmental crimes related to hazardous waste, hazardous substances, water, and air.
- *Foreign Prosecutions* – A foreign national who commits murder or other crimes in Colorado and subsequently flees to Mexico may be prosecuted, convicted, and sentenced to prison in Mexico. These prosecutions require specialized knowledge and resources that are usually lacking in the offices of local district attorneys. This unit also assists in returning victims and witnesses from Mexico to Colorado to testify in court.

General Fund also supports the *Violent Crimes Assistance Team (VCAT)*, which provides investigative and prosecutorial support to local District Attorneys for active, cold-case, and death penalty-eligible homicides. The assistance must be requested by a local District Attorney and approved by the Attorney General. Cases are prioritized based on complexity and the unique expertise that the Department may provide. The team also handles appeals of death penalty convictions in both state and federal appellate courts, and provides training concerning complex homicide prosecutions and cold cases for prosecutors and investigators.

Cash funds provide exclusive support for the investigation and prosecution of *insurance and workers' compensation fraud*. Funding for the program comes from the Insurance Fraud Cash Fund. Reappropriated funds transferred from the Department of Regulatory Agencies' Division of Securities support the investigation and prosecution of *securities fraud*.

→ REDUCE THE FEDERAL INTERSTATE AND WATER UNIT BY 1.9 FTE

JBC ACTION AS OF 3/16/20: The Committee approved an appropriation of \$834,195 General Fund and 6.5 FTE for FY 2020-21 for the Federal Interstate and Water Unit.

RECOMMENDATION/OPTION: Staff recommends a reduction of \$212,698 General Fund and 1.9 FTE. This option includes eliminating an AAG FTE and repurposing a Senior AAG position to a vacant position in the Colorado River Unit.

ANALYSIS:

Key Considerations: No immediate health, life, or safety impact/Does not affect vulnerable population

Additional Background:

This unit protects the state's interests in the waters of interstate rivers, with respect to both interstate water allocation and federal environmental requirements, including, among others, the National Environmental Policy Act, the Endangered Species Act, and the Wild and Scenic Rivers Act. The major litigation currently within the unit involves the Rio Grande Compact, the Arkansas Compact, and the Republican River Compact. This unit also works with state water users to protect the state's interests in the timely and reasonable resolution of federal claims for water rights, including reserved water rights and claims for in-stream flows.

→ ELIMINATE DEPUTY DISTRICT ATTORNEY TRAINING FUNDING

JBC ACTION AS OF 3/16/20: The Committee approved an appropriation of \$350,000 General Fund for FY 2020-21 for the Deputy District Attorney Training Funding line item.

RECOMMENDATION/OPTION: Staff recommends eliminating this appropriation. Legislation would be required.

ANALYSIS:

Key Considerations: No immediate health, life, or safety impact/Does not affect vulnerable population

Additional Background:

The General Assembly created this line item in FY 2015-16 to continue appropriations originally provided through H.B. 14-1144 (District Attorney Training). House Bill 14-1144 provided \$350,000 General Fund to the Department of Law in FY 2014-15 to support additional training for local district attorneys' staff; the Department passes the money through to the Colorado District Attorneys' Council (CDAC) to support additional training activities. The General Assembly created this line item to support that funding on an ongoing basis.

→ ELIMINATE REMAINING MTCF FOR POST

JBC ACTION AS OF 3/16/20: The Committee approved an appropriation of \$6.1 million cash funds for the Peace Officer Standards and Training Board Support line item, including the BA1 POST Job Task Analysis decision item. Of this amount, \$1,036,766 is from the Marijuana Tax Cash Fund (MTCF).

RECOMMENDATION: Staff recommends eliminating the cash funds from the Marijuana Tax Cash Fund. This would expand the recommended reduction of \$500,000 MTCF presented earlier in this document.

ANALYSIS:

Key Considerations: No immediate health, life, or safety impact/Does not affect vulnerable population.

Additional Background:

The P.O.S.T. Board was established as a result of the enactment of federal legislation requiring equal protection by jurisdictions that receive federal funding [Title VII of the Rehabilitation Act of 1973]. The P.O.S.T. Board consists of 24 appointed members, including the Attorney General, the Executive Director of the Colorado Department of Public Safety, the Special Agent in charge of the Denver Division of the Federal Bureau of Investigation, as well as representatives of local government, sheriffs, chiefs of police, peace officers, and the general public.

The P.O.S.T. Board is responsible for ensuring statewide consistency in the qualifications and training for peace officers. The Board thus certifies peace officers appointed by state and local law enforcement agencies, regulates peace officer training academies, and facilitates on-going training for all state peace officers by disbursing grants and providing training sessions specifically developed by the P.O.S.T.

Board and staff [see Section 24-31-301 *et seq.*, C.R.S.]. Since FY 2014-15, the P.O.S.T. Board has received funding from two major sources:

- The P.O.S.T. Board Cash Fund, which consists of fees paid by applicants seeking certification as well as a \$1.00 vehicle registration fee (S.B. 14-123 raised the vehicle registration fee from \$0.60 to \$1.00 for FY 2014-15 and subsequent years), supports the P.O.S.T. Board and provides the majority of funding for the line item (\$5.3 million in FY 2017-18). In FY 2017-18, the General assembly added \$500,010 to support on-line training programs for peace officers statewide.
- Pursuant to S.B. 14-215, the Marijuana Tax Cash Fund, supported by taxes on marijuana, supports law enforcement training programs related to marijuana, including advanced roadside impaired driving enforcement training and drug recognition expert training. Senate Bill 14-215 appropriated \$1,168,000 and 1.0 FTE to the P.O.S.T. Board for such expanded training efforts in FY 2014-15, and that level was continued in the FY 2015-16 Long Bill. H.B. 15-1367 provided additional funding (\$200,000 General Fund from the Proposition AA Refund Account) to support the P.O.S.T. Board's marijuana-related activities in FY 2015-16. To align with ongoing needs, the FY 2016-17 appropriation reduced the marijuana-related training appropriation to \$750,000, which was continued in the FY 2017-18 appropriation. For FY 2018-19, \$286,766 was included as part of a decision item to consolidate marijuana appropriations in POST.

20.0 PERCENT REDUCTION OPTION

→ REDUCE THE CONSUMER PROTECTION AND ANTITRUST UNIT BY 11.5 FTE

JBC ACTION AS OF 3/16/20: The Committee approved an appropriation of \$3,957,873 total funds, including \$2,040,267 General Fund, and 36.1 FTE. This included \$131,147 and 0.9 FTE for the R3 Data Security and Privacy request.

RECOMMENDATION/OPTION: Staff recommends reducing the Consumer Protection and Antitrust Unit by 11.5 FTE and \$2,171,120 General Fund. This option eliminates all General Fund appropriations in the Consumer Protection Antitrust line item. This will eliminate the GF funding for this effort, including associated centrally appropriate item.

The General Assembly cannot appropriate custodial dollars. However, the Department of Law could choose to refinance some of these positions with Consumer Protection custodial dollars.

ANALYSIS:

Key Considerations: Refinance opportunity/ No immediate health, life, or safety impact

Additional Background:

This line item supports two units that enforce provisions of the Colorado Consumer Protection Act [Section 6-1-101, *et seq.*, C.R.S.]. The Consumer Fraud Unit investigates and prosecutes traditional consumer protection matters such as fraudulent trade, and false advertising practices in a variety of areas, such as automobile repossession, health clubs, and manufactured homes. This unit also brings cases under the Charitable Solicitations Act and the Motor Vehicle Repair Act. With respect to Colorado cases, the Attorney General shares enforcement responsibilities with locally elected District Attorneys. In addition, the staff in this unit also participate in national or multi-state enforcement

activities with their counterparts in Attorney General offices in other states and with the Federal Trade Commission.

The Antitrust, Tobacco, and Consumer Protection Unit handles several specialized consumer protection provisions, including enforcement violations of the No-Call List Act [Section 6-1-901, *et seq.*, C.R.S.] and all of the consumer protection laws designed to address mortgage and foreclosure rescue fraud. This unit is also responsible for exercising the Attorney General's exclusive jurisdiction to enforce civil and criminal provisions of the Colorado Antitrust Act [Article 4 of Title 6, C.R.S.]. This unit thus investigates and prosecutes price fixing, bid rigging, and mergers that would unreasonably restrain fair competition. This unit also participates in merger reviews in conjunction with the Federal Trade Commission where the industry at issue implicates statewide interests of concern to Colorado. Finally, pursuant to Section 24-31-402, C.R.S., this unit is responsible for enforcing the tobacco Master Settlement Agreement (MSA) and related tobacco laws [Section 39-28-201, *et seq.*, C.R.S.]. This unit thus monitors compliance with the numerous MSA injunctive terms and ensures that Colorado's interests are protected under the payment calculation provisions. This unit works with the Department of Revenue to enforce escrow payment obligations of non-participating tobacco manufacturers.

Finally, this line item currently supports the Deputy Attorney General for the Consumer Protection section.