Strategic Plan FY 13-14
Business & Licensing Section
Department of Law

MISSION: The Business and Licensing Section's mission is to provide the highest quality legal representation to regulatory boards, commissions, programs and governmental agencies.

Objective 1: Business and Licensing's ("B&L") attorneys shall serve as general counsel to the following clients to effectuate the shared goal of public protection: Department of Regulatory Agencies, Department of Agriculture, and the Independent Ethics Commission. B&L also serves as special counsel or conflicts counsel to other state agencies.

Goal 1: Attorneys shall provide timely, accurate and responsive legal advice to the agencies and boards.
Goal 2: Attorneys for all units shall identify general counsel and litigation needs of the agencies and boards and communicate those needs to supervisors and clients.
Goal 3: Attorneys for all units shall assist in rulemaking as needed or requested by the agencies.
Goal 4: When appropriate to the agency, attorneys shall develop and maintain internal tracking systems for informal attorney general opinions rulemaking, and legislation affecting the agencies.
Goal 5: Attorneys shall provide aggressive and effective legal representation of the board or other clients on all appeals of board or agency decisions.

Objective 2: The Assistant Attorneys General ("AAGs") within B&L shall develop subject matter expertise on issues relevant to the clients they represent.

Goal 1: The Section shall continue to implement the training protocols for new attorneys by pairing each new attorney with a First Assistant or mentor and by holding section-wide practice improvement sessions.
Goal 2: The Section shall maintain competence of all attorneys by participating in the evaluation process and the goal planning process with supervisors.
Goal 3 The attorneys shall attend Continuing Legal Education programs and other training relevant to their practice.
Goal 4: Supervisors shall improve legal advice to all agencies by identifying areas of law and practice where section wide consistency can be achieved, and shall implement tools to address consistency.

Objective 3: The section shall effectuate the client's goals through effective litigation by initiating actions in administrative court, State District Court, courts of appeal and other courts as necessary.

Goal 1: Attorneys shall effectively and efficiently litigate cases referred to the AGO.

Goal 2: Supervisors and team leaders shall provide an educational environment in which attorneys and staff may increase their substantive knowledge of the subject matter and develop litigation skills.
Goal 3: All units shall have policies in place to assure early attorney review and development of case strategies appropriate for all referred cases.
Goal 4: All units shall identify backlogs and have plans in place to effectively manage backlogs.
Goal 5: Units shall work with clients to continually educate investigators and staff regarding their role in managing evidence, affidavits and documentation supporting the legal elements that must be proved at hearing.

Objective 4: The B&L attorneys shall provide effective conflicts counsel to agencies as assigned.

Goal 1: Attorneys shall effectively advise the State Personnel Board in its adjudicatory role in actions that come before the Board, and provide rulemaking support and other advice as required.
Goal 2: Attorneys shall effectively advise the Civil Rights Commission in its adjudicatory role in actions that come before the commission, and provide rulemaking support and other advice as required.
Goal 3: Attorneys shall effectively advise the Mined Land Reclamation Board in its adjudicatory role in actions that come before the Board.

I) BACKGROUND INFORMATION: BUSINESS AND LICENSING SECTION

The Department of Regulatory Agencies

The Department of Regulatory Agencies ("DORA") houses several divisions. The AAGs enforce compliance with the law by prosecuting disciplinary actions against licensed professionals, by representing the programs in licensure denial actions, by litigating civil enforcement and subpoena enforcement actions, and by litigating injunctive actions. In addition to prosecuting individual cases, the attorneys provide general counsel advice regarding legislative and policy matters, rulemaking and case analysis. Examples include:

Division of Registrations*: B&L AAGs provide legal representation to regulatory boards, committees and programs within the Division of Registrations, the largest division within DORA. The professions regulated include accountants, acupuncturists, addiction counselors, architects, athletic trainers, barbers, cosmetologists, chiropractors, dentists, dental hygienists, electricians, engineers, land surveyors, landscape architects, hearing aid dealers, massage therapists, marriage and family therapists, midwives, nurses, nurse aides, nursing home administrators, occupational therapists, optometrists, outfitters, passenger tramways, physicians, physical therapists, plumbers, podiatrists, pharmacists, private investigators, professional counselors, psychologists, respiratory therapists, social workers, speech pathologists, registered psychotherapists, surgical assistants, surgical technologists, the nurse-physician advisory task force for Colorado health care ("NPATCH") and veterinarians. B&L AAGs also provide representation to the Division of Registrations in carrying out its oversight role for the Michael Skolnik Medical Transparency Act of 2010.

*The name of the Division of Registrations was changed to the Division of Professions and Occupations effective August 8, 2012. For consistency, the Division will be referred to as Division of Registrations in this Strategic Plan.

Division of Real Estate: The AAGs representing the Division of Real Estate provide legal counsel to the Colorado Real Estate Commission, the Board of Real Estate Appraisers, the Mortgage Loan Originator Board, and the Colorado Conservation Easement Oversight Commission. Unit attorneys provide each of these boards and commissions general counsel services. Unit attorneys also litigate on behalf of these clients in both state and administrative courts.

Division of Insurance: AAGs representing the Division of Insurance act as general and litigation counsel to the various sections of the Division of Insurance ("Division"). The Division regulates all matters regarding the business of insurance in Colorado, including health care insurance, health maintenance organizations, long-term care, Medicare supplement insurance, life insurance, and property and casualty insurance. The Division also regulates preneed funeral contracts and commercial bail bonding. Unit attorneys assist and advise on a wide variety of subject areas related to the regulation of insurance companies and their agents (insurance producers), including rulemaking, changes and amendments to the insurance laws, informal attorney general opinions of legal issues pertaining to insurance, open records requests, and consumer complaints. Unit attorneys are assisting the Division with new developments in the law regarding health insurance and significant changes in commercial bail bonding resulting from recent legislation. Litigation is conducted in administrative and district courts on behalf of the DOI against insurance companies and producers in cases involving insurance law violations and/or the unauthorized business of insurance. Unit attorneys also represent the Division in all matters involving third party litigation.

Division of Securities: AAGs representing the Division of Securities assist the client in the regulation of securities, broker-dealers, sales representatives, investment advisers, and investment adviser representatives and other related entities. Unit attorneys conduct litigation on behalf of the Division of Securities in administrative and district court against individuals, companies, and investment funds or entities that operate in violation of the Colorado Securities Act.

Division of Banking: The Division of Banking regulates state-chartered commercial banks, trust companies, and money transmitters. The AAGs provide legal representation and advice to the Board and the Division of Banking on such issues as involuntary liquidations of banks, merger and consolidation applications, and general legal advice including rulemaking.

Division of Financial Services: AAGs representing the Colorado Financial Services Board assist the client in the regulation of life care institutions, state-chartered credit unions, and state-chartered savings and loan associations.

Independent Ethics Commission

The AAGs representing the Independent Ethics Commission assist the Commission in carrying out its constitutional and statutory duties through the Commission's issuance of Position

Statements, Advisory Opinions and Letter Rulings relating to standards of conduct for government officials. AAGs also help the Commission in its constitutional duty to investigate and hold hearings on ethical complaints.

Department of Agriculture

The Business and Licensing Section provides general and litigation counsel to the Colorado Department of Agriculture and the Commissioner of Agriculture. This representation is provided by two full-time AAGs who represent and provide legal advice to the various divisions within the department including: the Animals Division, the Colorado State Board of Livestock Inspection, the Conservation Services Division, the Inspection and Consumer Services Division, the Plants Division, and the Markets Division. The AAGs also represent and advise the Colorado State Fair and several other marketing-related boards associated with the department. The AAGs assist the department in dealing with a myriad of complicated legal issues on a daily basis from livestock disease emergency quarantines, takings and destructions, to regulation of pesticide use, licensing of commodity handlers, certification of organic producers, and prevention of plant diseases, many of which involve complex interactions between state and federal law. The AAGs also assist with rulemaking, drafting of proposed legislation and the sunset review process.

Mined Land Reclamation Board

The Business and Licensing Section provides a General Counsel position that serves as permanent conflicts counsel to the Colorado Mined Land Reclamation Board ("MLRB"), a multi-interest citizen board that establishes the regulations, standards, and policies that guide the Division of Reclamation, Mining and Safety ("DRMS"). The MLRB implements the Colorado Mined Land Reclamation Act and is actively involved in the decision-making process for controversial permit issuance and enforcement actions.

Other Conflicts Counsel Clients

Business and Licensing also represents the Civil Rights Commission and the State Personnel Board. The Civil Rights Commission is a seven-member commission appointed by the Governor for four-year terms. The State Personnel Board includes five members serving five-year terms, three of whom are appointed by the Governor and two of whom are elected by members of the state personnel system.

II) PRIOR YEAR LEGISLATION:

Department of Regulatory Agencies

Division of Securities: The General Assembly passed HB 12-1005, which amended § 24-75-601.1, C.R.S., the statute which governs the types of securities in which public funds may be invested. Unit attorneys advise the Division regarding the impact of these amendments, and whether certain investment vehicles may be utilized by public entities investing public funds.

Division of Registrations: The General Assembly passed HB 12-1055, which renamed the Division of Registrations as the Division of Professions and Occupations and authorized the executive director to promulgate rules.

A number of programs underwent sunset review. Those programs include the Professional Review of Health Care Providers (e.g., Peer Review) (HB 12-1300), the Committee on Anti-Competitive Conduct (LLS No. 12-0357), and pharmacists and prescription drug outlets (H.B. 12-1311).

A program to regulate Speech-Language Pathologists was created by HB 12-1303, while the Hearing Aid Providers and Audiologists program underwent sunset review with HB 12-1205.

The General Assembly passed HB 12-1065 extending the deadline for Advanced Practice Nurses, with prescriptive authority (granted prior to July 1, 2010) to submit the attestation of Articulated Plan. The deadline was extended from July 1, 2011 to September 30, 2012.

The General Assembly changed the licensing requirements for Nursing Home Administrators with the passage of HB 12-091 and HB 12-1055.

Division of Real Estate: This year, the General Assembly passed House Bill 12-1110 which, commencing July 1, 2013, requires the regulation of Appraisal Management Companies. The Board of Real Estate Appraisers is charged with such regulation and will receive additional representation from the AG's office.

Division of Insurance: The General Assembly passed several bills impacting the Division of Insurance. Many of them will require either the drafting of new rules or amending existing ones. The legislation includes: HB12-1008 Homeowner's Insurance Additional Protections; HB12-1071 Portable Electronics Insurance; HB12-1266 Sunset Continue Bail Bond Regulation; HB12-1289 Handling of Auto Insurance Adverse Action Complaints; SB12-038 Protection for Consumers re Residential Roofing Work; SB12-110 Funding for AG Insurance Fraud Investigations. In addition, the Division will continue to implement the provisions of the Patient Protection and Affordable Care Act of 2009, the federal health care reform bill. New legislation will impact attorneys' legal services as the bills become effective and new cases develop.

III) HOT ISSUES:

Department of Regulatory Agencies

Division of Registrations: Examples of cases handled by the attorneys representing the various boards, committees and programs within the Division of Registrations include:

Colorado State Board of Pharmacy v. Loren M. Priem, Colorado Court of Appeals Case No. 11CA 0439: The applicant, formerly a licensed pharmacist in the State of Colorado, relinquished his license in February 2006 after he stole drugs from three

pharmacies where he worked as a licensed pharmacist during 2005. In 2009, following criminal convictions for these thefts, the applicant sought a license as a pharmacy intern. The applicant argued that his showing of rehabilitation at hearing required licensure. The Board's AAG successfully argued to the Court of Appeals that Colorado licensing law permitted the Pharmacy Board's consideration of pertinent circumstances underlying the applicant's felony conviction.

Colorado Medical Board v. David J. Schaut, M.D.: Schaut was a general physician who came to the attention of the Medical Board upon the filing of a complaint by a former patient. The patient alleged that after closing his pain clinic, Schaut met him in a parking lot of a local supermarket and provided him with prescriptions for narcotics. The physician made no records of these meetings. The Board's AAG filed a four-count complaint in the Office of Administrative Courts on behalf of the Board requesting a sanction of revocation. After a four-day hearing, the administrative law judge rendered her 49-page Initial Decision which ruled in favor of the Board. The final agency order revoked Schaut's license.

Colorado Medical Board v. Richard N. Hansen, M.D. Hansen engaged in inappropriate sexual contact with a patient during a medical exam. Based on this conduct, a formal complaint was filed in administrative court seeking revocation of Hansen's medical license. Subsequent investigation by the Office of Investigations also determined that Respondent had sexual relationships with patients in his office, at the hospital and in other settings. Under separate criminal charges filed by a district attorney, Hansen entered a guilty plea to Unlawful Sexual Contact, a class 4 felony. Hansen then permanently relinquished his medical license.

Colorado Medical Board v. Michael T. Parra, d/b/a Colorado Hematology-Oncology, P.C.: The Board summarily suspended the medical license of this hematologist oncologist after an expert opined that, for example, Parra misdiagnosed a patient and treated her for metastatic cancer without conducting a proper test. A Board expert also found that medications were prescribed without justification and contrary to FDA guidelines. Subsequently, Parra's record management staff discovered that Parra was attempting to alter and backdate the medical records identified as of concern to the Board. The Board's AAG filed a complaint for injunctive relief in Arapahoe District Court, which, upon a hearing, ordered Parra to cease practice and to cease making medical records. The AAG promptly filed formal charges against Parra's license, alleging substandard care and fraud in a 288 paragraph complaint. Parra relinquished his medical license and agreed to never reapply.

The Director of the Division of Registrations, Office of Massage Therapy Registration v. Kim Ziwak: The AAG representing the Colorado Office of Massage Therapist Registration brought his matter to hearing following an application by Ms. Ziwak to become registered in Colorado as a massage therapist. Ms. Ziwak sought registration following her previous conviction for keeping a house of prostitution. The Massage Therapy statutes explicitly list prostitution-related offenses as being grounds for denial of a license application. Following a trial on the merits, the Judge found in favor of the Director and upheld denial of the license application, finding that Ms. Ziwak failed to show rehabilitation. This matter is currently on appeal at the Colorado Court of Appeals.

The Board of Licensed Professional Counselor Examiners v. Edwin Shockney: AAGs representing the Board of Licensed Professional Counselor Examiners assisted the Board in obtaining an interim cessation of practice agreement, and then a permanent relinquishment of Respondent's license to practice professional counseling in Colorado after questions arose about the education credentials relied upon for licensure potentially being fake or from diploma mills.

State Board of Nursing v. Robert Kelly Costin, R.N.: Mr. Costin was an intake nurse at a pre-arraignment detention facility ("PADF"). He was responsible for providing nursing care and treatment to inmates at the PADF and for performing receiving screening/assessments for all inmates who arrive at the PADF. Mr. Costin failed to properly complete an initial screening, assessment, and documentation on an inmate who was recently discharged from the hospital after suffering a liver laceration, a closed head injury and cardiac contusion. Mr. Costin's license was revoked, following a hearing, for acting in a manner inconsistent with patient health and safety, substandard nursing practice and for documentation issues in his care of inmate patients.

State Board of Nursing v. Trischelle Sheeler, C.N.A.: Ms. Sheeler worked as a CNA at a home health service facility, providing care to elderly and disabled clients. Ms. Sheeler used an elderly patient's credit card to make personal purchases, leaving the patient with insufficient funds to cover a check written to his daughter. Ms. Sheeler's certification was revoked following a hearing, for misappropriation of patient property and for substandard care.

The State Board of Dental Examiners v. Stein, DDS: Dr. Stein signed an Interim Cessation Agreement with the Board on June 24, 2011, pending final disposition of this case. During the course of its investigation, the Board learned of information that indicated a potential threat to the public related to Dr. Stein's re-use of syringes and needles between patients. The Board authorized the OAG to refer the information to the appropriate agencies.

The State Board of Dental Examiners v. John A. Drazek, D.D.S. Dr. Drazek practiced on the Western Slope. He had moderate sedation privileges. In 2011, he failed to adequately assess, document, monitor, and manage a patient under moderate sedation and used excessive amounts of local anesthetic. He failed to document a contemporaneous anesthesia record. He entered into a series of interim agreements in lieu of cease and desist proceedings. This case was resolved with a stipulation and final agency order providing for restrictions to Dr. Drazek's practice, including a 7-day suspension, 12 months probation upon reinstatement, 12 months practice monitoring, continuing education, practice restriction preventing him from administering any anesthesia on the authority of his dental license, relinquishment of his moderate sedation privileges, and further restriction of his ability to reapply for any sedation permit or privilege.

The Director of the Division of Registrations v. Sheena Nicole Young-Pitcher, ST: Ms. Pitcher was a registered surgical technologist who was found to be "huffing" anesthesia gas while at work. She intentionally inhaled sevoflurane (an anesthetic agent) while working as a surgical technologist. Additionally, Ms. Young-Pitcher ingested amphetamine without a

prescription. Her registration was revoked following a hearing for excessive use and abuse of amphetamines and sevoflurane.

Board of Architects, Professional Engineers, and Professional Land Surveyors v. H. Gary Howell: The Board of Architects, Professional Engineers, and Professional Land Surveyors initiated disciplinary proceedings against professional engineer H. Gary Howell. The Board alleges that Mr. Howell failed to meet generally accepted engineering practice standards; failed to protect public safety, health, property, and welfare; and failed to exercise appropriate skill, care, and judgment in the application of building codes in his structural engineering work on the Meeker Elementary School. The school was closed pending repair of the structural issues. The Board is seeking a two-year suspension of Mr. Howell's license, during which time he would be required to complete continuing education in engineering ethics and pass the structural engineering examination. Mr. Howell has agreed to cease practice until the conclusion of the administrative proceedings.

Division of Real Estate: Examples of cases handled by the AAG's representing the Division of Real Estate and programs within the Division include:

Colorado Real Estate Commission v. Dyson: The Commission referred this case to the OAG based on its investigation of a complaint that Mr. Dyson unlawfully purchased a home at a foreclosure auction that was previously owned by his seller client. According to the investigation, Mr. Dyson received an offer for the property on behalf of his client to buy the property but he failed to relay the offer to the lender. AAGs obtained a favorable settlement for the Commission in which Mr. Dyson agreed to a six month license suspension, two years of supervision, thirty-six hours of coursework, a $5,000 fine and a public censure.

Colorado Board of Mortgage Loan Originators v. David Nelson and Jason Lyon: Mr. Nelson's and Mr. Lyon's company was approved by HUD to originate FHA loans in 2008. After Mr. Nelson and Mr. Lyon obtained this approval, they allowed originators who were not employees of the company, and therefore not approved by HUD to originate FHA loans, to take loan applications for the company. Mr. Nelson or Mr. Lyon would then list themselves as the originator on the loan applications and documents to submit the loan for approval. They would pay a portion of the income received from the closed loans back to the originators not approved to originate the FHA loan. AAGs negotiated strong settlements in both cases. Mr. Nelson agreed to relinquish his mortgage loan originator license, with a $4,000 fine due should he ever reapply for licensure. Mr. Lyon agreed to a $4,000 fine for his actions.

Colorado Board of Mortgage Loan Originators v. Benjamin Haynes: AAGs obtained a permanent injunction against Mr. Haynes for his unlicensed mortgage loan originator activities in which Mr. Haynes offered mortgage loan services and held himself out as a mortgage broker through his company, Advisory Consulting. He solicited clients on mortgage loan websites, convinced clients to give him money upfront, failed to provide any services, and would subsequently disappear.

Colorado Board of Mortgage Loan Originators v. Jill Evans: Ms. Evans was a licensed mortgage loan originator who was referred to the OAG by the Director of the Division of Real Estate after the Board of Mortgage Loan Originators voted to summarily suspend her license. Ms. Evans was taking large sums of money from clients for loans she never delivered and aggressively advertising for new clients with no regard for advertising regulations. After extensive settlement negotiations, a settlement was finalized in which Ms. Evans agreed to pay restitution in the amount of $24,225.00 to victims and pay an administrative fine of $10,000.00 to the Board.

Colorado Real Estate Commission v. Sherry Jefcoat: The Division of Real Estate received multiple reports that Sherry Jefcoat and her business Legend Property Management & Real Estate Services, LLC, were collecting rent on behalf of landlords and cheating the landlords. The landlords lost thousands of dollars as a result of the misconduct of Sherry Jefcoat and Legend. The Commission summarily suspended Mr. Jefcoat's license. Thereafter, AAGs obtained an Initial Decision ordering revocation of Ms. Jefcoat's license and payment of a $15,000 fine.

Colorado Real Estate Commission v. Matthew Sysum: Matthew Sysum, a licensed real estate broker, was referred to this office by the Real Estate Commission for his failure to establish proper broker-client relationships, failure to give proper disclosures to the parties in a real estate transaction, and his failure to properly handle contingency contracts. The Commission investigated Mr. Sysum's purchase of three properties, either on his own or through an associated company. Mr. Sysum almost immediately resold each of the properties to a group of investors. AAGs successfully settled this case with Mr. Sysum agreeing to pay a $2,000 fine, complete 24 hours of education, and a 3 year probationary license where he is only permitted to act under the supervision of an employing broker.

Colorado Real Estate Commission v. James Elterman: AAGs successfully negotiated a settlement regarding Mr. Elterman's real estate broker license after Mr. Elterman entered a guilty plea to a violation of the Colorado Organized Crime Control Act, a class 2 felony, and professional gambling, a class 1 misdemeanor.

Division of Insurance: Significant cases handled by the Insurance Unit include:

Farmers Insurance: Insurance Unit attorneys successfully settled litigation in Denver District Court and the Court of Appeals involving three Farmers entities. The cases involved issues related to the entities' workers compensation business in Colorado. The Division obtained payment of a $206,000 civil penalty and the entities' agreement to fully comply with the Division's interpretation of insurance statutes and regulations pertaining to workers compensation.

Minnesota Surety & Trust: Insurance Unit attorneys worked with the Division of Insurance to aggressively pursue the license revocation of Minnesota Surety and Trust Company ("Minnesota Surety") based on its wrongful acts in the State of Colorado, including falsifying thousands of documents and wrongful signatures and misrepresentation undertaken by Minnesota Surety in its attempt to avoid adverse findings in a pending market conduct examination. In November of 2011, the Attorney General's Office in Minnesota, relying on

the work done by the Colorado AG Insurance Unit and the Division, filed a motion for liquidation of Minnesota Surety. Minnesota Surety agreed to the liquidation in a Consent Order it entered into with the Minnesota Department of Commerce. The primary basis for the liquidation of Minnesota Surety were the law violations and findings made in Colorado as a result of the work done by the Insurance Unit and the Division.

Alliant Title Insurance Company: The Division conducted a market conduct examination ("MCE") of Alliant Title Insurance Company ("Alliant"). At the conclusion of the MCE the Division determined that Alliant violated numerous provisions of Colorado Insurance law. The Commissioner adopted the content of the report and issued a Final Agency Order. Alliant threatened protracted litigation in Denver District Court and the Court of Appeals. Members of the Insurance Unit, Division staff and the Commissioner negotiated non-stop with Alliant and counsel for Alliant resulting in a resolution in which Alliant conceded on all disputed legal issues, solidified the Division's position on law violations and did not compromise consumer protection issues. The settlement was completed on the night before the litigation would have to have been filed.

The Unit's attorneys are assisting the Division with its implementation of the new federal health care reform act as the Division scrutinizes insurance premiums and rate filings. In addition, the attorneys are assisting the Division with restructuring commercial bail bond business with new licensing requirements and major amendments to all existing regulations affecting commercial bail bonding.

Division of Securities: The AAGs representing the Division of Securities handled a significant number of complex civil matters. For example:

In the Matter of E*Trade Securities: Unit attorneys represented the Staff of the Division of Securities in bringing a license discipline action in the Office of Administrative Courts against E*Trade Securities ("E*Trade") based upon their fraudulent offer and sale of auction rate securities ("ARS"). Unit attorneys prevailed in a trial on the merits, and obtained a finding that E*Trade failed to make material disclosures regarding certain risks associated with ARS, and failed to adequately supervise their sales representatives. With the Administrative Law Judge recommending a one year suspension of E*Trade's broker-dealer license in Colorado, attorneys in the unit negotiated a settlement between the Division of Securities and E*Trade that required E*Trade to buy back all outstanding ARS from their customers nationwide, plus reimburse Colorado for its attorneys fees and pay $5 million in fines to be allocated among numerous states investigating E*Trade. As a result of the settlement, over $137 million was returned to investors nationwide through buybacks, reimbursements to investors who sold below par value, and reimbursement of other funds to investors.

Mieka v. Joseph: Unit attorneys prosecuted a cease and desist action against Mieka Corporation, Daro Blankenship, and Stephen Romo based on their illegal offer of securities to a Colorado investor. Following a hearing on the merits, the Colorado Securities Board issued an order (affirmed by the Securities Commissioner) directing the Respondents to cease and desist from acting in violation of the Act. The Respondents sought an appeal, arguing that the investments themselves (joint venture/general partnership interests in oil and gas

wells) were not securities under Colorado law. The Colorado Court of Appeals issued a published opinion finding that the record supported a finding that the joint venture interests were securities based on the "economic realities" of the investment, including the fact that the investments lacked many of the hallmarks of a true general partnership, and other evidence that revealed that the promoters retained substantial pre-investment control over the direction of the investment.

In the Matter of Tony Hartman et al.: Unit attorneys prosecuted a license discipline action against Tony Hartman, VFG Securities, and VFG Advisors based upon extensive unlicensed activity by Hartman in Colorado. Based upon a settlement in the case, Hartman will not be permitted to obtain licensure in Colorado as a broker-dealer, sales representative, investment adviser, or investment adviser representative in the future. VFG Securities and VFG Advisors will also be required to withdraw their licensure from Colorado, and will reimburse Colorado investors for the fees obtained in conjunction with the unlicensed activity.

In addition to traditional injunctive litigation, AAGs representing the Division of Securities are actively managing a number of cases where a receiver has been successfully sought by the DOS to seize investment funds, including Mueller Capital Management, Wealth Systems International and the DelGreene family of funds, Secured Financial Group and the Integrity Funds, Southern Financial Corporation and the Secured Real Estate Lending Fund, Mark Jackson, Dharma Investment Group and the Dharma family of entities, Yost Company, Valley Investments, as well as XL Capital and the Vision and Velocity Funds.

Division of Banking: As outlined below, AAGs representing the Division of Banking successfully obtained two protective orders and worked with the Banking Board staff and the FDIC to close three banks in July 2011.

Colorado Capital Bank, Douglas County Colorado: On July 8, 2011, Fred Joseph, the Acting Colorado State Bank Commissioner, with the approval of the Colorado State Banking Board, took emergency action to close Colorado Capital Bank and appoint the FDIC as receiver for the purpose of liquidating the bank. Colorado Capital Bank was a $718 million State bank with six branches.

Signature Bank, Weld County, Colorado: On July 8, 2011, Fred Joseph, the Acting Colorado State Bank Commissioner, with the approval of the Colorado State Banking Board, took emergency action to close Signature Bank and appoint the FDIC as receiver for the purpose of liquidating the bank. Signature Bank was a $67 million State bank with one full-time branch. On July 15, 2011, a director of the bank filed an application with the Banking Board to rescind this action. This application was withdrawn on August 22, 2012, after prehearing briefs were filed.

Bank of Choice, Weld County, Colorado: On July 22, 2011, Fred Joseph, the Acting Colorado State Bank Commissioner, with the approval of the Colorado State Banking Board, took emergency action to close Bank of Choice and appoint the FDIC as receiver for the purpose of liquidating the bank. Bank of Choice was a $1.1 billion State bank with 17 branches.

First Bank & Trust Company v. Bumgarner: First Bank and Trust is the successor in interest to Colorado Capital Bank, which was closed on July 8, 2012 as described above. First Bank and Trust brought a suit to collect an unpaid debt of Defendant Bumgarner. Defendant Bumgarner served a subpoena on the State Bank Commissioner. On March 31, 2012, the Douglas County District Court issued a protective order barring discovery of bank examination reports and other non-public supervisory information that is required to be kept confidential pursuant to sections 11-102-305 and -306, C.R.S. After Defendant filed a motion to compel the bank holding company to disclose this same information, the State Bank Commissioner intervened. On June 20, 2012, the Judge entered a second protective order. The Defendant continues to seek the protected information from other sources and additional legal action may be required.

Independent Ethics Commission: This past fiscal year, the IEC issued numerous Advisory Opinions and were assisted by AAGs in doing so. Some of the more notable advisory opinions for this year include opinions regarding conflicts of interest in hiring, reimbursement of travel expenses by for profit and not for profit entities and waiver of registration fees at conferences. AAGs also assisted the Commission resolve complaints and represented the Commission during hearings.

Department of Agriculture: Significant cases handled by AAGs representing the Department of Agriculture include:

Stulp v. Schuman: The Bureau of Animal Protection intervened in a livestock neglect and cruelty case in which over twenty head of livestock were severely malnourished, sick, dehydrated, and dying; one had to be euthanized on-site. CDA petitioned the Logan County District Court for possession of the livestock and temporarily restrained the owner from owning, possessing, managing, or otherwise tending livestock in Logan County through and to a hearing for a permanent injunction. The permanent injunction enjoining the owners from owning, managing or controlling livestock in Logan County was issued July 22, 2011. Defendant has appealed this decision, arguing a district court has no authority to restrain activity that is otherwise legal. Oral arguments regarding the scope of the injunctive authority of the district court are set for August 8, 2012.

Stulp v. Wagner, et al: The Bureau of Animal Protection intervened in a second livestock neglect and cruelty case in which over 150 head, in a 1,200-head herd, were found deceased, having become malnourished and ultimately perishing in the winter's elements in Park County. In 2010, the Department sought possession of the entire herd, removed 379, sold that herd, and negotiated a temporary restraining order to uphold the status quo of the remainder of the herd pending a trial on whether Mr. Wagner should be permanently restrained from owning, possessing, managing, or otherwise tending livestock in Park County. From December 5 through 9, 2011, the Department's AAGs argued in Park County District Court that Mr. Wagner's pattern and practice of ranching was unsustainable and would lead only to further livestock death and disease. At the close of the trial, the district court judge granted the Department the injunctive relief it sought, restraining Mr. Wagner from owning, possessing, or managing cattle in Park County, Colorado. Mr. Wagner has retained new counsel and filed a Notice of Appeal.

Weinroths v. Colo. State Fair: At the close of the 2011 State Fair Junior Livestock Sale, two goats owned and shown by Benjamin and Margaret Weinroth were disqualified after testing positive for prohibited substances. The Weinroths were given the opportunity to contest their disqualification in a formal administrative hearing, but instead chose to resolve the matter through mediation with a confidential settlement.

Mined Land Reclamation Board: Significant cases handled by General Counsel for the MLRB include:

Cotter Corporation v. MLRB and the Division of Reclamation, Mining and Safety: Cotter Corporation holds a reclamation permit for the Schwartzwalder Mine, an inactive uranium mine in Jefferson County. The mine is located near Ralston Creek. Ralston Creek flows into Ralston Reservoir, which is a drinking water source for Denver, Arvada and other communities. Cotter ceased production at the mine in 2000. When it was active, Cotter dewatered the mine. After mining ceased, the mine was allowed to fill with water, eventually reaching a level at least twenty-five feet above the level of Ralston Creek. After a hearing, the MLRB found Cotter that the level of the mine water is creating a hydrologic gradient toward Ralston Creek, allowing mine water to pollute it. The MLRB found Cotter in violation of the Mined Land Reclamation Act for failing to minimize disturbances to the hydrologic balance, failing to handle toxic-forming material to protect the drainage system from pollution, and failing to protect areas outside of the affected land from damage. The MLRB ordered Cotter to begin dewatering the mine, treat the water removed, and pay a $55,000 civil penalty. The MLRB subsequently found Cotter had taken no action to comply with its order; the Board issued Cotter a cease and desist order and levied an additional $39,000 civil penalty. Cotter filed an appeal of both the Board's initial order and its cease and desist order. After extensive briefing, the court affirmed the Board's orders, rejecting all of Cotter's arguments and finding that the initial order and cease and desist order were reasonable, proper and supported by substantial evidence. Cotter filed an appeal of the District Court's orders with the Court of Appeals.

State Personnel Board:

Colorado Department of Human Services v. Maggard: The AAG for the Personnel Board successfully argued this matter before the Colorado Supreme Court, resulting in an affirmation of the straightforward and efficient standard of review applicable to appeals from Personnel Board decisions. The Personnel Board AAG's also assisted with rulemaking related to procedures applicable to state employees in the classified system.

IV) WORKLOAD MEASURE:

WORKLOAD INDICATORS

As a result of DORA's increased use of the Expedited Settlement Program within the Division of Registrations and Division of Real Estate, cases not requiring referral for legal services have

been resolved within the agency. Consequently, the cases that have been referred to the Office of the Attorney General have been more complex and contentious. Consistent with the client's expectation, AAGs have continued to aggressively file or resolve most cases within a one-year period of time. AAGs have responded to this goal without compromising their commitment to prioritize the most egregious cases and promote public protection. Furthermore, the ongoing mortgage crisis has resulted in increased litigation surrounding the regulation of mortgage loan originators. Under HB 10-1141 enforcement authority shifted to a Board model, as well as to Department of Regulatory Agencies oversight. As has been the case for the past few years, substantial state and federal statutory and regulatory changes to the Mortgage Loan Originator Program have required a significant amount of legal time to be allocated to the drafting and review of newly promulgated rules and position statements.

Strategic Plan FY 13-14
Revenue and Utilities Section ("R&U")
Department of Law

MISSION: R&U's mission is to provide responsive and proactive legal representation of the highest quality to its clients.

The Department of Law created this new Section in FY 13-14 based on a decision item approved by the legislature to provide an additional Deputy Attorney General to the Legal Services to State Agencies line item. R&U was split off from the Business & Licensing Section so that an appropriate span of control could be maintained for both sections.

Objective 1: Maintain and develop relevant subject matter expertise within R&U.

Goal 1: R&U shall maintain core competencies of attorneys and staff by participating in the evaluation and goal-setting process with supervisors.
Goal 2: R&U supervisors and Senior Assistant Attorneys General shall facilitate and promote an educational environment in which attorneys and staff may increase their substantive knowledge of relevant subject matter, including general counsel concepts, and client-specific needs.
Goal 3: R&U shall maintain and develop competence of all attorneys through Continuing Legal Education, attending and designing practice improvement programs, and facilitating mentoring and collaboration between attorneys.

Objective 2: Effectuate the clients' goals through effective litigation by initiating and defending actions in administrative court, State district court, courts of appeals and other courts as necessary.

Goal 1: R&U Units shall have policies and procedures to assure early attorney review and action on all referred matters.
Goal 2: R&U attorneys shall work with the client to accomplish early identification and development of legal and factual issues. R&U Units shall work with clients as appropriate to continually educate investigators and staff regarding their role in managing evidence, affidavits and documentation supporting the legal elements that must be proved in litigation as well as relevant discovery concepts.
Goal 3: R&U supervisors and Senior Assistant Attorneys General shall facilitate and promote an educational environment in which attorneys and staff may develop and increase litigation skills, including appropriate discovery, trial and litigation support skills.

Objective 3: Provide general counsel advice as appropriate to effectuate the shared goal of public protection.

Goal 1: R&U Units shall provide timely, accurate, and responsive legal advice to the clients.
Goal 2: R&U Units shall assist in rulemaking as needed or requested by the clients.
Goal 3: When appropriate to the agency, R&U Units shall develop and maintain internal tracking systems for informal opinions, rulemaking, and legislation affecting the clients.
Goal 4: R&U Unit supervisors shall work with the assigned attorneys and clients to identify areas where proactive legal advice would better serve the clients and the State.

I. BACKGROUND INFORMATION: REVENUE & UTILITIES SECTION

R&U consists of three Units: 1) Revenue, 3) Conservation Easement Tax Credit, and 3) Public Utilities Commission ("PUC") Litigation. These Units represent the following clients:

- Department of Revenue
- Department of Local Affairs (Property Tax Administrator and Property Tax Division)
- Department of Regulatory Agencies (Public Utilities Commission Litigation Staff)

A. Department of Revenue

The Revenue Unit represents several clients within the Department of Revenue ("Revenue").

Taxation (Office of the Tax Conferee, Collections, Taxpayer Services, Discovery, Tax Policy Analysis, Audit and Compliance). The Revenue Unit attorneys represent the Tax Conferee in administrative, district court and appellate proceedings in which all types of tax assessments are contested; defend the Revenue against multiple tax protester lawsuits in several different courts; provide legal advice defending the State's interest in consumer bankruptcy cases; support and assist Revenue in rulemaking and legislative matters; and represent the Revenue in actions related to tax collection efforts. The Department's taxation division requires intensive legal services to assure that taxpayers comply with the law and pay the amount owed under the law, thereby protecting the interests of all taxpayers. Tax cases are complex and often involve disputed amounts in the millions of dollars. Taxpayers are statutorily entitled to receive two trials: one at the administrative level, and a *de novo* trial in district court. Many also are appealed to Colorado's appellate courts. R&U attorneys also provide legal advice and representation to Revenue regarding collections. Often, when delinquent taxpayers declare bankruptcy, Revenue's interest must be protected in bankruptcy court.

Enforcement (Division of Gaming and the Colorado Limited Gaming Control Commission, the Auto Industry Division and the Colorado Motor Vehicle Dealer Board, the Division of Racing and the Racing Commission, the Medical Marijuana Enforcement Division, and the Liquor and Tobacco Enforcement Division). Attorneys provide general

counsel advice on matters including rulemaking, interpretations, policies, legislative matters and other questions presented. Attorneys represent the clients in administrative hearings, during the exceptions process and on appeal. Finally, attorneys defend clients in injunctive, declaratory judgment and other civil actions in district court.

Colorado Lottery: (Lottery Division and the Lottery Commission.) Attorneys provide general counsel advice, assistance with rulemaking, and other legal assistance as requested.

Division of Motor Vehicles: Attorneys review rules and records requests, represent the Division in appeals of driver's license revocation cases to the Colorado Court of Appeals and Supreme Court, and provide other legal assistance as requested.

Executive Director's Office: Attorneys provide legal representation to Revenue's Executive Director, including defending the Executive Director in a variety of lawsuits related to any of Revenue's Divisions.

B. Department of Revenue—Conservation Easement ("CE") Tax Credits

The CE Tax Credit Unit provides general counsel advice and legal representation to various Divisions and Programs at Revenue with respect to CE income tax credits. The CE Tax Credit Unit was created following legislation to address a backlog of credit disallowance cases. Among other things, House Bill 11-1300 created a process by which taxpayers may elect to waive their administrative hearing on the disallowance of the CE tax credits and proceed with an appeal and de novo trial to a district court presided over by a specially appointed judge.

C. Department of Local Affairs

The Revenue Unit also represents the Division of Property Tax and the Property Tax Administrator within the Department of Local Affairs.

Property Tax Administrator and Division of Property Tax. Attorneys prosecute cases related to state-assessed value before the Board of Assessment Appeals (BAA), the district courts and appellate courts. The Division coordinates and administers the implementation of property tax law throughout 64 counties in Colorado, and is responsible for the valuation of the operating plant and property of all public utilities doing business in Colorado. These include telephone companies, airlines and railroads, among others. Attorneys representing the Division provide statutory interpretation and other general counsel services as needed and represent the Administrator in administrative hearings and litigation before the Board of Assessment Appeals and the state district and appellate courts.

C. Department of Regulatory Agencies

The PUC Litigation Unit represents the staff of the Colorado Public Utilities Commission ("PUC" or "Commission").

Public Utilities Commission Litigation Staff. The PUC regulates the rates, charges, services, and facilities of public utilities within the State. The PUC Litigation Unit represents 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 providing legal advice 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 in cases in which public utilities seek to either build new facilities or extend existing Colorado facilities.

The AAGs also, as appropriate, represent 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.

II. HOT ISSUES

A. Department of Revenue

Significant cases handled by the Revenue Unit on behalf of the Department of Revenue include:

TAXATION

Direct Marketing Association v. Brohl. Revenue has filed an appeal with the Tenth Circuit seeking reversal of the district court's permanent injunction enjoining the enforcement of use tax notice and reporting requirements for non-collecting retailers. The dispute in this case is over what methods the State may employ to enforce and collect the undisputedly constitutional use tax on sales made via the Internet and other remote means. District Court Judge Robert E. Blackburn found that the notice and reporting requirements discriminate against and unduly burden interstate commerce in violation of the dormant Commerce Clause. The Department argues on appeal that the dormant Commerce Clause does not require that interstate commerce be treated *more favorably* than intrastate commerce and that the modest reporting requirements on retailers without a physical presence in the State do not approach the significant burdens upon local and national retailers with such a presence of collecting and remitting the use tax. The Department received amicus support from the Multistate Tax Commission, which was uniquely positioned to offer a national perspective on the explosion of E-commerce and the U.S. Supreme Court's *Quill Corp. v. N.D.* decision prohibiting states from compelling out-of-state retailers to collect and remit use tax.

GE Wind v. Dep't of Revenue. The Unit's attorneys are awaiting a decision by the District Court regarding whether the transaction is subject to county sales taxes assessed by the

Department in connection with a wind farm erected and installed by GE Wind Energy, LLC ("GE Wind") in Prowers County, Colorado. The parties are awaiting a ruling following the first phase of the litigation. If the Department is successful, the second phase of the litigation will be a determination of the proper tax base. The Court has bifurcated the issues as: 1) Whether the transaction is subject to county sales tax; and 2) The applicable tax base.

Creager Mercantile v. Dep't of Revenue. The Unit's attorneys are representing the Department in this dispute over whether "blunts" or "blunt wraps" are a "tobacco product" as defined in C.R.S. §39-28.5-101(5) for the purposes of tobacco taxes proscribed in C.R.S. §39-28.5-102 and §39-28.5-102.5. Plaintiffs have attempted to add tort claims against the Department and its criminal investigator.

Daimler Chrysler v. Dep't of Revenue. The Unit's attorneys are representing the Department in this dispute over whether Daimler Chrysler is entitled to a "bad debt" deduction of $490,284.40 for loans it made through motor vehicle dealers to consumers that were not honored.

Chrysler Group and Old Carco v. Revenue. The United States District Court for the Southern District of New York dismissed this lawsuit, which had been pending for two years, on March 15, 2012. The lawsuit challenged amendments to Colorado motor vehicle dealer laws purportedly requiring manufacturers to offer a right of first refusal to dealers rejected in bankruptcy if the manufacturer wished to offer a new dealership in the former dealer's geographic area. Unit attorneys successfully argued that the lawsuit failed to state a claim upon relief could be granted. The Colorado statute, on its face, had no impact on the bankrupt company formerly known as Chrysler LLC, now a liquidating trust known as Old Carco LLC, because Old Carco no longer was engaged in business as an automobile manufacturer and thus no longer was awarding dealerships. Further, the statute had no impact on Chrysler Group LLC, the newly-formed Fiat affiliate which purchased Old Carco's assets in bankruptcy, because the federal court in Old Carco's bankruptcy case had specifically held that the purchaser was not a legal successor of Old Carco, and Colorado's statute applied only to Old Carco and any legal successors. The case against Colorado therefore was dismissed without prejudice. In similar litigation against Illinois, Maine, and Kentucky, post-Chrysler amendments to those states' dealer laws were found to be unconstitutional, resulting in injunctions against enforcement of those laws.

Ultimate Acquisition. In a Delaware bankruptcy case, attorneys for the Unit collected approximately $2 million of sales taxes, resulting in full payment of all taxes, interest, and out of pocket costs.

PJCOMN. In a Maryland bankruptcy case filed by the franchisee of all Papa John's pizzerias in Colorado, attorneys for the Unit collected approximately $450,000 in sales taxes and wage withholding, with all taxes paid in full within six months of the bankruptcy filing.

DUI APPEALS

Driving License Revocation of Tom Francen. The Unit's attorneys represented Revenue's Division of Motor Vehicles on appeal. The majority of the Colorado Court of Appeals held that: "the plain language of the relevant [driving] statute does not require, or even allow, a hearing officer (or a district or appellate court) to determine the lawfulness of the initial contact in a revocation proceeding under 42-2-126." In addition, after performing an *Ahart* analysis, the majority concluded that the exclusionary rule does not apply to a civil driver's license revocation proceeding. Counsel for Francen has indicated he will petition the Colorado Supreme Court for cert.

ENFORCEMENT

Champion Auto Group dealerships. The Unit's attorneys resolved these cases on behalf of the Motor Vehicle Dealer Board following the summary suspension of five related motor vehicle dealer licenses. Each of the five dealerships voluntarily surrendered their licenses and agreed to total fines of $447,500, with $179,000 due and payable to the Colorado Motor Vehicle Dealer Board and $268,500 held in abeyance and payable if the dealerships seek re-licensure by the Dealer Board. The agreement also included payment into a consumer restitution fund.

Medicinal Gardens et al v. City of Fort Collins et al. Several medical marijuana centers sued local and state government, challenging the City of Fort Collins' ban on medical marijuana businesses. The Medical Marijuana Enforcement Division successfully defended a preliminary injunction request and the case was ultimately settled and withdrawn.

Rudy's Farm. The Medical Marijuana Enforcement Division successfully defended its denial of Rudy's Farm, a medical marijuana center and grow. The Applicant filed exceptions with the State Licensing Authority, which affirmed the hearing officer's denial of the license.

Gilpin County. Attorneys for the Gaming Commission successfully defended a lawsuit brought by Gilpin County challenging the Gaming Commission's rule codifying its historical interpretation of how certain Limited Gaming funds are distributed to Teller County, Gilpin County, and the three gaming towns. The case is on appeal.

B. Department of Revenue - CE Tax Credit

As of the end of FY 12-13, Revenue had referred cases involving 490 CE donations for resolution. Consolidated elections by taxpayers under House Bill 11-1300 ("HB 1300"), and a separate consolidated appeal of an agency determination of four additional CE Tax Credit matters have resulted in 175 discrete district court cases filed against Revenue. The total amount of income tax liability at issue estimated for fiscal note purposes under HB 1300 was $222.8 million, including $154.9 million from CE tax credit claims; $18.6 million in penalties assessed on denied credit claims; and $49.3 million in interest on those denied credit claims. HB 1300 strongly encourages Revenue to waive penalties and interest for taxpayers who have acted in good faith to resolve these disputes. Such waivers will impact the amount ultimately collected by Revenue.

Significant matters handled by the CE Tax Credit Unit on behalf of the Department of Revenue include:

Kowalchik v. Brohl. This matter involved the first successful interlocutory appeal under new Colorado Appellate Rule 4.2. Traditional tenets of due process warranted Revenue's appeal of an order denying its motion to compel the joinder of transferees whose tax liability is at stake in the CE tax credit cases to avoid prejudice to their interests and result in an enforceable judgment. The Court of Appeals held that due process does not require joinder by the statutorily-designated Tax Matters Representative ("TMR") of transferees. The Court also held that notice mailed to transferees by the TMR advising transferees of the proceeding and their statutory right to interve, rather than traditional joinder and service of a summons and complaint, satisfied due process. Finally, the court held that a transferee is a "taxpayer," liable for deficiencies, interest, and penalties associated with a CE tax credit claim. The net effect of the opinion is streamlined litigation of the CE tax credit matters resulting in a judgment enforceable against transferees, even without their participation as parties in the matter.

Consolidation of Matters. HB 1300 encourages consolidation of related district court conservation easement CE tax credit cases in order to efficiently, equitably and expeditiously resolve these cases. Through motions filed on behalf of Revenue, Unit attorneys successfully obtained consolidation of several related cases. The one exception being Judge M. Jon Kolomitz's ruling in *OBE Corp. v. Brohl* denying consolidation of 28 related cases involving 47 CE donations and roughly 500 taxpayers. Although Judge Kolomitz concluded that the factual and legal standards for consolidation were met, he ultimately rejected consolidation based on "the case management aspect" of dealing with this number of cases, particularly in the second and third phases of the CE tax credit proceeding, which pertain to apportionment of tax liability and adjudication of any third-party claims.

Settlement of Matters. Unit Attorneys have reached agreement in principal on a settlement of a large group of cases in Adams County. Successful completion of the settlement negotiations will result in the recovery of more than 2 million tax dollars. CE Tax Credit Unit Attorneys have opened negotiations with a group of transferees of tax matters in excess of 9.8 million dollars of tax liability, penalties and interest. The CE Tax Credit Unit attorneys have also negotiated settlements in several smaller CE tax credit matters.

C. Department of Local Affairs

Significant cases handled by the Revenue Unit on behalf of the Department of Local Affairs include:

Qwest Corp v. DPT. The Department of Property Tax (DPT) prevailed in the Court of Appeals in its argument that the state's centralized method of valuation of public utilities on a statewide basis is valid compared to the local assessment of most other property. The Colorado Supreme Court has granted Qwest's petition for writ of certiorari.

NuStar Energy v. DPT. NuStar sued DPT over its 2010 and 2011 centrally assessed Colorado value for property tax. At issue were the appropriate valuation techniques and procedures for a company of this type. After two years, the litigation has been resolved through settlement.

Treehouse Condominium Association v. DPT. The question in this case is whether development rights held separately from surface rights constitute a taxable interest in real property, subject to assessment in Colorado. The BAA held that they do. The case is pending in the court of appeals.

D. Public Utilities Commission

Significant cases in which the PUC Unit was involved include:

Public Service Company of Colorado Electric Rate Case. Represented Staff in a Public Service (Public Service or the Company) rate case in which the Company requested an annual increase of $153.2 million. Staff completed its audit and review and a settlement was entered into by Public Service, Staff, and other major intervenors including the Office of Consumer Counsel, Colorado Energy Consumers, and Climax Molybdenum. The settlement permitted Xcel to implement a series of three rate increases, as follows: $73 million for the period May 1, 2012 through December 31, 2012, $16 million for the period January 1, 2013 through December 31, 2013, and $25 million for the period January 1, 2014 through December 31, 2014. The PUC approved the settlement.

Public Service's 2011 Electric Resource Plan. Represented Staff in reviewing Public Service Company's 2011 Electric Resource Plan (ERP), which is designed to acquire generation resources need beginning in 2017. The Company's filing was voluminous and highly technical, and approximately 20 parties have intervened in the proceeding. In June 2012, Staff filed the answer testimony of ten witnesses addressing numerous issues raised by the Company's plan. Since that time, the Company has effectively amended its plan and will be filing supplemental testimony in early August, 2012. Staff continues to review the plan and the amendments and will file additional testimony in September 2012. The case is set for eight days of hearing beginning in late October 2012.

Public Service's Application to Provide Different Treatment to Its Boulder Customers. This is a case of first impression. Public Service filed an application seeking to apply different terms and conditions to some of the services it provides to its customers within the City of Boulder (Boulder or the City). Public Service's basis for filing the application was the argument that since, in the Company's view, Boulder has taken significant steps towards the municipalization of Public Service's electric distribution system within the City's limits, it was necessary to apply different treatment to its Boulder customers to prevent costs from being inappropriately shifted to the remainder of its customers in the event municipalization occurs. The Commission established a procedural schedule calling for written comments, including how the Commission would interact with the Federal Energy Regulatory Commission and the state District Court in the event Boulder initiated condemnation proceedings. All parties, with the exception of Public Service, argued that the Company's application was premature. The Commission agreed and dismissed Public Service's application without prejudice.

Glustrom v. PUC. Represented the PUC in an appeal brought by Ms. Leslie Glustrom in the Colorado Supreme Court. The crux of this appeal related to Glustrom's argument that the PUC

may not prohibit her from challenging the prudence of Public Service's investment in the Comanche 3 coal plant during the course of an electric rate case proceeding. After briefing and oral argument, the Court issued a ruling in favor of the PUC, dismissing Glustrom's action.

Black Hills Electric CPCN Application to Construct an LMS100 Power Plant. Represented Staff in a docket where Black Hills Electric sought authorization to construct a 88 MW LMS100 power plant in Pueblo, Colorado. As a result of the Clean Air-Clean Jobs Act, Black Hills is required to close a 42 MW coal plant by the end of 2013 and proposed to replace such capacity with the LMS100. However, because the LMS100 is larger than the 42 MW need, Black Hills also proposed to retire two aging power plants in Pueblo to justify the need for the LMS100. Staff reviewed the Company's filings and determined that the Company had not established that the LMS100 was the best alternative to replace the 42 MW coal plant nor that the retirement of the Pueblo units was in the public interest. Staff argued that Black Hills had not fully explored other alternatives and therefore had not provided the Commission a record on which to approve its proposal as the best solution. Staff's position was adopted by the ALJ and affirmed by the Commission, and the application was denied.

Century Link –Integra Formal Complaint. Represented Staff in a formal complaint by several Competitive Local Exchange Companies (CLECs) against CenturyLink/Qwest for violating a Commission order approving a settlement agreement entered into between these parties concerning the use of certain computer systems that manage "trouble tickets" for the CLECs. The CLECs claim that Century Link/Qwest is developing and putting into place a new system to replace the old systems earlier than allowed by the settlement agreement and without proper notice and participation of the CLECs pursuant to that settlement agreement. After a hearing in January 2012, the parties filed a settlement agreement in mid-May 2012. The settlement agreement was contingently approved in late July 2012, and required Qwest to make a compliance filing. The compliance filing was made in late July 2012 and the case is concluded.

Wiggins Telephone Company Request for High Cost Support Funds from the Colorado High Cost Support Mechanism. This is a case of first impression. Wiggins is requesting monies from the Colorado High Cost Support Mechanism Fund for building a Fiber to the Home (FTTH) network that not only provides basic local exchange services, but also provides other services which are defined in Colorado as non-regulated telecommunication services. However, the services are considered regulated by the Federal Communications Commission (FCC). No other rural telecommunications provider has requested funds for this type of telecommunications system. The question before the Commission is whether these costs should be allocated between regulated and non-regulated services as determined by the FCC's rules or by Colorado statutes and Commission rules. A three day hearing was held on this matter in July 2012, and Statements of Position and Reply Statements of Position are due in August.

Robert Woodring d/b/a Tri Star Transportation. Unit attorneys represented Staff in a transportation matter which brought a novel issue before the Commissioners through Exceptions to the Administrative Law Judge's Recommended Decision. The issue was whether the Commission has the authority to issue a cease and desist order as a result of a civil penalty hearing. While the Commissioners ultimately denied the Exceptions, they did agree with Staff's statutory interpretation that under the Commission's broad authority, a cease and desist order

may be issued in a Civil Penalty Assessment Notice docket. They also provided guidance to the Transportation Staff regarding the notice that must be provided to obtain a cease and desist order from the Commission.

I) BACKGROUND INFORMATION: STATE SERVICES SECTION.

Collectively, the attorneys in the State Services section provide representation to eight of sixteen executive branch state agencies, as well as Colorado's five statewide elected public officials, the Governor, Lt. Governor, Attorney General, Secretary of State and Treasurer. The Section also represents the Judiciary and the Public Utilities Commission. 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 both state and federal court. In general, the State Services Section protects children, people at risk, and represents the public at large. The Section also conserves 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.

It is challenging to determine metrics that effectively measure whether the Section is performing its duties well. We are modifying the reply this year to provide two measures:

The primary metric is the volume of cases handled by each unit. For some units, additional workload measures are provided.

The Section is composed of the following units:

Human Services:

This Unit represents the Department of Human Services both defending the Department in civil litigation and prosecuting on its behalf in the administrative courts. The Unit defends the county confirmation that a person is responsible for child abuse or neglect. The unit prosecutes licensure actions to revoke or discipline child care providers who harm children or do not follow requirements. Attorneys represent the Division of Youth Corrections requesting early parole or community placement for aggravated offenders or extensions of commitment for youth who are a risk to the community. The unit handles motions to quash record subpoenas and provides general legal advice to various Divisions within the Department, including the Division of Behavioral Health, the Mental Health Institutes, the Division of Developmental Disabilities, and the Division of Vocational Rehabilitation. The Unit assists with transactional issues, including water rights, contracts, tax disputes, and more. Lastly, the Unit represents the State Long Term Care Ombudsman and the newly created Child Welfare Ombudsman.

Health Care:

This Unit represents the health programs of the Department of Public Health and Environment, including the division that licenses and surveys all health facilities in the state, sets standards and level of care for hospital emergency departments and trauma units, and certifies EMTs and paramedics. The Unit also represents the Registrar of Vital Statistics within CDPHE, which includes the Medical Marijuana Registry, birth/death records, and the State Laboratory. The Unit represents the Department of Health Care

Policy and Financing, which administers Medicaid, the Colorado Indigent Care Program and the Children's Basic Health Plan. The Unit's representation includes eligibility issues, Medicaid provider appeals, recipient appeals on judicial review, collection of overpayments and amounts owed Medicaid by third-parties. In addition, we review rules for and provide counsel to the Colorado Board of Health and the Colorado Medical Services Board. We also provide counsel to the Hospital Provider Fee Oversight and Advisory Board, a governor appointed board which was created by HB 09-1293 (Health Care Affordability Act).

Labor/Personnel and Administration:

This Unit represents the Department of Labor and Employment, which involves mainly workers compensation, unemployment compensation, and petroleum storage tank monitoring and cleanup. In addition, the Unit does the legal work for the Department of Personnel and Administration, 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.

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:

This Unit provides legal advice to the Governor, Lt. Governor, Secretary of State (election and campaign finance law), the Treasurer, the Attorney General, and the Judicial Department, as well as the Department of Local Affairs, the Department of Military Affairs, the State Auditor and the Colorado Lottery. The Unit handles constitutional challenges to some state laws and initiated measures adopted by the voters.

Public Utilities Commission (PUC):

This Unit represents the three commissioners of the PUC and the staff members of the PUC in an advisory (general counsel) capacity. The PUC Unit provides legal advice in the wide variety of quasi-judicial and quasi-legislative proceedings, including rulemaking proceedings, conducted before the Commission. The PUC Unit also represents the PUC in state and federal court.

II) PRIOR YEAR LEGISLATION

Human Services

SB 12-022 Concerning Maintaining Child Care Assistance for Working Families
The bill allows persons receiving child care assistance to continue to receive this benefits after obtaining employment that may exceed the county income eligibility for a period up to six months while gradually transitioning off this assistance.

SB 12-033 Concerning Adding Near Fatalities to the Responsibilities of the Department of Human Services Child Fatality Review Team
This bill defines "near fatalities" and "incidents of egregious abuse or neglect" and adds the review of these events to the responsibilities of the human services child fatality review team. Counties are required to report any suspicious near fatality or incident of egregious abuse or neglect. Child fatality reports shall be published, absent confidential information.

Education

SB 12-078 Concerning Protections for At-Risk Adults
The bill amends statutory provisions concerning mistreatment, self-neglect, and exploitation of at-risk adults. All county department employees who will have direct contact with at-risk adults must now complete a fingerprint-based criminal background check. An at-risk adults protection services task force has been convened and will have an AG representative.

SB 12-51 Concerning requirements for contracts executed by local education providers. This bill allows each school district and board of cooperative services (BOCES) to review and revise the policies and procedures it has in place for contracting for services, including educational services, activities, or undertakings and authorizes the school district or BOCES to adopt a policy requiring competitive bidding on contracts for professional services, other than instructional services.

SB12-052 Concerning a property tax exemption for business personal Property. This bill requires the Commission on Higher Education to develop a new master plan for Colorado's system of higher education. The legislation creates a performance-based plan that will allocate funds to state colleges and universities based on their success in meeting their specified goals. Colorado will begin implementing the performance funding plan after the 2015-2016 fiscal year, but the plan will go into effect only if funding for higher education is at least $706 million. If that funding threshold is met, then the legislature will appropriate 25 percent of all higher education funding over $650 million to the performance-based funding plan.

SB 12-61 Concerning procedures relating to the authorization of charter schools.
This bill adds to minimum requirements for district and institute charter school applications and modifies procedures for applications and approvals. It also requires each

authorizer to adopt a policy that establishes procedures for closing a charter school when the charter contract is revoked or not renewed.

SB 12-67 Concerning requirements pertaining to the corporate status of charter schools. Effective July 1, 2013, this bill requires each charter school that was initially chartered on or after August 6, 1997, to incorporate as a nonprofit corporation and prohibits a board of education of a school district or the state charter school institute board (authorizer) from approving a charter application submitted by, or entering into a charter contract with, a for-profit entity.

SB 12-68 Concerning prohibiting the inclusion of industrially produced trans fats in foods made available to students by public schools, and, in connection therewith, making an appropriation. This bill prohibits a school of a school district, a district charter school, or an institute charter school from making available to a student a food item that contains any amount of industrially produced trans fat.

SB 12-121 Concerning charter schools. This bill makes changes to charter school participation in the public school capital construction board (BEST board) financing and clarifies waiver requirements. It also permits the Charter School Institute to retain the full 3% of each institute charter school's per pupil revenues until the end-of-year balance of the account to which these moneys are credited exceeds a certain amount. Rather than the institute being subject to annual appropriations, the act continuously appropriates operational moneys to the institute.

HB 12-1013 Concerning intervention services for middle-grade students. This bill directs school districts and charter schools to consider adopting procedures for identification of, and services to, at risk students.

HB 12-1043 Concerning concurrent enrollment for students who may complete high school graduation requirements before the end of twelfth grade. This bill requires each public school to inform the student and the student's parent or legal guardian concerning concurrent enrollment.

HB 12-1090 Concerning the annual date for establishing the total pupil enrollment of each public school. This bill permits flexibility in the October 1 count day to accommodate religious holidays.

HB 12-1201 Concerning adjustments in the amount of total program funding for public schools for the 2011-12 budget year, and, in connection therewith, making and reducing appropriations. This bill increases the minimum level of total program funding for the 2011-12 budget year, sets the minimum level of total program funding for the 2012-13 budget year and adjusts the appropriations in the 2011-12 long bill for total program funding.

HB 12-1238 Concerning literacy education for students enrolled in

kindergarten through third grade, and, in connection therewith, creating the "Colorado early literacy act" and making and reducing appropriations. This bill repeals the "Colorado Basic Literacy Act" on July 1, 2013, and replaces it with the "Colorado READ Act". The Department of Education is to adopt rules and procedures to implement.

HB 12-1240 Concerning statutory changes to k-12 education. This bill makes several statutory changes concerning K-12 education including:

- LLS is to report any introduced legislation concerning education data to the education data advisory committee.
- The pool of potential sources for gifts, grants, and donations for S.B. 10-191 is expanded by allowing the department of education to accept moneys outside of federal moneys.
- The date for the inclusion of diploma endorsements in performance indicators is extended.
- The criteria for awarding the John Irwin Schools of Excellence Award is changed to include those schools with the highest level of attainment on the performance indicator concerning student achievement levels.
- The difference between an "on-line program" and an "on-line school" is clarified.
- The number of charter school food authorities is increased.
- "Ongoing deficit" as it pertains to school district budgets is defined.
- The requirement that a school district receiving an impact assistance grant must certify the amount of that grant to the board is removed.
- Internet safety policies updated to include "technology devices", which includes any computer, hardware, software, or other technology that is used for learning purposes and has the ability to connect with the internet.
- Colorado is included in a consortium of states that focuses on the readiness of students for college and careers through the development of a common set of assessments.

HB 12-1345 Concerning the financing of public schools, and, in connection therewith, requiring a post-enactment review of the implementation of this act and making and reducing appropriations. Funding for public schools from kindergarten through the twelfth grade, as determined by the "Public School Finance Act of 1994" (Act) is modified for the 2012-13 budget year and, in some circumstances, for budget years thereafter.

Health Care

SB 12-128 Concerning Achieving Efficiencies in the Medicaid Long-Term Care Program through Greater Utilization of Alternative Care Facilities. This bill provides financial incentives to alternative care facilities as an alternative to nursing facility care in order to lower costs to the Medicaid program. The Department may create an enhanced reimbursement methodology in which an alternative care facility can receive a temporary increase in the Medicaid per diem reimbursement rate for a client discharged from a nursing facility.

SB 12-1281 Concerning Pilot Program Establishing New Payment Methodologies in Medicaid, and, in connection therewith Making an Appropriation. This bill creates the Medicaid Payment Reform and Innovation Pilot Program. The Department is directed to create a process for interested contractors to submit payment projects for consideration under the pilot program, specifically, the use of global payments.

HB 12-1041 Concerning the Creation of an Electronic Death Registration System in the Department of Public Health Environment, and, in connection therewith Making an Appropriation. This bill authorizes CDPHE to create a new system where doctors, funeral directors, health facilities, coroners, etc will notify the State Registrar of deaths electronically.

HB 12-1268 Concerning a Transfer of Functions Pertaining to Health Facility Compliance with certain Building Safety Standards from the Department of Public Health and Environment to the Division of Fire Safety in the Office of Preparedness, Security, and Fire Safety within the Department of Public Safety, and in Connection therewith, Creating the Health Facility Construction and Inspection Section in the Division of Fire Safety. This bill transfers the authority and duty to inspect health facilities for compliance with fire safety code from the Department of Public Health and Environment to the Department of Public Safety effective July 1, 2013. Relevant employees and items of property will likewise be transferred.

Public Utilities Commission

House bills 1002, 1008, 1019 and 1119 and Senate Bill 12-026 are bills of general applicability, but does have significant effect to actions of the PUC.

HB12-1002 Concerning the rules of state agencies applicable to applications for permits. This bill amends the State Administrative Procedure Act (APA) to state that the rules of a state agency in effect on the date that a person applies for a new or renewed permit govern the application for a new permit or for renewal of the permit.

HB12-1008 Concerning additional methods for providing input to executive branch agencies about proposed rules, and, in connection therewith, directing agencies to establish representative groups to evaluate and comment on proposed rules, requiring agencies to notify the general assembly of any rule-making that results in increases in fees or fines, and requiring agencies to submit departmental regulatory agendas to the general assembly. This bill adds additional methods for providing input to executive branch agencies about proposed rules, and directing agencies to establish representative groups to evaluate and comment on proposed rules, requiring agencies to notify the General Assembly of any rule-making that results in increases in fees or fines, and requiring agencies to submit departmental regulatory agendas to the General Assembly.

HB12-1019 Concerning the abolition of the motor carrier services division of the division of motor vehicles of the department of revenue, and, in connection therewith, transferring the powers, duties, and functions of the motor carrier services division relating to ports of entry to the Colorado state patrol of the department of public safety, transferring the powers, duties, and functions of the motor carrier services division relating to commercial driver's licenses and the international registration plan to the department of revenue, and making and reducing appropriations. This bill abolishes the Motor Carrier Services Division (Division) of the Division of Motor Vehicles of the Department of Revenue transferring: (1) ports of entry section of the Division to the Colorado State Patrol of the Department of Public Safety; (2) powers, duties, and functions of the Division relating to commercial driver's licenses to the Department of Revenue; and (3) powers, duties, and functions of the Division relating to the international registration plan to the Department of Revenue.

HB12-1119 Concerning violations of state requirements enforced by the department of public health and environment that pertain to construction-related discharges of storm water. This bill limits the discretion of a state executive agency to impose a fine for a minor violation of a state law or a state agency rule and defines a minor violation as an inspection-related or paperwork related violation of state law or state agency rule that does not harm or threaten public health or safety. The bill further requires the agency to provide a violator with notice an opportunity to cure a minor violation before imposing a fine.

HB12-1258 Concerning regulation of public utilities in terms of alternative fuel vehicles. This bill explicitly excludes sellers of electricity as fuel for alternative fuel vehicles from being regulated as public utilities under Title 40. Further, the bill updates § 40-1-103.3, C.R.S., to require that public utilities make commercially reasonable efforts to provide connection of electric and natural gas service to alternative fuel vehicle charging facilities, and to set forth guidelines for a public utility making regulated operating expenditures and capital investments related to serving alternative fuel facilities.

HB12-1312 Concerning the exclusion of land use issues addressed by local governing bodies from the public utilities commission's proper scope of review with respect to applications for certificates of public convenience and necessity for transmission lines. This bill clarifies that the PUC, in determining whether or not to grant a CPCN for

proposed electric transmission lines and associated facilities not constructed in the ordinary course of business, shall not consider land use issues because a local government can address these considerations through its land use regulations.

HB12-1315 Concerning the reorganization of the governor's energy office, and in connection therewith, making an appropriation. This bill reorganizes the governor's energy office, renaming it the Colorado Office of Energy Development, and, among other initiatives to further align the office's duties with its updated mission, creates the Renewable Energy Fund for use to work with communities, utilities, private and public organizations to promote renewable energy and energy efficient technologies.

HB12-1327 Concerning financial responsibility requirements for motor carriers, and, in connection therewith, repealing the surety bond requirement for towing carriers, imposing a period of disqualification from the right to operate as a towing carrier as an additional penalty for failure to respond as required after violating applicable provisions, creating a designated tow truck license plate, and, in connection therewith, making an appropriation. This bill repeals the requirement for a $50,000 surety bond that was added to the statutes governing towing carriers in 2011 and provides instead that a towing carrier that fails to pay a fine for violating applicable statutory or regulatory requirements is subject to: (a) immediate revocation of its operating authority; and (b) a five-year prohibition on reapplying for new authority. The bill also imposes a five-year period of disqualification on the towing carrier and on its owners, principals, officers, members, partners, directors, and affiliated companies.

SB12-026 Concerning a state agency rule that creates a state mandate on a local government. This bill prohibits an agency from promulgating a rule creating a state mandate on a local government unless certain criteria are met and requires additional procedures prior to filing a notice of proposed rulemaking with the Secretary of State, including providing information to the director of the Office of State Planning and Budgeting related to the rule.

Public Officials

HB 11-1230 Concerning the consolidation of state programs that distribute federal housing moneys to persons needing assistance in obtaining housing into the division of housing within the department of local affairs, and making an appropriation therefor. This bill consolidates a housing program for the disabled with a housing program for persons needing assistance. The office is providing legal advice to conform the program to federal law.

III) HOT ISSUES:

Human Services

- *CLA v.* Bicha: The Department settled a lawsuit involving how long individuals wait for competency evaluations and in-patient restoration treatment in criminal cases. Although the case is resolved, beginning September 1st, the Department will be providing monitoring reports monthly to the Legal Center. At this time, the Department is in compliance with the settlement terms. Out-patient competency evaluations are only partially included and compliance will be phased in for this group over the next year.

Health Care

- The Unit continues to defend HCPF in the CBMS litigation. Presently, we are continuing to monitor case processing figures for compliance with the settlement agreement.

- The Unit is continuing joint efforts with the U.S. Attorney's office and the Medicaid Fraud Control Unit to pursue Medicaid provider fraud, in both the civil and criminal arenas.

- The Unit continues to defend HCPF in numerous appeals filed by nursing facilities challenging reimbursement rates.

- The Unit is defending HCPF in a Americans with Disabilities Act action in federal district court challenging HCPF's reimbursement rate for non-emergency medical care.

- The Unit is defending HCPF in an action against a major insurance carrier seeking over $4,000,000 of over payments based on equitable theories.

- The Unit successfully represented HCPF in pursuing reimbursement against an attorney who failed to disclose settlement funds paid by a liable third party and owed to the Department under the automatic statutory lien statute.

- The Unit continues to provide legal advice and opinions to the Department of Public Health and Environment, Medical Marijuana Registry. We also continuously defend the Department against subpoenas seeking confidential information, and assist the Board of Health with rulemaking issues.

- The Unit continues to assist the Department with ongoing public health and disease control investigations.

- The Unit continues to defend the Department's Laboratory Services Division against challenges to their blood-alcohol and breathalyzer testing and from subpoenas seeking confidential and/or overly burdensome information.

Labor/Personnel and Administration

- *CDLE Bond Issue.* In conjunction with CHFA, the department issued $640 million in bonds to cover a shortfall in the UI Tax Fund. With these bonds the department will make the fund solvent and reduce UI taxes for all Colorado employers. The bonds were issued in June and there are numerous tasks and deadlines associated with this issue and repayment.

- *CDLE, Division of UI v. FedEx.,* Docket Nos. 6299-2011, 7956-2011, 37816-2010. These three cases involve a reclassification of package delivery drivers from independent contractors to employees. Extensive discovery is proceeding although no hearing dates have yet been scheduled.

- The unit will be working with the Office of Information Technology to streamline the State's contracting and administration process in connection with information technology.

- The unit will continue to work with DPA and the Governor's Office and reform of the State procurement and State contracting policies and procedures.

Education

These matters have significant potential impact and have received coverage in the press.

- *Lobato v. State of Colorado.* In 2005, a group of school districts, parents, and students sued the Governor and CDE alleging the legislature inadequately funds K-12 education. Initially, the district court dismissed the complaint as nonjusticiable. Plaintiffs appealed, and a unanimous division of the Court of Appeals affirmed. The Supreme reversed and remanded the case to afford Plaintiffs the opportunity to prove their allegations. On remand, the trial court excluded evidence of how the General Assembly's education funding decisions are made in the context of constitutional limitations and competing demands such as health care, prisons, and higher education. After a 5 week trial in 2011, the trial court held that the public school finance system is irrational, arbitrary, and severely underfunded. Subject to a stay pending appeal, the trial court enjoined Defendants from adopting, implementing, administering, or enforcing any and all laws and regulations that fail to establish, maintain, and fund a thorough and uniform system of free public

schools throughout the state that fulfills the qualitative mandate of the Education Clause and the rights guaranteed to the Plaintiffs thereunder and that is in full compliance with the requirements of the Local Control Clause. The trial court further ordered Defendants to design, enact, fund, and implement a system of public school finance that provides and assures that adequate, necessary, and sufficient funds are available in a manner rationally related to accomplish the purposes of the Education Clause and the Local Control Clause. The Governor and CDE appealed to the Colorado Supreme Court, filing their opening brief on July 18, 2012.

- *Taxpayers for Public Education, et al., v. Douglas County School District RE-1, et al.,* Case No. 2011CV 4427 and *LaRue, et al., v. Colorado Board of Education, et al.,* Case No. 2011CV4424.

These cases were brought against the Douglas County School District, the State Board of Education, and the Colorado Department of Education as a constitutional and statutory challenge to the Douglas County Option Certificate Pilot Program, which will allow up to 500 Douglas County public school students to attend private schools of their choice both inside or outside the district. The District Court enjoined the Program and the County, the Board and CDE appealed. The matter will be fully briefed to the Court of Appeals in early August.

- *Colorado Education Association v. Colorado State Board of Education, Denver District Court.*

  This lawsuit was filed by the CEA challenging the State Board of Education's legal authority to promulgate the recently-passed Parental Notification Rules, which require school districts to notify parents whenever a teacher is arrested or convicted of certain felonies. The Rules expired and the case became moot.

- *Cost Recovery Efforts for Environmental Contamination on the campus of Colorado School of Mines.*

  Mining research projects conducted primarily by private mining interests and the Federal government at a research center on the Colorado School of Mines campus left research wastes containing radioactive materials and metals at the Site. The General Assembly appropriated approximately $7.5 million between April 1994 and February 1995 for Site cleanup. EPA conducted a partial clean up that proved ineffective. Potentially responsible parties funded the soil characterization study of EPA's excavation but made no further contribution to the clean up. The School continued investigation and cleanup incurring further costs. The State has negotiated a consent decree with numerous private PRPs and the Federal government to recover a large proportion of the State's unrecovered costs.

Public Officials

a. Pending Public Officials litigation—These lawsuits have potentially significant public impact and have been covered in the media:

- *Independence Institute v. Buescher*. The Independence Institute and other plaintiffs challenge several provisions in Colorado's initiative statute, including residency for circulators, limits on payments made on a per-signature basis, requirements that circulators be available to provide testimony in petition challenges, licensure of petition entities, and other provisions. The federal district court entered a preliminary injunction against the State on the residency requirements and the limits on pay per-signature. The judge denied the preliminary injunction on all other issues. The court held an eight-day hearing in May 2012. We are awaiting the court's decision

- *Colorado Common Cause v. Gessler*. The 10th Circuit in *Sampson v. Buescher* declared that the $200 threshold for issue committees was unconstitutional. The Secretary passed a rule establishing a $5,000 threshold. The district court found that the Secretary exceeded his authority by promulgating the rule. The Secretary appealed the case to the Colorado Court of Appeals. Oral argument will be held on August 7, 2012.

- *Paladino v. Gessler*. Various plaintiffs have challenged campaign finance regulations promulgated by the Secretary of State. Oral argument will be held in Denver District Court on August 3, 2012.

- *Coalition for Secular Government v. Gessler*. The plaintiff is challenging the constitutionality of several provisions in the Campaign and Political Finance Amendment relating to issue committees, including the definition of "major purpose" and the $200 threshold.

- *Riddle v. Gessler*. Plaintiffs are challenging limits on campaign finance expenditures on minor party candidates.

Public Utilities Commission

a. Pending PUC litigation – The PUC Unit is defending the PUC in the lawsuits described below:

- *Office of Consumer Counsel (OCC) v. PUC*. The OCC has challenged the lawfulness of the Commission's decisions authorizing Qwest Corporation to increase the rate it charges for standalone residential basic local exchange service. The OCC claims that the record before the PUC does not support the adopted rates. The Denver District Court set aside the PUC's decision. The PUC and Qwest have appealed this matter to the Colorado Supreme Court. On April 30, 2012, the Colorado Supreme Court issued an opinion in which it affirmed the PUC and reversed the district court. The

Court concluded that the PUC regularly pursued its authority in setting the maximum rate for basic local telephone services because it considered all of the statutorily-mandated factors and substantial evidence supports its decision.

- *Clean Air Clean Jobs Act Judicial Review Litigation I* The Associated Governments of Northwest Colorado and Peabody Corporation have brought judicial review actions challenging a variety of procedural and substantive rulings made by the PUC in the establishment of the parameters for the retirement and replacement by Public Service Company of approximately 900 MW of coal fired generation facilities. These challenges focus on whether the decision of the PUC was just, reasonable and in the public interest and on whether any of the PUC Commissioners were biased and should have been disqualified. Recently the Routt County District Court entered an order regarding its jurisdiction to hear these judicial review actions. The PUC disagreed with this interpretation and has petitioned the Colorado Supreme Court for C.A.R.21 (original jurisdiction review), which petition is presently pending. However, on April 23, 2012, the Colorado Supreme Court issued an opinion rejecting the PUC's interpretation. The Court found that filing a petition for judicial review in the wrong court related to venue rather than subject matter jurisdiction, and that the Routt County District Court therefore possessed the authority to transfer it to a proper division of the district court. The cases were subsequently transferred to Denver and consolidated. A draft order with scheduling is due August 13, 2012. The PUC will be required to certify a record of PUC Docket No. 10M-245E in its entirety no later than August 15, 2012. In addition, the PUC is required to create a second "disqualification-only" subset record, which must be certified no later than September 28, 2012. Further, the Court is interested in hearing argument concerning whether this case should be stayed while the parties await a ruling from the Colorado Court of Appeals in a related case, *CMA v. Urbina.* *CMA v. Urbina* is the substantive challenge to the AQCC's approval of the Regional Haze SIP that included the CACJA emission reduction plans. The PUC must file its Opening Brief on the issue of mootness and the need for a stay no later than September 14, 2012.

- *Clean Air Clean Jobs Act Judicial Review Litigation II* The Office of Consumer Counsel has sought judicial review challenging the PUC's authority to require Staff's consultants that assisted Staff in the Public Service Clean Air Clean Jobs Act proceeding be paid with money collected by Public Service through its rates. After briefing was completed, the OCC and the PUC negotiated a settlement, by which the PUC will seek specific funding from the legislature where a Staff Consultant is required in the future.

- *American Tradition Institute v. State of Colorado* This federal lawsuit asserts that Colorado's Renewable Energy Standard (which became law on December 1, 2004 (codified at 40-2-124, C.R.S.) following its approval by the electors of the State as Amendment 37, and as subsequently amended by the General Assembly in 2005, 2007, 2008, 2009, and 2010) violates the dormant commerce clause aspect of the Commerce Clause of the United States Constitution. Plaintiffs seek injunctive and

declaratory relief as well as damages and attorneys' fees under § 1983. The Defendants have filed a motion to dismiss, a ruling on which is presently pending.

- *Colorado Mining Association (CMA) v. Ritter* CMA is appealing the lower court's order approving, *inter alia*, the PUC's invocation of the deliberative process privilege in a CORA matter seeking to obtain access to information related to the stakeholder process that lead to the enactment into law of the Clean Air Clean Jobs Act (House Bill 10-1365). Both the district court and the Colorado Court of Appeals have sided with the PUC and other state defendants. The CMA then filed a petition for writ of certiorari, which was recently denied by the Colorado Supreme Court.

- *Intermountain Rural Electric Association v. PUC* IREA has sought appellate review of the district court's ruling that the PUC's discussion by e-mail of potential legislation is outside the scope of the PUC's policy-making authority and, therefore, was not a "meeting" in violation of the Open Meetings Law under the reasoning of *Bd. of County Comm'rs v. Costilla County Conserv. Dist*, 88 P.3d 1188 (Colo. 2004). The District Court granted summary judgment in favor of the PUC, on the grounds that the conversation was not related to the policy-making function of the PUC and therefore did not constitute a meeting subject to the OML under the Colorado Supreme Court's reasoning in *Costilla County*, 88 P.3d 1188. The District Court did find emails generally can constitute meetings that are subject to the OML. On appeal, the Colorado Court of Appeals affirmed the District Court's decision in its entirety. Awaiting possible writ of certiorari request from IREA, which is due September 4, 2012.

- *Mile High Cab v. PUC* Mile High Cab is seeking judicial review of the PUC's decision to deny its application for authority to operate 150 taxicabs in the Denver metro area. In this case, the PUC interpreted the 2008 statutory standards related to the entrance of taxi cabs into the greater Denver market. The district court sided with the PUC and Mile High Cab appealed. Oral argument before the Colorado Supreme Court is scheduled for November 8, 2012.

- *Qwest Corporation v. PUC, Cbeyond Communications* This matter is before the U.S. Tenth Circuit Court of Appeals. Qwest and PUC/CBeyond cross-appealed the lower court decision. At issue is the proper interpretation of the Federal Communication Commission's definition of a "business line" to be used when determining how much intercarrier competition there is in a wire center. The interpretation is important because the level of competition affects the wholesale price at which Qwest may sell access to its facilities. The Tenth Circuit Court of Appeals recently ruled against the interpretation adopted by the PUC. No party filed a writ of certiorari with the U.S. Supreme Court.

- *Trinchera Ranch v. PUC* Trinchera Ranch (owned by Louis Bacon), a very large landowner whose property the transmission line jointly sponsored by Public Service Company of Colorado and Tri-State Generation and Transmission Association may cross, has challenged both the need for the proposed transmission line and the

proposed corridor for the line. Over these objections, the PUC has issued a decision awarding a Certificate of Public Convenience and Necessity for the transmission line. Once the proceedings at the PUC concluded, Trinchera Ranch sought judicial review on whether any of the commissioners, other than Commissioner Tarpey, should have disqualified themselves. The Costilla County District Court has stayed this judicial review matter pending the outcome of Public Service Company's electric resource plan application. In that application, Public Service seeks, *inter alia*, an order by the PUC authorizing it to abandon the transmission line project due to changed needs.

- *Liberty Taxi Corporation v. PUC* In this consolidated matter concerning four requests to provide new or expanded taxicab service in the Denver Metropolitan Area, the PUC determined not to grant any new authority. Liberty Taxi sought review of the PUC decision in the Denver District Court and a briefing schedule is presently under way.

b. Potential PUC litigation:

Qwest Corporation vs. MCI and other Competitive Local Exchange Carriers (CLECs) This matter is presently pending before the PUC and judicial review is likely in the near future. This matter involves a complaint that Qwest filed with the PUC against the CLECs, claiming discrimination in the provision of switched access services. The legal issues include proper interpretation of the statute of limitations (the primary defense asserted by the defendant CLECs), Commission authority to order reparations, and other statutory interpretation issues.

Commerce City v. Union Pacific Railroad Corporation. This dispute involves a proposed highway widening, which impacts the railroad property and the highway-rail crossing. The railroad has argued, among other things, that the PUC is preempted by federal statutes from exercising any authority over the crossing. Other legal issues include the proper interpretation of the statutes governing the scope of PUC's jurisdiction at highway-rail crossings pursuant to § 40-4-106, C.R.S.

c. High-profile initiatives: The PUC is undertaking the two high-profile dockets that may receive legislative or press attention: *Telecommunications Revision Process, and 2011 Electric Rate Plan*

IV) WORKLOAD MEASURE:

DEPARTMENT OF HUMAN SERVICES

Workload Measure	FY 12 Actual	FY 12 Estimate
Defend the Department in litigation regarding the implementation of the Colorado Benefits Management System (CBMS).	Review and submit monthly data regarding timely processing in accordance with settlement agreement; communicate with plaintiffs' counsel to address concerns, CBMS upgrades and processing data.	Work with the Department to address systemic issues; prepare reports every six months for Judge Bellipanni, and if necessary defend in active litigation
Defend County confirmations of child abuse/neglect in the State database system on behalf of the Department for use in employment/background checks.	Ongoing litigation to prosecute child abuse/neglect in full evidentiary hearings before the OAC.	Aggressively prosecute child abuse cases to prevent persons who are found responsible for child abuse from working with children.
Prosecute licensing actions for the Division of Childcare	Actively litigate to revoke, suspend, and deny licenses where the facility fails to follow department rules, the licensee or employs commits child abuse, or otherwise fails to assure safe care for children.	Continue to actively prosecute child care licensing cases to assure safe childcare.
Advise the Department in rulemaking and adoption process.	Review rules and advise on authority and substantive content.	Continue advising on rulemaking.
Initiate actions to revoke, suspend, or deny substance abuse treatment licenses for the Division of Behavioral Health, and certifications for the Division of Developmental Disabilities.	Prosecute treatment agencies or certified service agencies for failures to comply with Department regulations.	Continue to represent the Divisions in licensing actions.

Defend the Department in administrative proceedings brought by recipients of Vocational Rehabilitation services or programs who were denied or reduced services.	Actively defend and, where possible, negotiate settlements for the Division of Vocational Rehabilitation.	Continue to defend the Department in these actions before the OAC. Assist the Division to improve the administrative hearing rules for these cases.
File petitions in district courts on behalf of the Division of Youth Corrections for aggravated offenders, requesting extensions of commitments, release from mittimus or vacating illegal sentences.	Represent the DYC in all post-commitment juvenile proceedings, specifically those requiring a return to court for a change in placement or status or responding to subpoenas for records.	Continue representing the DYC in juvenile cases and providing legal advice.
Assist the Department to respond to subpoenas and open records requests.	File motions to quash or redact records as needed when responding to records requests.	Provide ongoing legal advice and representation.
Represent and advise the Division of Developmental Disabilities.	Provide legal advice and represent the Department when needed in court actions.	Advise the Division in proceedings before OAC,represent the Division in Imposition of Legal Disability proceedings, and assist with rule revisions.

Caseload Trends:

The Human Services Unit continues to see a greater variety of cases and requests for legal advice from more divisions within the Department of Human Services.

Type of Case	Number of Cases	Current Status
All Other Cases	77 cases or issues assigned	68 currently active
Child Abuse/Neglect	75 (during a transition in process, no cases were received for 6 months)	115 active currently
Child Care Licensing	38 cases received	26 active currently
Vocational Rehabilitation	9	2 active
Youth Corrections	28	All granted or pending

HEALTH CARE

Workload Measure	FY 12 Actual	FY 13 Estimate
Department of Health Care Policy and Financing		
Defend HCPF in litigation regarding the implementation of the Colorado Benefits Management System.	Monitor provision of claims processing date. Respond to inquiries from plaintiffs' counsel	Anticipate that this office will continue to monitor a very complex settlement.
Defend HCPF in numerous administrative and civil proceedings brought by recipients and providers claiming services or amounts due under complex state and federal Medicaid statutes and regulations.	78 civil cases received. 42 cases received challenging nursing facility rates.	Given the substantial increase in Medicaid populations, and the implementation of the new RAC audit contract, we anticipate increased number of appeals.
Recover funds expanded as a result of third parties' actions.	Total recovery of $1,870,230.	Although HCPF handles more third party cases in house, it is likely that the increase in Medicaid recipients will stabilize the work load in this area.
Coordinate with HCPF's Program Integrity Unit to uncover and eliminate provider overpayments and fraud in the Medicaid program.	Prosecute and defend provider overpayment appeals at civil level. Work with agency and health care fraud task force to identify fraud in the Medicaid program.	Anticipate increase in provider appeals due to increasing enrollment and the implementation of the RAC audit contract.
Advise HCPF 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.	Continue to provide advice to Medical Services Board and the Oversight and Advisory Board (which sets hospital provider fees).	Continue representation of both MSB and OAB.
Provide advice and legal opinions with regard to	50 requests for legal opinions received.	Need for legal advice and opinions is expected to

numerous Medicaid, health care, and CORA issues.		increase due to health care expansion.
Colorado Department of Public Health and Environment		
Workload Measure	FY 12 Actual	FY 13 Estimate
Actions prosecuted to revoke, suspend, or place on probationary status licenses of Emergency Medical Technicians.	20	Anticipate equivalent case load.
Defend civil action, provide legal advice and opinions, and defend against subpoenas seeking confidential and/or overly burdensome requests.	Defended CDPHE is 20 civil matters. Defended against 30 medical marijuana related subpoenas. 25 requests for legal advice and opinions received.	Same as FY 12.
Prosecute licensing actions involving Health facilities licensed under the authority of the Department.	20	Anticipate equivalent case load.
Provide rulemaking advice to Board of Health.	Review all rules and attend monthly Board meetings. Provide advice and legal opinions to Board.	Same as FY 12

EDUCATION

Caseload trends:

The unit continues to average 2-3 major constitutional cases each year.

Teacher licensure cases referred for litigation have doubled this 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.

Workload Measure Teacher Licensure	Unit	FY 11 Actual	FY 12 Actual
Total teacher licensure matters referred	# of matters	37	89
Settlements obtained	# of settlements	11	14
Closed cases/matters	# of closed matters	41	30
Actions Filed/matters referred for litigation	# of cases	18	36
Cases/matters carried over to next FY	# of matters	17	9

Objective: To support the Department of Education and the State Board of Education in protecting school children from teachers who have violated State standards.

Strategy: Provide timely legal services to the clients on all matters referred; closely track case status to assure timeliness; solicit and respond to oral and written client feedback to maintain client satisfaction.

Evaluation of Prior Year Performance; The Unit avoided case backlogs and worked collaboratively with the client to achieve its objective of protecting students from substandard teachers.

Key Workload Indicators: Case status tracking numbers, client satisfaction surveys and ongoing communication to address client concerns.

PUBLIC UTILITIES COMMISSION

Workload Measure	FY 12 Actual	Comments
Prevail in appeals of	Prevailed in 2	There are 10 appeals or other

PUC decisions in state and federal court	of 3 cases. Obtained a split decision in 0 cases. Obtained favorable or neutral settlements in 1 cases .	court cases pending
Provide on-going, comprehensive, timely and accurate legal assistance to the PUC regarding PSCo's Emissions Reduction Plan Filing Pursuant to HB10-1365	Continue to meet all deadlines and provide substantive assistance in any appeals of the PUC's 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 PSCo/Tri-State application to construct a transmission line connecting the San Luis Valley to a site near Pueblo	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 the Qwest merger with CenturyLink.	This matter commenced at the very end of the FY09	We have met all deadlines in this matter and continue to substantively assist the PUC in its decision in this matter.
Provide comprehensive and timely legal assistance to the PUC regarding the promulgation of rules regarding the renewable energy	Began drafting new rules in FY10.	We have met all deadlines in this matter and continue to substantively assist the PUC in its decision in this matter.

standard and community solar gardens.		

LABOR/PERSONNEL AND ADMINISTRATION

DEPARTMENT OF LABOR AND EMPLOYMENT, DIVISION OF WORKERS COMPENSATION

1. Worker's Compensation Enforcement

DEPARTMENT OF LABOR AND EMPLOYMENT, DIVISION OF WORKERS COMPENSATION, ICAO APPEALS, AND DIVISION OF OIL AND PUBLIC SAFETY

1. Worker's Compensation Enforcement

Objective: Pursue statutory fines against employers that fail to have WC insurance for their employees. In the event that employers continue to fail to obtain or maintain WC insurance coverage, the Division seeks to either bring the employer into compliance or close the business.

Workload Measure	Unit	FY 11 Actual	FY 12 Actual	FY13 Estimate
Total number of new cases in Unit		247	**235**	175 to 200
WC cases		80	**73**	Approx. 100 cases
WC settlements		16	**21**	15 to 20
WC fines imposed ~~and sent to collections~~		$1.6M	**$2.3M**	$1.5M
WC fines sent to collections		$567,095	**$1.2M**	$500K

2. ICAO Appeals

The Industrial Claims Appeals Office (ICAO) serves as the first appellate level for appeals in Worker's Compensation and Unemployment Insurance cases. If an ICAO decision is appealed, that appeal in filed with the Colorado Court of Appeals. Further appeal is available in the Colorado Supreme Court. The ICAO selects cases that effect the overall administration of the WC or UI systems, and not just whether benefits were granted in a particular case.

Workload Measure	Unit	FY 11 Actual	FY 12 Actual	FY13 Estimate
Total number of cases		41	**26**	50 cases
Appellate briefs		32	**17**	40 briefs
Oral arguments		6	**4**	10 oral arguments

3. Division of Oil and Public Safety

The Division of Oil and Public Safety (OPS) has several statutory duties including oversight of petroleum storage tanks, amusement rides, boiler inspection program, and the elevator, escalator, and other public conveyances program. OPS is in the process of streamlining the administration of UST program claims with the goal of reducing the number of hearings and appeals.

Workload Measure	Unit	FY 11 Actual	FY 12 Actual	FY13 Estimate
New OPS cases		33	**41**	30 to 40 new cases
Successfully closed or dismissed cases		23	**22**	40 cases
OPS settlements		23	**15**	30 settlements

I) BACKGROUND INFORMATION: COLORADO DEPARTMENT OF PUBLIC SAFETY UNIT

The Colorado Department of Public Safety (CDPS) includes the Executive Staff and five divisions: Colorado Bureau of Investigation (CBI), Colorado State Patrol (CSP), Division of Criminal Justice (DCJ), the Division of Fire Prevention and Control (DFPC), and the Division of Homeland Security and Emergency Services (DHSES). The Department is responsible for the provision of state law enforcement services and for research, advice and oversight of the State of Colorado criminal justice system. Pursuant to legislation enacted in 2012, the Department is also responsible for fire and wildlife mitigation and the provision of emergency services. Approximately 90 statutory and administrative boards and commissions fall under the auspices of CDPS. The 2012 legislation added employees of the Ports of Entry, Emergency Management, and portions of the Colorado State Forest Service to CDPS, increasing its employees statewide from 1400 to approximately 1650. CDPS headquarters are located at 700 Kipling Street, Denver, CO.

The Colorado Department of Public Safety actively and extensively utilizes the legal services of the Department of Law. Due to the nature of its mission of ensuring the safety and security of the public, the CDPS consults its attorney on a daily basis, oftentimes initiating 2-3 additional requests for advice and legal representation each day. Due to the sensitive nature of much of its work, the attorney has become a member of its executive team which meets monthly to address department wide issues.

The attorney provides legal services involving representation of CDPS in all litigation, except claims against the risk management fund. Representation includes actions seeking declaratory judgments, administrative reviews of final agency actions, appearances in criminal cases when challenges are made to CDPS policies, representation of employees deposed as non-parties to civil lawsuits, actions before the state personnel board, and all appellate issues resulting from this litigation. The attorney appears statewide on behalf of CDPS in federal, state, and local jurisdictions, in criminal and civil litigation, in administrative proceedings and even in bankruptcy court.

The attorney provides legal services in all transactional matters, including the drafting, review, and oversight of contracts, intergovernmental agreements, memorandum of understanding, grant application requirements, administrative rules, and federal forfeiture requests. The attorney advises on policy matters, reviews proposed changes to departmental policies and initiates proposed policies and on legal issues.

The attorney also initiates training proposals on relevant legal topics. In a recent year, training was presented to internal affairs investigators on report writing and testifying in court. The training was well received and presentations have been requested for additional groups of employees. Currently, updated training on the 4th Amendment is being developed for presentation to all peace officers in the Colorado State Patrol.

The Public Safety Unit attorney is also responsible for providing legal services to the P.O.S.T. Board and P.O.S.T. staff. 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.

The provision of legal services to the P.O.S.T. Board and to the P.O.S.T. staff includes attendance at all P.O.S.T. Board quarterly meetings, rule interpretations, legal research and advice, and legal representation in litigation, as needed.

II) PRIOR YEAR LEGISLATION:

HB 12-1283 consolidated homeland security functions under CDPS, transferred the emergency services to CDPS, and transferred the forestry functions relating to fire and wildlife mitigation, response, suppression, coordination, or management to CDPS. These functions and associated positions (approximately 140 FTE) were transferred to CDPS from Colorado State University and the Department of Local Affairs. Legal services funding was not increased and no legal services funding was transferred from other agencies.

HB 12-1019 transferred motor carrier services relating to Ports of Entry to the Colorado State Patrol, CDPS. The functions and associated positions (approximately 120 FTE) were transferred to CDPS with this legislation. Legal services funding of about $7000 was transferred from the Department of Revenue to CDPS. A three year average of legal services incurred by Ports of Entry is approximately $18,000 per year. No additional legal services funding was appropriated.

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. The reorganization and transfer of Homeland Security and Emergency Services and the transfer of significant state forestry functions to CDPS require substantial additional legal services and funding. The transfer of Ports of Entry and an additional 120 employees into CDPS will require significant additional legal advice and extensive rule-making proceedings. Additionally, the P.O.S.T. Board staff has experienced a substantial turnover in staff and an increasing need for legal advice.

IV) WORKLOAD MEASURES:

This position is funded for one fulltime attorney position.

Workload Measure	Unit	FY 11 Actual	FY 12 Actual	FY 13 Estimate	FY14 Request
Trial Court Litigation	# of cases	5	3	6	10
Administrative Hearings	# of cases	12	29	20	30
EEOC Investigations	# of cases	2	0	2	5
Appellate Litigation.	# of cases	2	5	3	6
Court Interventions	# of appearances	30	35	40	50
Major Policy Issues	# of issues	10	20	30	50
Intergovernmental Agreements	# of agreements	8	10	10	20
Rulemaking Hearings	# of hearings	2	3	4	10
Major Client Meetings	# of meetings	100	125	150	200
General Requests for Legal Advice	# of requests	200	225	250	300
P.O.S.T. staff legal advice	# of requests	50	100	80	100

I. BACKGROUND INFORMATION: CIVIL LITIGATION AND EMPLOYMENT LAW

The employees of the section defend state agencies, institutions of higher education, officials, and employees in litigation in state and federal court, as well as administrative hearings. The section also acts as general counsel to the Division of Risk Management, the Colorado Department of Corrections (CDOC), the Parole Board, the Colorado Civil Rights Division (CCRD), the Colorado Transportation Commission, and the Colorado Department of Transportation (CDOT), providing quick and thorough legal advice regarding the many issues that arise on a daily basis. The section advises all state agencies and institutions of higher education regarding personnel matters. The section is divided into five units: Corrections, Employment Personnel and Civil Rights, Employment Tort, Tort Litigation, and Transportation. A brief description of each unit follows.

Corrections Unit:

The Corrections unit is responsible for the representation of CDOC, the Colorado State Board of Parole, and all employees of those agencies in state and federal lawsuits and appeals alleging tort claims, claims of various constitutional violations, construction claims, requests for documents and appearances in court, challenges to sentences, appeals of internal inmate discipline and classification, 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 CDOC and the Parole Board except in the areas of personnel and contracts. The unit members give advice on a daily basis to representatives of CDOC and the Parole Board on the many complicated issues that arise in a prison and parole context. The attorneys' provide advice regarding proposed legislation as well.

Employment Personnel and Civil Rights Unit:

The Employment Personnel and Civil Rights unit defends state agencies, institutions of higher education, and employees in administrative hearings before the State Personnel Board and before the appellate courts in matters involving classified employee grievances and appeals of disciplinary actions. The cases involve claims arising from the Colorado Constitution, the State Personnel System Act, the state whistleblower act, the Colorado Anti-Discrimination Act, and related federal and state statutes. The attorneys also provide advice and risk reduction training to state agencies and institutions of higher education on issues such as hiring, managing, and disciplining employees. The unit provides legal advice to the CCRD within the Department of Regulatory Agencies in connection with CCRD's investigation of charges of employment, housing, and public accommodations discrimination and cases brought based as a result of those investigations. The unit

also assists CCRD on all transactional legal matters. The unit prosecutes civil rights cases through all stages of appeal and defends challenges to the authority of the Colorado Civil Rights Commission. The unit also represents and defends the Special Funds Unit of the Division of Workers' Compensation within the Department of Labor and Employment. The unit defends challenges to the Subsequent Injury and the Major Medical Insurance Funds in administrative courts and on appeal, and assists the Special Funds Unit in transactional matters.

Employment Tort Unit:

The Employment Tort unit defends state agencies, institutions of higher education, 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 Family Medical Leave 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 attorneys also provide advice and risk reduction training to state agencies and institutions of higher education regarding employment law. The unit provides day to day advice to the State Risk Management Division on questions of coverage, indemnity, settlements, and conflicts.

Tort Litigation Unit:

The Tort Litigation unit defends state agencies, institutions of higher education, and employees in lawsuits seeking damages for personal injury and property damage, and those brought pursuant to federal law (except for employment claims). The unit also provides day to day advice to the State Risk Management Division on questions of coverage, indemnity, settlement, 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. In addition, the unit provides most of the Conflicts Counsel services to regulatory agencies and boards in cases where line attorneys act as prosecutors in regulatory actions before the agencies and boards and are therefore prevented from advising the decision makers.

Transportation Unit:

The Transportation unit acts as a general service law firm to the 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. The unit prosecutes all condemnation actions, defends inverse condemnation actions, and handles administrative actions. The unit also handles access control, highway beautification, and billboard location disputes, and protests brought 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.

II. PRIOR YEAR LEGISLATION

HB 12-1223: Concerning earned time for inmates and, in connection therewith, making and reducing appropriations.

This bill provides that in addition to other earned time authorized by statute, permits the CDOC to award inmates an additional 60 days of achievement earned time for successful completion of a milestone or phase of an educational, vocational therapeutic or reentry program, or who demonstrates exceptional conduct that promotes the safety of CDOC staff, volunteers or other persons under the supervision of the CDOC. An offender may not be awarded more than 120 days of achievement earned time pursuant to this statute.

HB12-1321: Concerning modernization of the State Personnel System.

This bill made changes to the State Personnel System that became effective September 1, 2012, including the elimination of bumping rights for all employees except those within five years of retirement and establishing merit pay in lieu of a pay-for-performance system.

House Concurrent Resolution 12-001: Submitting a referendum to the voters concerning the State Personnel System.

This referendum includes amendments to constitutional provisions governing the State Personnel System, including expanding the veterans' preference in the hiring and layoff processes, increasing the number of candidates eligible to be appointed to a position from three to six, allowing the flexibility to remove up to 1% of the classified workforce from the State Personnel System, modifying the residency requirement for certain classified positions, adjusting the terms of service for members of the State Personnel Board, and requiring merit-based appointments to be made through a comparative analysis process rather than examinations.

HB 12-1361: Concerning claims against the State arising under the "Colorado Governmental Immunity Act".

This bill waived immunity of the State for injuries arising from a Prescribed Fire negligently started or maintained by the State or its employees. Immunity was

waived retroactively to January 1, 2012, in order that claims arising from the Lower North Fork fire would be included in the waiver of immunity.

In addition, this bill provided a mechanism for authorization by the General Assembly acting by bill to pay amounts in excess of the damages caps permitted by § 24-10-114 in cases in which claimants settle claims against the State or its employees and obtain a recommendation of the State Claims Board to the General Assembly to authorize an excess payment.

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 case was brought against the CDOC 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 believed they had been injured by discrimination against them 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 1,400 claims were filed and resolved. The state paid less than $50,000 overall on these claims. In addition, the Division of Risk Management paid plaintiffs' attorneys fees and the special masters' fees. Presently, hearings are being conducted to determine whether the CDOC has complied with the special masters' orders with respect to individual accommodations awarded to the individual inmates. Also, the Tenth Circuit Court of Appeals ruled that the individual inmates may appeal the special masters' orders to the Tenth Circuit, despite the language in the original settlement agreement waiving such appeal. 2) The CDOC was given two years to comply with the terms of the stipulation, followed by a two-year monitoring period. The compliance period was extended twice - the ultimate date for compliance was May 1, 2009. An eight-week hearing to determine whether compliance was achieved was held in 2010. Full briefing on proposed finding of fact and conclusions of law was completed in August 2011. We will await Judge Kane's ruling on compliance.

2. Administrative segregation cases and mental health treatment and outdoor exercise issues.

The CDOC has several cases relating to extended confinement in Administrative Segregation in which offenders are not permitted outdoor exercise. In addition, recent trends across the country as well as communications from the ACLU indicate that litigation relating to extended confinement in Administrative Segregation is detrimental to offender's mental health and exacerbates mental health problems in offenders with existing mental health problems.

3. Sex offender treatment.

The CDOC has been sued in a potential class action pertaining to access the Sex Offender Treatment for offenders sentenced under the Lifetime Supervision of Sex Offender Act. If an offender is sentenced under the Lifetime Act, the offender is sentenced to an indeterminate sentence. The sentence specifies a minimum period of incarceration to life. An offender must serve the minimum sentence before he or she is eligible for parole. In order to be eligible for parole, the offender must have successfully progressed in treatment. The offenders claim that they are being denied access to treatment and have thus been given a life sentence. In certain other individually filed cases, courts have ordered immediate placement of the particular offender into treatment.

4. Death penalty protocol.

With the exhaustion of appeals rapidly approaching, the execution of Nathan Dunlap will potentially occur next year resulting in substantial litigation pertaining to execution protocols.

5. Risk reduction training.

The corrections and employment units continue to create and present risk reduction training to state agencies on a myriad of employment and litigation issues. This past year, the attorneys conducted training sessions covering sexual harassment, retaliation, due process, search and seizure, litigation issues, and best practices for managers. The units conducted training sessions for DPA and DOLE supervisors and made presentations to DOC wardens, management staff and hearing officers on personnel, ethics issues and due process. The units also presented investigations and state personnel system training to the Community College System presidents and investigators.

6. Colorado State Penitentiary II (CSP II) closing.

The Employment Personnel and Civil Rights unit provided assistance to the CDOC on issues involving transfers and staff assignments in light of the closing of CSP II Correctional Facility.

7. Inter-departmental employee transfers.

The Employment Personnel and Civil Rights unit provided assistance to the Department of Revenue on personnel issues related to House Bill 12-1019's abolishment of the Department's Motor Carrier Services Division and the Type 3 transfer of the Ports and Entry's powers, duties, and functions to the Colorado State Patrol. The unit provided similar assistance to the Department of Local Affairs and

Colorado State University following the passage of House Bill 12-1283 and the consolidation of homeland security functions within the Department of Public Safety. The unit advised these agencies concerning personnel issues stemming from Type 2 transfer of the State Forest Service and Division of Emergency Management to the Department of Public Safety.

8. Lower north fork fire litigation.

On July 2, 2012, a group of insurance companies that have paid or expect to pay claims of their insureds for damage caused by the Lower North Fork fire filed suit against the State, Colorado State University, and the Colorado State Forest Service to recover amounts paid on such claims. Their claims include a negligence claim that comes within the new waiver of immunity contained in § 24-10-106.1. C.R.S. It also included a claim for "trespass" which does not allege negligence and should be barred by the CGIA, and a claim for inverse condemnation. The Tort Litigation unit responded to the Complaint, raising defenses to the second and third claims for relief by not contesting liability under the first claim for relief. We interpleaded the cap of $600,000 among plaintiffs and all others who have filed notices of claims for damages caused by the Lower North Fork fire. We have asked the court to stay proceedings until the time for filing notices of claim expires and all claimants can be joined in the case.

9. Colorado Bridge Enterprise litigation.

On May 22, 2012, the TABOR Foundation sued the Colorado Bridge Enterprise, the Colorado Transportation Commission and individual Transportation Commissioners in their official capacities, claiming that the Bridge Safety Surcharge authorized by SB09-108 constituted a "tax" rather than a "fee" requiring statewide voter approval and also claiming that $300 million in bonds issued by the Bridge Enterprise in December 2010 to fund "designated bridge" repair and reconstruction projects required voter approval. The lawsuit seeks a declaration that the Bridge Safety Surcharge and bonds are illegal and should be enjoined. The lawsuit is being defended in Denver District Court by both the Transportation unit and outside counsel retained on behalf of the Transportation Commission and the individual Transportation Commissioners.

10. High Performance Transportation Enterprise.

The High Performance Transportation Enterprise is pursuing a concession agreement for construction, operation and maintenance of "managed lanes" on U.S. Highway 36 and I-25. This will be the first concession agreement involving private operation and maintenance of a public highway sought by a state entity.

11. Taxpayer's Bill of Rights (TABOR) litigation.

Attorneys from various units in the section are assisting the Solicitor General in defending a challenge to TABOR in U.S. District Court brought by current members of the Colorado General Assembly. Plaintiffs allège that TABOR violates the Colorado Constitution and statutory obligation to maintain a republican form of government by removing the General Assembly's power to tax.

IV. WORKLOAD MEASURES

The workload measurements below do not reflect all areas of work these units address on behalf of clients. The measurements below are presented to provide a representation of the type and gravity of work each unit performs throughout each year.

Corrections Unit:

Workload Measure	Unit	FY 11 Actual	FY 12 Actual	FY 13 Estimate	FY 14 Request
New cases	Corrections	376 (248 inmate, 79 Risk Mgmt, 34 advice, 11 Montez, 4 assigned to outside counsel)	336* (202 inmate, 93 Risk Mgmt, 41 advice, 0 assigned to outside counsel)	400	400
Billable hours		17,431	16,860	17,000	17,000

Employment/Personnel and Civil Rights Unit:

Workload Measure	Unit	FY 11 Actual	FY 12 Actual	FY 13 Estimate	FY 14 Request
Personnel cases opened	Employment Personnel	209	240	220	220
Special funds (SIF and MMIF) cases opened		3	6	5	5
Civil rights matters opened (including hearing worthiness analysis and probable cause sufficiency analysis)		13	18	20	20
Billable hours		19,362	18,690	19,500	19,500

Employment Tort Unit:

Workload Measure	Unit	FY 11 Actual	FY 12 Actual	FY 13 Estimate	FY 14 Request
New cases opened	Employment Tort	22 new cases with 100 claims	21 new cases with 123 claims	20 new cases with 150 claims	20 new cases with 150 claims
Cases and claims handled in-house		41 cases with 505 claims	54 cases with 554 claims	40 cases with 500 claims	40 cases with 500 claims
Cases and claims handled by outside counsel		5 cases with 13 claims	5 cases with 13 claims	1 case	1 case
Billable hours		12,529	9,940	12,500	12,500

Tort Litigation Unit:

Workload Measure	Unit	FY 11 Actual	FY 12 Actual	FY 13 Estimate	FY 14 Request
New cases opened	Tort Litigation	83	89	90	90
Notices of claims received and reviewed		1,658	1,843	1,850	1,850
Conflicts cases handled (new FTE added in FY 11)		22	60	55	55
Billable hours		16,363	19,397	19,650	19,650

Transportation Unit:

Workload Measure	Unit	FY 11 Actual	FY 12 Actual	FY 13 Estimate	FY 14 Request
New cases filed	Transportation	30	41	30	30
Pending cases		52	42	50	50
Number of trials		2	0	2	2
Contested hearings		3	6	4	4
Condemnation cases resolved		15	14	15	15
Contracts reviewed		586	620	580	580
Billable hours		12,945	13,083	14,000	14,000

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

Introduction to the Natural Resources and Environment Section

The Natural Resources and Environment Section protects 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 nine units that represent and advise state agencies, and state boards and commissions that regulate and oversee the development, use and conservation of Colorado's natural resources and protect the quality of Colorado's environment.

Water Quality/Radiation Unit

The Water Quality/Radiation 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 water resources. The Unit also represents the divisions of CDPHE that are charged with controlling radioactive materials and consumer protection. Specifically, the Unit provides legal counsel to the Executive Director's Office, the Radiation Management Program, 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, the Uranium Special Projects Unit, and the Consumer Protection Division.

The attorneys in the 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.

Air Quality Unit

The Air 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 quality. Specifically, the Unit provides legal counsel to the Executive Director's Office, the Air Quality Control Commission, and the Air Pollution Control Division. The Unit also represents the Governor's Energy Office.

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.

Hazardous & Solid Waste 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 and administrative law enforcement, regulatory matters and rule-makings, and transactional matters. The Unit ensures 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 "meaningful and substantial involvement" is incorporated into EPA's CERCLA response actions. 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). The Unit also provides legal advice to the Director of the Department of Labor's Division of Oil and Public Safety in connection with Explosives Permit appeals hearings.

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), Colorado Parks and Wildlife (CPW), the State Land Board (SLB), the Department of Transportation (DOT), the Department of Corrections (DOC) and any other state agency or official that requests water rights advice or representation.

The Unit files water rights applications or water rights diligence applications for CWCB, CPW, SLB, DOT, and DOC and also files statements of opposition in water court to protect the existing water rights of these agencies. Water matters are appealed directly from Water Court to the Supreme Court, and the Unit always has numerous matters pending before Water Court at any given time and often has matters before the Supreme Court. 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 its Board, works on trials and appeals, helps in drafting and promulgating rules and regulations for the instream flow program, the floodplain program and the weather modification program. The Unit establishes policies and guidelines for the loan program and the water conservation program, and drafts and reviews CWCB loan and grant contracts, including the thirty-six million dollar purchase of the Animas La-Plata water rights. The Unit negotiates and drafts documents for long-term and short-term acquisitions of water to supplement protection of existing water rights for the CWCB or to add water rights protection where non-existent, but needed. 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. The Unit also 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 assistant 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 Division of Reclamation, Mining and Safety (DMRS, which regulates Hard Rock, Coal, and Construction Material mining operations), the Mined Land Reclamation Board (MLRB), the Colorado Coal Mine Board of Examiners, Colorado Inactive Mines Program, and the Mine Safety Unit. These clients within DNR implement and enforce numerous statutorily created programs including regulation of reclamation of land that has been impacted by mining operations, regulation of oil and gas operations, and closure of inactive or abandoned mines. The activities performed by attorneys in the Resource Conservation Unit include general legal advice to and representation of the divisions, boards and commissions of DRMS, MLRB, and Colorado Oil and Gas Conservation Commission (COGCC) in administrative and judicial hearings, trials, and appeals; promulgation of rules and regulations; defense of litigation filed against the agencies; prosecution of enforcement actions; general advice and counsel in permitting matters; and advice on legislative proposals.

The attorneys help to ensure that the State's mining and oil and gas industry and citizens comply with applicable environmental protection and reclamation requirements, and they assist in the enforcement actions brought against those who do not comply.

Trust Lands Unit

The attorneys and legal assistants in the State Trust Lands Unit provide legal assistance and representation to state officials and agencies within the Department of Natural Resources (DNR), including to the State Board of Land Commissioners (also known as the Land Board). The Unit is responsible for all legal matters involving the Land Board, including advising on the management of significant real property (land and water) holdings throughout the state administered by Land Board.

The Land Board is a cash funded agency that generates its own revenues through the management of state trust lands. The Land Board serves as trustee, and manages eight trusts of land granted to the state by the federal government. The largest of these trusts is the school lands trust received at statehood for the benefit of public K-12 education in Colorado. The Land Board manages the trusts under the constitutional and statutory provisions governing the trusts to generate revenue or other benefits for the purposes of the respective trusts. The Land Board receives no general fund allocation. Given the Board's role to generate revenues, representation of the Land Board is similar in many respects to representation of a for profit corporate business entity and, as such, raises issues frequently not presented by other state agencies.

Parks and Wildlife Unit

The attorneys and legal assistants in the Parks and Wildlife Unit provide legal assistance and representation to the Division of Parks and Wildlife and the Parks and Wildlife Commission (collectively referred to hereinafter as "Parks and Wildlife") within the Department of Natural Resources. The Unit is responsible for all legal matters involving Parks and Wildlife, including advising on the management of significant real property (land and water) holdings throughout the state and the numerous regulatory programs (hunting, fishing, threatened and endangered species, recreational trails, vessels, snowmobiles, Off-Highway Vehicles, river guides) administered on a statewide basis by Parks and Wildlife.

However, unlike most agencies, Parks and Wildlife is a cash funded agency that generates its own revenues through the sale of hunting and fishing licenses and parks passes and other permits, which revenues are used to support its statutorily mandated responsibilities and activities to manage all wildlife and park and outdoor recreation resources and programs. Parks and Wildlife receives no general fund allocation. In that regard, representation of Parks and Wildlife agencies is similar in many respects to representation of a for profit corporate business entity and, as such, raises issues frequently not presented by other state agencies. Parks and Wildlife is a TABOR enterprise funded entirely by the sale of hunting and fishing licenses, parks passes and

permits, federal fish and wildlife and park and outdoor recreation funds, and other funds made available to it by the Great Outdoors Colorarado Trust Fund.

II) PRIOR YEAR LEGISLATION

Air Quality Unit

SB 12-034 repealed the rapid screen program that had been jointly administered by the Air Pollution Control Division and Department of Revenue. This program was part of the motor vehicle emissions program that used remote sensing to find vehicles with excessive pollution emissions. This program was repealed because it was not effective.

III) WORKLOAD MEASURES

Water Quality/Radiation Unit

The attorneys in the 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 Water Quality Control Division, Water Quality Control Commission, the Water and Wastewater Facility Operators Certification Board, the Radiation Management Program, the Board of Health, and various state and federal courts. As just one example, the attorneys prepare for and attend approximately 15 – 20 meetings of various boards and commissions annually.

The attorneys assist the water division and radiation program in obtaining and maintaining delegation from the EPA and the NRC to administer the state counterparts of corresponding federal environmental and radiation 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, the regulation of medical and industrial uses of radioactive materials, clean-up of historic uranium mills, and licensing of new uranium mills.

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, and environmental covenants to ensure protection of the public health and safety.

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 water quality and radiation control. Such workload increases have included and will include large-scale rulemakings such as nutrient pollution control. They also include new temperature, organic chemicals, and arsenic standards, other permitting regulations, and water pollution issues from oil and gas operations. There has also been an increase in litigation (both in court and administrative) concerning challenges to CDPHE decisions, such as with respect to water permits, radioactive materials licenses, Open Records Act issues, agency commission determinations, construction stormwater enforcement, water treatment plant site approvals, and drinking water disinfection revocations. 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, litigation, and policy initiatives will require additional legal resources as CDPHE makes changes to its corresponding state program.

Air Quality Unit

The attorneys in the Air 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, 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 fifteen meetings of various boards and commissions annually.

Unit attorneys assist the Air Pollution Control Division and Air Quality Control Commission in obtaining and maintaining delegation from the EPA to administer the state counterpart of corresponding federal environmental program. 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 compliance with national standards for ground level ozone and regional haze, greenhouse gas regulation, and the management of pollution emissions associated with wildfires and controlled, open burning. A Unit attorney also serve as counsel for the Colorado Energy Office, serving as general counsel for the office, which includes representing the office when it intervenes in cases before the Public Utilities Commission.

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.

The Air Pollution Control Division continues to experience significantly more work associated with permitting due to an increase in oil and gas exploration and production as well as an increasingly educated regulated industry. As the Division manages this workload, there is more demand on Air Quality attorneys to address a myriad of issues. The increase in industrial activity has also created an increase in enforcement, requiring additional enforcement support from the Unit's attorneys. The Division faces greater workload due to large-scale rulemakings, such as oil and gas, ozone, regional haze and mercury regulations, which has been done to address federally mandated program changes. This will likely continue as EPA commences or continues to implement new standards for ozone, nitrogen oxides and sulfur dioxides. These complicated and contentious program changes also strain the resources of the Air Quality Control Commission. Air Quality Unit attorneys will continue to see an increased demand for legal support on these program changes. In recent years, the Division and Commission have experienced an increase in litigation (both in court and administrative) concerning challenges to CDPHE decisions approving regulations, permits, and Open Records Act issues. This trend has required the Unit's attorneys to spend additional time advising the agencies and defending their decisions.

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. Additionally, the Unit represents the related rule-making body, the Solid & Hazardous Waste Commission, and ensures it complies with applicable statutory and regulatory procedural requirements, and advises the Commission as 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 leveled off from its recent trend of increasing litigation, especially relating to solid waste enforcement, although new legislative mandates and penalty authorities cold reverse this trend. 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.

Newly promulgated Solid Waste regulations continue to generate work, in part due to the promulgation process, and in part the new regulations often lead to increased regulatory efforts. Dry cleaning facilities are the fastest-growing clean up category; approximately half of all hazardous waste remediation sites in Colorado are current or former dry cleaners.

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. 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. For example, this year the Unit helped draft and finalize 18 loans, totaling over $22 million.

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 or 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.

There also has been over the past year a historically severe drought. As a result of this drought, the State Engineer's Office has been forced to administer numerous water rights that have not historically been administered. A number of relatively senior water rights have been curtailed. There have been numerous legal challenges to this administration requiring legal representation from the Attorney General's Office.

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, attorneys, etc.) and complex issues (water quality, legal right to enter) are involved. In addition, attorneys in this unit represent the Division in all litigation and related appeals. The attorneys also assist the Division in drafting proposed regulations for rulemaking hearings. 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.

In addition, attorneys in this unit act as legal advisor to the Colorado Oil and Gas Conservation Commission at monthly administrative hearings to ensure it complies with applicable statutory and regulatory procedural requirements, and advises the Commission as needed. In addition, the unit represents COGCC staff related to administrative enforcement actions. The attorneys also handle COGCC civil and administrative litigation and assists the client in formulating litigation strategy, amassing evidence, preparing witnesses (if needed), and appearing in administrative, trial and appellate courts. The Commission's attorney also assists the Commission/staff in drafting proposed regulations for rulemaking hearings. The attorneys also provide day-to-day verbal and written advice and representation to the Commission and staff on a variety of legal issues and matters.

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 workload related gold, molybdenum, and uranium prospecting and mining/development. Such mining and development will ultimately result in reclamation permit applications and/or amendments being filed with the Division and hearings being held on such applications before the Mined Land Reclamation Board. Accordingly, there will be a parallel increased need for legal services.

A number of federal and state regulatory issues have arisen, and will likely continue to arise, in regard to uranium development and the passage of HB-08-1161 which made all uranium mining operations designated mining operations (a classification that requires the Division's highest level of technical scrutiny). These regulatory issues have required and will continue to require significant legal advice and counsel. Many of the uranium mines are located on federal lands, so the unit provides advice regarding the complex federal NEPA process and assists the division in its role as a co-operating agency.

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. Case loads for this client agency continues to increase and generally exceeds legal service budgets, however, attorneys work directly with the client to establish priorities within those budgets. Several lawsuits have been filed against the Commission concerning recent rule changes, the process for applications for permits to drill, and other final agency actions by the Commission. In addition, hydraulic fracturing was an important topic addressed by the Commission through thorough chemical disclosure rules. Based on the rules, the current and anticipated litigations, and the record breaking business of the COGCC, there is likely to be a continued increase in the Commission's need for legal services.

All client agencies represented by this unit have seen an increase in litigation this past year, and that trend will likely continue. In many of the current litigation, the matter does not end at the district court level. Appeals are becoming more common, therefore, the unit is involved in a significant amount of appellate work.

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, continues to implement the regulations it adopted in 2008. In addition, several lawsuits have been filed against the Commission concerning these rules, the process for applications for permits to drill and other final agency actions by the Commission. Based on the rules, the litigations and the record breaking business of the OGCC, there is likely to be a continued increase in the Commission's need for legal services.

Trust Lands Unit

The attorneys in the Trusts Lands Unit are assigned to and act as general counsel to and work directly with the State Land Board to appropriately plan and meet the demand for legal services based on workload and budget constraints. The case load for the Board continues to increase and generally exceed legal service budgets and attorneys work directly with the Board to establish priorities within those budgets. Due to the specialized nature of the agency, which is primarily a revenue generating entity 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 State Land Board in establishing policies and program direction during its monthly meetings and then assist the staff to implement those policies and programs and general management of the revenue generating assets of the Board. The provision of legal services is given in a

manner intended to avoid legal challenge to or litigation regarding the activities of the Board. However, any litigation that is filed is handled by the attorney assigned to representing the Land Board in a timely and effective manner.

Parks and Wildlife Unit

The attorneys in the Parks and Wildlife Unit is assigned to and act as general counsel to and work directly with its client agency, the Colorado Parks and Wildlife Commission, to appropriately plan and meet the demand for legal services based on workload and budget constraints. The case load for the client agency continues to increase and generally exceeds the legal service budget. Attorneys work directly with staff from the client agency to establish priorities within the budget. Due to the specialized nature of their client agency, which is primarily a revenue generating entity 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 Parks and Wildlife Commission to establish policies and program direction during its monthly meetings and then assist the agency's staff to implement those policies and programs. Attorneys also assist with legal issues regarding the general management of the revenue generating assets of the client agency. The provision of legal services is given in a manner intended to avoid legal challenge to or litigation regarding the activities of the client agency. However, any litigation that is filed is handled by the attorney assigned to representing the client agency in a timely and effective manner.

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 ("Commission"). 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 YEARS LEGISLATION

The Colorado Legislature in 2007, 2008, 2009, and 2010 passed the following legislation affecting energy and telecommunication regulation in Colorado:

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;

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;

HB09-1345, Concerning Integrated Planning for the Construction of Electric Transmission Facilities in Colorado;

SB09-051, Concerning Measures to Facilitate the Financing of Energy-Efficient Structures;

HB10-1001, Concerning the Installation of New Distributed Renewable Energy Generation Facilities in Colorado and Increasing the Target Percentages under the Electric Utility Portfolio Standard;

HB10-1365, Concerning Incentives for Electric Utilities to Reduce Air Emissions, and Requiring Plans to Achieve Such Reductions that Give Primary Consideration to Replacing or Repowering Coal Generation with Natural Gas and Also Considering Other Low-Emitting Resources.

III) HOT ISSUES (for the OCC)

Governor Ritter's issuance in November 2007 of his Colorado Climate Action Plan and the Legislature's passage of HB10-1365, known as the "Clean Air-Clean Jobs Act" ("CACJA"), has greatly affected energy regulation in Colorado. As a result of the Governor's Climate Action Plan, the above referenced legislation, the CACJA, and the Commission's rulemaking dockets to implement the legislation, the OCC has been heavily involved in numerous proceedings before the Commission involving energy issues.

The Commission requires jurisdictional electric utilities, Public Service Company of Colorado ("Public Service") and Black Hills/Electric ("Black Hills") to file every four years their electric resource plan ("ERP") to determine cost-effective resource portfolios to meet their electric resource needs. Public Service filed their latest ERP in October 2011 and Black Hills filed their latest ERP in July 2012. These ERP filings were affected by the PUC's decisions in other dockets, which included the CACJA, Demand Side Management, Renewable Energy Resources, Interruptible Service Option Plan and various transmission plan applications. HB07-1037 required the Commission 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. HB07-1281 revised the electric resource standards by requiring electricity to be generated, for utilities under the Commission'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. SB09-051 encourages the installation of energy-efficient equipment such as solar panels. HB10-1001 further revised the electric resource standards by requiring electricity from eligible energy resources to 12% for the years 2011 through 2014, 20% for the years

2015 through 2019 and 30% for the year 2020 and thereafter. The 2011 and 2012 ERP proceedings involved all of the above referenced legislation, except for SB07-022.

The CACJA required Public Service and Black Hills to file at the Commission before August 15, 2010 its Emission Reduction Plan, which covered a minimum of 900 megawatts or 50% of the utility's coal-fired electric generating units in Colorado, which ever was smaller. Each of the utility's plans had to be reviewed by the Department of Public Health and Environment prior to filing to determine if the plan or plans "meet the current and reasonably foreseeable requirements of the Federal Act ("Federal Clean Air Act") and State law ("Colorado Air Pollution Prevention and Control Act") in a cost-effective manner." Filings were made by Public Service and Black Hills. Pursuant to HB10-1365 the Commission issued its Decision in both proceedings on December 15, 2010. The CACJA requires full implementation of the approved Emission Reduction Plans on or before December 31, 2017. As indicated above, the CACJA affects the ERP filings made by Public Service and Black Hills. In addition to affecting the ERP filings, the implementation of the CACJA will affect the electric rates paid by the customers of the two utilities. The OCC has represented customers in the electric rate cases that were filed by both utilities and will continue to represent customers in future rate cases.

Because of the rising energy costs, SB07-022 was passed to assist low-income households who are having problems paying their utility bills. The first proposed pilot project to implement this legislation was filed in Public Service's 2008 natural gas rate case and approved by the Commission. The program became operational in January 2009. A similar pilot program for electric customers was filed in Public Service's 2009 electric rate case and was approved by the Commission. As a result of the pilot programs, the Commission in 2012 approved low-income programs for Colorado utilities.

HB08-1227 amended § 40-15-502(3)(b)(I), C.R.S. to eliminate the 13 year old "statutory rate cap" for telecommunication companies and stated new statutory language creating a Residential Basic Service "maximum price" cap. As a result of this legislation, Qwest Corporation ("Qwest") filed a rate case before the Commission to increase its residential basic local exchange rate. As a result of the Commission's decision, the OCC filed an appeal with the Denver District Court. On January 6, 2011, the District Court reversed the Commission's Order and remanded the matter back to the Commission for further proceedings. Both Qwest and the Commission filed an appeal with the Colorado Supreme Court, which reversed the District Court Decision in April, 2012.

IV) WORKLOAD MEASURE (for the OCC)

Workload Measure	Unit	FY 11 Actual	FY 12 Actual	FY 13 Estimate	FY 14 Request
Achieve customer savings that at least equal the OCC's annual appropriation		2820%* $41,700,544	2880% $42,676,084	2850% $42,200,000 (Based on a 2 year fiscal average)	2850% $42,200,000 (Based on a 2 year fiscal average)
Percent of rate proceedings in which the OCC participated on behalf of consumers		100%	100%	100%	100%

* The calculation for customer savings for FY11 was revised.

OCC

Performance Measure	Outcome	FY 11 Actual		FY 12 Actual		FY 13 Estimate		FY 14 Request	
		Incidents	Change	Incidents	Change	Incidents	Change	Incidents	Change
Number of cases OCC participates	Benchmark	60		60		60		60	
	Actual	55		74					

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 cases.

Performance Evaluation: The OCC has saved utility customers millions of dollars each year since the OCC was created by the Legislature in 1984. The savings chart above shows the customer savings for the past two fiscal years. The OCC can maintain this success by diligently advocating for utility customers in proceedings before the Commission.

DEPARTMENT OF LAW

FY 2013-14 RECONCILIATION OF DEPARTMENT REQUEST

(2) Legal Services to State Agenices

Long Bill Line Item	Total Funds	FTE	General Fund	Cash Funds	Reappropriated Funds	Federal Funds
Legal Services to State Agencies						
Personal Services						
FY 2012-13 Long Bill Appropriation (HB 12-1335)	$20,510,299	237.9	$0	$280,576	$20,229,723	$0
HB 12-1303 Certification of Speech Lang Pathologists	$14,990	0.1	$0	$0	$14,990	$0
HB 12-1110 Appraisal Mgt Companies	$56,555	0.5	$0	$0	$56,555	$0
HB 12-1300 Sunset Continue Prof Review Committee	$2,044	-	$0	$0	$2,044	$0
HB 12-1311 Sunset Continue Pharmacy Board	$20,783	*0.2*	$0	$0	$20,783	$0
HB 12-1330 Hearing Process Wildlife	$2,725	-	$0	$0	$2,725	$0
	$0		$0	$0		$0
	$0	-	$0	$0	$0	$0
FY 2012-13 Total Appropriation	**$20,607,396**	**238.7**	**$0**	**$280,576**	**$20,326,820**	**$0**
HB 12-1303 Certification of Speech Lang Pathologists	($5,792)	*(0.1)*	$0	$0	($5,792)	$0
HB 12-1300 Sunset Continue Prof Review Committee	($2,044)		$0	$0	($2,044)	$0
HB 12-1311 Sunset Continue Pharmacy Board	($11,925)	*(0.1)*	$0	$0	($11,925)	$0
HB 12-1330 Hearing Process Wildlife	($2,725)		$0	$0	($2,725)	$0
HB 12-1110 Appraisal Mgt Companies	$0	-	$0	$0	$0	$0
	$0	0.0	$0	$0	$0	$0
FY 13-14 Base Request	**$20,584,910**	**238.5**	**$0**	**$280,576**	**$20,304,334**	**$0**
	$0		$0	$0	-	$0
	$0		$0	$0	$0	$0
	$0				$0	
	$0				$0	
FY 13-14 November 1 Request	**$20,584,910**	**238.5**	**$0**	**$280,576**	**$20,304,334**	**$0**
Operating Expenses						
FY 2012-13 Long Bill Appropriation (HB 12-1335)	$1,670,720	0.0	$0	$0	$1,670,720	$0

DEPARTMENT OF LAW

FY 2013-14 RECONCILIATION OF DEPARTMENT REQUEST

(2) Legal Services to State Agenices

Long Bill Line Item	Total Funds	FTE	General Fund	Cash Funds	Reappropriated Funds	Federal Funds
HB 12-1303 Certification of Speech Lang Pathologists	$1,666	-	$0	$0	$1,666	$0
HB 12-1300 Sunset Continue Prof Review Committee	$227	-	$0	$0	$227	$0
HB 12-1311 Sunset Continue Pharmacy Board	$2,309	-	$0	$0	$2,309	$0
HB 12-1330 Hearing Process Wildlife	$303	-	$0	$0	$303	$0
HB 12-1110 Appraisal Mgt Companies	$6,284		$0	$0	$6,284	$0
FY 2012-13 Total Appropriation	**$1,681,509**	**0.0**	**$0**	**$0**	**$1,681,509**	**$0**
HB 12-1303 Certification of Speech Lang Pathologists	($644)	-	$0	$0	($644)	$0
HB 12-1300 Sunset Continue Prof Review Committee	($227)	-	$0	$0	($227)	$0
HB 12-1311 Sunset Continue Pharmacy Board	($1,325)	-	$0	$0	($1,325)	$0
HB 12-1110 Appraisal Mgt Companies	$0	-	$0	$0	$0	$0
HB 12-1330 Hearing Process Wildlife	($303)	-	$0	$0	($303)	$0
Annualization of FY 12 DI #4 Deputy Attorney General	($6,882)	-	$0	$0	($6,882)	
FY 13-14 Base Request	**$1,672,128**	**0.0**	**$0**	**$0**	**$1,672,128**	**$0**
	$0					
	$0					
	$0					
FY 2013-14 November 1st Request	**$1,672,128**		**$0**	**$0**	**$1,672,128**	**$0**
Indirect Costs						
FY 2012-13 Long Bill Appropriation (HB 12-1335)	$2,950,911	0.0	$0	$0	$2,950,911	$0
	$0	0.0	$0	$0	$0	$0
FY 2012-13 Total Appropriation	**$2,950,911**	**$0**	**$0**	**$0**	**$2,950,911**	**$0**
New Indirect Calculation	**$234,579**				**$234,579**	
FY 13-14 Base Request	**$3,185,490**	**0.0**	**$0**	**$0**	**$3,185,490**	**$0**
PIO Decision Item	**$67,610**				**$67,610**	
FY 2013-14 November 1st Request	**$3,253,100**	**0.0**	**$0**	**$0**	**$3,253,100**	**$0**

DEPARTMENT OF LAW

FY 2013-14 RECONCILIATION OF DEPARTMENT REQUEST

(2) Legal Services to State Agenices

Long Bill Line Item	Total Funds	FTE	General Fund	Cash Funds	Reappropriated Funds	Federal Funds
(2) Legal Services to State Agenices						
FY 2012-13 Appropriation(Long Bill plus Special Bills)	**$25,239,816**	**238.7**	**$0**	**$280,576**	**$24,959,240**	**$0**
FY 2013-14 Base Request	**$25,442,528**	**238.5**	**$0**	**$280,576**	**$25,161,952**	**$0**
FY 2013-14 November 1 Request	**$25,510,138**	**238.5**	**$0**	**$280,576**	**$25,229,562**	**$0**

SCHEDULE 2 - PROGRAM SUMMARY

Department of Law — **LEGAL SERVICES TO STATE AGENCIES**

Item	Actual FY 11		Actual FY 12		Approp FY 13		Estimate FY 13		Request FY 14	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
PERSONAL SERVICES	20,518,789	218.0	21,424,236	226.3	20,607,396	238.7	23,079,682	238.7	20,584,910	238.5
General Fund	-		-		-		-		-	
General Fund Exempt	-		-		-		-		-	
Cash Fund	1,582,388		1,560,550		280,576		280,576		280,576	
Reappropriated Funds	18,936,401		19,863,686		20,326,820		22,799,106		20,304,334	
OPERATING EXPENSES	2,113,222		2,782,987		-		2,992,098		1,672,128	
General Fund	-		-		-		-		-	
General Fund Exempt	-		-		-		-		-	
Cash Fund	-		-		-		-		-	
Reappropriated Funds	2,113,222		2,782,987		-		2,992,098		1,672,128	
INDIRECT COST ASSESSMENT	2,608,316		2,809,499		2,950,911		2,950,911		3,253,100	
General Fund	-		-		-		-		-	
Cash Fund	-		-		-		-		-	
Reappropriated Funds	2,608,316		2,809,499		2,950,911		2,950,911		3,253,100	
GRAND TOTAL	25,240,327	218.0	27,016,722	226.3	25,239,816	238.7	29,022,691	238.7	25,510,138	238.5
General Fund	-		-		-		-		-	
General Fund Exempt	-		-		-		-		-	
Cash Funds	1,582,388		1,560,550		280,576		280,576		280,576	
Reappropriated Funds	23,657,939		25,456,172		24,959,240		28,742,115		25,229,562	
Federal Funds	-		-		-		-		-	

SCHEDULE 3 - PERSONAL SERVICES PROGRAM DETAIL

Department of Law — **LEGAL SERVICES TO STATE AGENCIES**

Item	Actual FY 11		Actual FY 12		Approp FY 13		Estimate FY 13		Request FY 14	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
I. POSITION DETAIL										
Deputy Attorney General	468,340	3.8	491,488	3.9			623,640	5.0	623,640	5.0
Assistant Deputy Attorney General	135,528	1.0	135,528.00	1.0			135,528	1.0	135,528	1.0
First Assistant Attorney General	2,460,212	24.1	2,706,978	27.1			2,851,899	28.0	2,851,899	28.0
Senior Assistant Attorney General	3,407,329	37.7	3,402,571	37.8			3,576,891	40.0	3,576,891	40.0
Assistant Attorney General	7,124,732	97.0	7,308,804	99.4			7,612,348	103.0	7,599,562	102.8
Assistant Attorney General II										
Assistant Attorney General I										
Attorney I										
Legal Assistant II	1,916,311	32.5	1,888,915	32.2			1,929,417	33.0	1,929,417	33.0
Legal Assistant I	69,064	1.3	38,278	0.8			55,598	1.2	55,598	1.2
Program Assistant I			42,900	1.0						
Office Manager I	211,836	4.0	215,868	4.0			266,268	5.0	266,268	5.0
General Professional V	40,908	0.4	37,762	0.4			37,762	0.4	37,762	0.4
Temporary Aide	1,680	0.1								
IT Tech II							15,455	0.3	15,455	0.3
Admininistrative Assistant I	22,923	0.7	7,950	0.3						
Administrative Assistant III	239,684	6.3	234,516	6.0			281,820	7.0	281,820	7.0
Administrative Assistant II	332,922	9.2	447,203	12.3			541,800	14.8	541,800	14.8
TOTAL POSITION DETAIL	16,431,469	218.0	16,958,760	226.3			17,928,426	238.7	17,915,640	238.5

SCHEDULE 3 - PROGRAM DETAIL

Department of Law — **LEGAL SERVICES TO STATE AGENCIES**

Item	Actual FY 11 Total Funds	Actual FY 11 FTE	Actual FY 12 Total Funds	Actual FY 12 FTE	Approp FY 13 Total Funds	Approp FY 13 FTE	Estimate FY 13 Total Funds	Estimate FY 13 FTE	Request FY 14 Total Funds	Request FY 14 FTE
(I.A) CONTINUATION FTE SALARY COSTS	16,431,469	218.0	16,958,760	226.3			17,928,426	238.7	17,915,640	238.5
(Permanent FTE by position)										
Continuation Salary Subtotal										
(I.B) OTHER PERSONAL SERVICES										
PERA on Continuation Subtotal	1,236,464		1,271,701				1,819,735		1,818,437	
Medicare on Continuation Subtotal	228,176		235,899				259,962		259,777	
Non-Base Building Performance Awards							-			
Part-Time/Temporary Salaries	235,909		237,649				206,060		237,240	
Contractual Services	194,571		289,546				202,023		288,566	
Overtime Pay	8,672		12,857				10,250		10,250	
Termination/Retirement Payouts	60,198		29,577							
Sick Leave Payouts	66,141		23,481							
Unemployment Compensation	-		24,062							
OT TO JUD	10,101		46,964				55,000		55,000	
Furloughs	-		-							
Other Employee Benefits	71,789		38,502							
Subtotal -	18,543,492	218.0	19,168,998	226.3			20,481,456	238.7	20,584,910	238.5
(I.C.) PERSONAL SERVICES SUBTOTAL= A+B										
(I.D.) POTS EXPENDITURES										
Health/Life/Dental	1,276,420		1,384,976				1,499,751			
Salary Survey										
Performance Awards										
Short Term Disability	27,717		29,737				31,733			
SB 04.257 A.E.D.	388,004		465,922				573,710			
SB 06.235 S.A.E.D.	283,155		374,604				493,032			
Other:										
[ ] Indicates a Non-add										
	20,518,789	218.0	21,424,236	226.3			23,079,682	238.7	20,584,910	238.5
(I.E.) BASE PERSONAL SERVICES= C+D										
General Fund										
General Fund Exempt										
Cash Funds	1,582,388		1,560,550				280,576		280,576	
Reappropriated Funds	18,936,401		19,863,686				22,799,106		20,304,334	

SCHEDULE 3 - PROGRAM DETAIL

Department of Law — LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 11 Total Funds	Actual FY 11 FTE	Actual FY 12 Total Funds	Actual FY 12 FTE	Approp FY 13 Total Funds	Approp FY 13 FTE	Estimate FY 13 Total Funds	Estimate FY 13 FTE	Request FY 14 Total Funds	Request FY 14 FTE
(I.F.) DIFFERENCE= II-I.E.										
(I.G.) REQUEST YEAR DECISION ITEMS										
General Fund										
Cash Funds										
Reappropriated Funds										
Dec Item #										
General Fund										
Cash Funds										
Reappropriated Funds										
NP DI										
Reappropriated Fund										
NP DI										
Reappropriated Fund										
									-	
Cash Funds Exempt									-	
									-	
Cash Funds Exempt										
Dec Item #									-	-
Cash Funds										
Cash Funds Exempt									-	0.0
Cash Funds Exempt										
ROLLFORWARDS	-		-				-			
General Fund Exempt	-		-				-			
Reappropriated Funds	-		-				-			
Projected Spending Authority Shortfall							-			
Reappropriated Funds							-			
PERSONAL SERVICES TOTAL	20,518,789	218.0	21,424,236	226.3			23,079,682	238.7	20,584,910	238.5

SCHEDULE 3 - PROGRAM DETAIL

Department of Law — **LEGAL SERVICES TO STATE AGENCIES**

Item	Actual FY 11 Total Funds	Actual FY 11 FTE	Actual FY 12 Total Funds	Actual FY 12 FTE	Approp FY 13 Total Funds	Approp FY 13 FTE	Estimate FY 13 Total Funds	Estimate FY 13 FTE	Request FY 14 Total Funds	Request FY 14 FTE
General Fund										
General Fund Exempt	-		-				-			
Cash Funds	1,582,388		1,560,550				280,576		280,576	
Reappropriated Funds	18,936,401		19,863,686				22,799,106		20,304,334	
Federal Funds										
II. PERSONAL SERVICES REQUEST (AGGREGATE ADJUSTMENTS TO THE BASE APPROPRIATION)										
Previous Year Long Bill and Special Bills									20,607,396	238.7
									-	-
SPECIAL BILLS:									-	-
Salary Survey-Classified									-	
PBP Classified									-	
Salary Survey Exempt									-	
PBP -Exempt									-	
Annualization of Special Bills									(22,486)	(0.2)
Subtotal -									20,584,910	238.5
PERSONAL SERVICES RECONCILIATION										
Long Bill Appropriation	18,687,929	223.6	19,473,569	226.6	20,510,299	237.9	20,510,299	237.9		
Supplemental HB10-1305										
Supplemental SB11-144	806,828	6.2		0.0						
Special Bills -										
HB 12-1303 Certification of Speech Lang Pathologists					14,990	0.1	14,990	0.1		
HB 12-1330 Hearing Process Wildlife					2,725		2,725			
HB 12-1300 Sunset Continue Prof Review Committee					2,044	-	2,044	-		
HB 12-1311 Sunset Continue Pharmacy Board					20,783	0.2	20,783	0.2		
HB 12-1110 Appraisal Mgt Companies					56555	0.5	56,555	0.5		

SCHEDULE 3 - PROGRAM DETAIL

Department of Law — **LEGAL SERVICES TO STATE AGENCIES**

Item	Actual FY 11		Actual FY 12		Approp FY 13		Estimate FY 13		Request FY 14	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
SB 10-072 Seed Potato Act	*815*	-								
SB 10-109 Phys Patient relationship Med. Mar	*551,217*	*4.5*								
SB 10-124 Healthcare provider disclose info	6,784	-								
SB 10-203 CO Elections After Supreme Court	4,069	-								
HB 10-1018 Regulate Waste Tire	13,568	0.2								
HB 10-1125 Regulate waste food preparation	6,784	-								
HB 10-1128 Supervision of Reg. Professional	(8,819)	-								
HB 10-1141 Mort. Co. Reg. with Div Real Estate	5,766	-								
HB 10-1148 Ren License to Practice Architecture	(11,307)	-								
HB 10-1176 Gov Overpayment of Tax Dollars	1,800	-								
HB 10-1193 Collect sales/use tax	36,000	-								
HB 10-1224 Colorado Podiatry Board	2,035	-								
HB 10-1260 Sunset Board of Med Examiners	15,536	0.1								
HB 10-1278 CO Common Interest Ownership	15,679	0.1								
HB 10-1284 Regulate Medical Marijuana	244,231	2.0								
HB 10-1365 PUC reduce air emissions	11,737	0.1								
HB 10-1415 Reg. of assiss for surgeons	3,769	-								
SB 11-76 PERA Bill			(451,303)							
SB 11-88 Sunset Review Direct Entry Midwives			3,698	-						
SB 11-91 Sunset Board Veterinary Medicine			3,962	-						
SB 11-94 Sunset Optometric Board			3,962	-						
SB 11-128 Child-only Health Insurance Plans			2,642	-						
SB 11-169 Sunset Physical Therapy Board			34,997	0.3						
SB 11-187 Sunset Mental Health Professionals			158,479	1.4						
SB 11-251 Division of Fire Safety Duties			6,603	-						
HB 11-1100 Military Experience License Certificate			31,036	0.4						
HB 11-1121 Bar Felons from School Employment			9,905	-						
HB 11-1195 Private Investigators Voluntary License			6,603	-						
HB 11-1300 Conservation Easements			1,216,740	9.1						
Roll Forward to Subsequent FY										
Year End Transfers										
Overexpenditures (Reversions)										
Lapsed Appropriation Cash Funds										
Lapsed Appropriation Cash Funds Exempt										
Lapsed Appropriation Reappropriated Funds	(1,745,369)	(18.8)	(1,253,428)	(11.5)						
Other										
Allocated POTS										

SCHEDULE 3 - PROGRAM DETAIL

Department of Law LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 11		Actual FY 12		Approp FY 13		Estimate FY 13		Request FY 14	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
Salary POTS	-		-				-			
Health/Life/Dental	1,197,340		1,341,104				1,451,332			
Short Term Disability	23,981		28,297				28,726			
SB 04.257 A.E.D.	374,987		447,651				533,635			
SB 06.235 S.A.E.D.	273,429		359,719				458,593			
Pots Subtotal	1,869,737		2,176,771				2,472,286			
Reconciled Total	20,518,789	218.0	21,424,236	226.3			23,079,682	238.7		
II. PERSONAL SERVICES REQUEST TOTAL	20,518,789	218.0	21,424,236	226.3	20,607,396	238.7	23,079,682	238.7	20,584,910	238.5
General Fund	-		-		-					
General Fund Exempt	-		-		-		-			
Cash Funds	1,582,388		1,560,550		280,576		280,576		280,576	
Reappropriated Funds	18,936,401		19,863,686		20,326,820		22,799,106		20,304,334	
Federal Funds	-		-		-					

SCHEDULE 3 - OPERATING PROGRAM DETAIL

Department of Law

LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 11 Total Funds	Actual FY 11 FTE	Actual FY 12 Total Funds	Actual FY 12 FTE	Approp. FY 13 Total Funds	Approp. FY 13 FTE	Estimate FY 13 Total Funds	Estimate FY 13 FTE	Request FY 14 Total Funds	Request FY 14 FTE
OPERATING EXPENSES										
1930 Purchased Services - Litigation	86,367		108,914				338,009		340,725	
2170 Waste Disposal Services	5,451		5,087				4,800		4,800	
2220 Building Grounds Maintenance	24,554		8,940				15,500		15,500	
2230 Equipment Contract Maintenance	9,710		734				1,500		1,500	
2231 ADP Equip Maint/Repair Services	33,087		42,705				19,850		19,850	
2232 Software Upgrades	184,804		115,266				185,026		185,026	
2240 Motor Vehicle Repair/Maintenance	-		-						-	
2251 Rental/Lease Motor Pool Veh	21,679		19,786				21,250		21,250	
2252 Leased Vehicle - Variable	20,163		19,575				22,520		22,520	
2253 Rental of Equipment	218		36				217		217	
2254 Rental of Motor Vehicles	-		-						-	
2255 Rental of Building	714,125		737,624						-	
2258 Parking	7,670		6,600				9,850		9,850	
2259 Parking Fee Reimbursement	85		132				-		-	
2268 Rental of IT Software - Network			84,622							
2510 In State Travel	331		606				1,000		1,000	
2511 IS Common Carrier Fares	2,448		1,154				850		850	
2512 IS Personal Travel Per Diem	9,739		6,055				8,544		8,544	
2513 IS Pers Vehicle Reimbursement	965		936				1,245		1,245	
2514 IS State Owned Aircraft	-		-						-	
2515 State-Owned Vehicle Charge	-		-						-	
2520 IS Travel Non Employee	-		-						-	
2521 IS Common Carrier Non Employee	-		-						-	
2522 IS Non Employee Per Diem	-		-						-	
2523 IS Non Employee Per Veh Reimburse	-		-						-	
2530 Out of State Travel	117		770				650		650	
2531 OS Common Carrier Fares	1,354		4,591				4,312		4,312	
2532 OS Personal Travel Per Diem	1,267		4,427				4,200		4,200	
2533 OS Pers Vehicle Reimbursement	342.9		-						-	
2541 OS/Non-Empl Common Carrier			436							
2550 Out of Country Travel	0		-						-	
2552 OC Per Diem	0		-						-	
2610 Advertising	131		300						-	
2611 Public Relations	0		-						-	
2630 Comm Service Div of Telecom	137,387		127,963				150,200		150,200	
2631 Comm Svcs from Outside Sources	5,985		6,040				7,456		7,456	
2640 GGCC Billing Purch Services	0		-						-	
2641 Other ADP Billing	237,350		241,520				287,255		287,255	
2650 OIT Purchased Svs	96		-							
2660 Insurance	28,206		37,418				29,500		29,500	
2680 Contract Printing	69,758		45,553				79,888		79,888	
2681 Photocopy Reimbursement	-		-						-	

SCHEDULE 3 - OPERATING PROGRAM DETAIL

Department of Law — **LEGAL SERVICES TO STATE AGENCIES**

Item	Actual FY 11 Total Funds	Actual FY 11 FTE	Actual FY 12 Total Funds	Actual FY 12 FTE	Approp FY 13 Total Funds	Approp FY 13 FTE	Estimate FY 13 Total Funds	Estimate FY 13 FTE	Request FY 14 Total Funds	Request FY 14 FTE
2810 Freight & Storage	0		-						-	
2820 Other Purchased Services	12,056		14,397				25,116		25,116	
2830 Office Moving-Pur Services	-		-				-		-	
2831 Storage-Purchase Services	195		1,233						-	
3110 Other Supplies and Materials	-		-						-	
3112 Automotive Supplies	-		-						-	
3113 Clothing and Uniform Allowance	-		-						-	
3114 Custodial	-		-						-	
3115 DP Supplies	12,200		2,299				29,850		28,150	
3116 Purchased/Leased Software	22,805		143,820				66,500		66,500	
3117 Educational	-		-				2,800		2,800	
3118 Food and Food Service Supplies	-		-						-	
3120 Books & Subscriptions	42,457		54,199				55,452		55,452	
3121 Office Supplies	44,066		40,928				45,245		43,848	
3122 Microfilming/Photo. Supplies	-		-						-	
3123 Postage	26,999		27,851				32,233		32,233	
3124 Printing	-		1,402				1,247		1,247	
3126 Repair & Maintenance Supplies	-		34						-	
3128 Non-Capitalized Equipment	1,949		20,009				16,450		16,450	
3131 Non-Capitalized Building Materials	43,769		115,846				61,683		61,684	
3132 Non Capitalized IT Purchases	13,908		5,519						-	
3139 Non - Capitalized Fixed Asset Other	500		-							
3140 Non-Capitalized IT - PC's	39,324		57,610						-	
3141 Non-Capitalized IT- Servers	21,019		-						-	
3142 Noncapitalized IT Network			39,559							
3143 Non-Capitalized IT Other	25,533		22,394						-	
3146 Non-Cap. IT Purch. Server Software	21,224		-						-	
3940 Electricity	-		-						-	
3950 Gasoline	-		-						-	
3970 Natural Gas	-		-						-	
4110 Losses	-		-						-	
4111 Prizes and Awards	1,835		12,449						-	
4117 Reportable Claims Against the State	-		-						-	
4140 Dues & Memberships	67,617		76,347				73,550		73,550	
4151 Interest - Late Payments	72		73						-	
4170 Miscellaneous Fees	-		-						-	
4180 Official Functions	4,251		7,786				7,260		7,260	
4220 Registration Fees	21,501		76,695				61,500		61,500	
4221 Other Educational - W2 RPT	-		-						-	
6140 Leasehold Improv - Direct Purch	-		-						-	
6210 ADP Equipment	-		-						-	
6212 IT Servers - Direct Purchase	39,286		-						-	
6214 IT Other Direct Purchase	23,515		-						-	

SCHEDULE 3 - OPERATING PROGRAM DETAIL

Department of Law — **LEGAL SERVICES TO STATE AGENCIES**

Item	Actual FY 11 Total Funds	Actual FY 11 FTE	Actual FY 12 Total Funds	Actual FY 12 FTE	Approp FY 13 Total Funds	Approp FY 13 FTE	Estimate FY 13 Total Funds	Estimate FY 13 FTE	Request FY 14 Total Funds	Request FY 14 FTE
6215 IT Network Direct Purchase			53,559							
6220 Office Furn & Equip	-		-				9,000			
6222 Office Furn Direct Purchase			381,187							
6224 Other Furn & Fixtures- Direct Purch.	-		-						-	
6480 Other Cap. Equipment-Lease Furn	-		-						-	
6340 Leasehold Improvements	-		-						-	
OPERATING EXPENSE SUBTOTAL	2,089,472		2,782,987				1,681,508		1,672,128	
General Fund										
General Fund Exempt										
Cash Funds	-		-							
Reappropriated Funds	2,089,472		2,782,987				1,681,508		1,672,128	
DECISION ITEMS:										
TF									-	
General Fund										
Cash Funds										
Reappropriated									-	
DECISION ITEMS: NP										
TF									-	
Reappropriated									-	
DECISION ITEMS:										
TF									-	
RF									-	
ROLLFORWARDS	23,750						-			
General Funds Exempt	-						-			
Reappropriated Funds	23,750						-			
Subtotal:	**23,750**		-		-		-		-	
Reappropriated Funds	23,750		-		-		-		-	
Potted Operating Expenses										
Workers' Compensation							41,777			
Leased Vehicle Expense							21,625			
Capital Complex Lease Space							728,790			
Lease Space							19,985			
IT Asset Maintenance							348,280			
ADP Capital Outlay										
CLE Registration Fees							70,013			
Building Security							80,120			

SCHEDULE 3 - OPERATING PROGRAM DETAIL

Department of Law — LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 11 Total Funds	Actual FY 11 FTE	Actual FY 12 Total Funds	Actual FY 12 FTE	Approp FY 13 Total Funds	Approp FY 13 FTE	Estimate FY 13 Total Funds	Estimate FY 13 FTE	Request FY 14 Total Funds	Request FY 14 FTE
Total							**1,310,590**			
Reappropriated Funds							1,310,590			
OPERATING EXPENSE TOTAL:	**2,113,222**		**2,782,987**		**-**		**2,992,098**		**1,672,128**	
General Fund							-		-	
General Fund Exempt							-		-	
Cash Funds	-		-				-		-	
Reappropriated Funds	**2,113,222**		**2,782,987**		**-**		**2,992,098**		**1,672,128**	
Operating Expense Reconciliation										
Long Bill Appropriation	1,445,134		1,479,444		1,670,720		1,670,720		1,675,225	
Annualization of FY 12 Deputy DI #4									(6,882)	
Supplemental HB10-1305										
Supplemental SB11-144	103,670									
Supplemental HB 10-1313 Reg Agencies										
Special Bills -										
HB 12-1303 Certification of Speech Lang Pathologists					1,666		1,666		(644)	
HB 12-1330 Hearing Process Wildlife					303		303		(303)	
HB 12-1300 Sunset Continue Prof Review Committee					227		227		(227)	
HB 12-1311 Sunset Continue Pharmacy Board					2,309		2,309		(1,325)	
HB 12-1110 Appraisal Mgt Companies					6,284		6,284		6,284	
SB 10-072 Seed Potato Act	*90*									
SB 10-109 Phys Patient relationship M	*61,246*									
SB 10-124 Healthcare provider disclos	*754*									
SB 10-203 CO Elections After Suprem	*453*									
HB 10-1018 Regulate Waste Tire	*1,508*									
HB 10-1125 Regulate waste food prep	*754*									
HB 10-1128 Supervision of Reg. Profe	*(980)*									
HB 10-1141 Mort. Co. Reg. with Div R	*641*									
HB 10-1176 Gov Overpayment of Tax	*200*									
HB 10-1193 Collect sales/use tax	*4,000*									
HB 10-1224 Colorado Podiatry Board	*226*									
HB 10-1260 Sunset Board of Med Exa	*1,726*									
HB 10-1284 Regulate Medical Marijua	*27,137*									
HB 10-1365 PUC reduce air emissions	*1,304*									
SB 11-88 Sunset Review Direct Entry Midwives			411							
SB 11-91 Sunset Board Veterinary Medicine			440							
SB 11-94 Sunset Optometric Board			440							
SB 11-128 Child-only Health Insurance Plans			293							
SB 11-169 Sunset Physical Therapy Board			3,889							
SB 11-187 Sunset Mental Health Professionals			17,609							
SB 11-251 Division of Fire Safety Duties			734							

SCHEDULE 3 - OPERATING PROGRAM DETAIL

Department of Law

LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 11 Total Funds	Actual FY 11 FTE	Actual FY 12 Total Funds	Actual FY 12 FTE	Approp FY 13 Total Funds	Approp FY 13 FTE	Estimate FY 13 Total Funds	Estimate FY 13 FTE	Request FY 14 Total Funds	Request FY 14 FTE
HB 11-1100 Military Experience License Certificate			3,448							
HB 11-1121 Bar Felons from School Employment			1,100							
HB 11-1195 Private Investigators Voluntary License			734							
HB 11-1300 Conservation Easements			135,193							
Allocated POTS:										
Vehicle Lease Payments	20,389		18,485				21,625			
Capital Complex Lease Space	694,715		718,796				728,790			
Lease Space	18,857		18,857				19,985			
Worker's Compensation	28,206		37,418				41,777			
IT Asset Maintenance	321,177		321,177				348,280			
Building Security	67,055		70,213				80,120			
Postage Increase										
ADP Capital Outlay										
CLE Registration Fees	64,125		64,125				70,013			
Year-End Transfer										
Rollforward from previous FY										
Rollforward to Subsequent FY	23,750									
Overexpenditure/(Reversion)										
Lapsed Appropriation Cash Funds Exempt										
Lapsed Appropriation Reappropriated	(772,915)		(109,819)							
Other										
TOTAL	2,113,222		2,782,987		1,681,509		2,992,099		1,672,128	
OPERATING AND LITIGATION:					**1,681,509**				**1,672,128**	
General Fund									-	
Cash Funds									-	
Reappropriated					**1,681,509**				**1,672,128**	
INDIRECT COST ASSESSMENT	2,608,316		2,809,499		2,950,911		2,950,911		3,253,100	
General Fund										
Cash Funds										
Reappropriated Funds	2,608,316		2,809,499		2,950,911		2,950,911		3,253,100	
INDIRECT COST ASSESSMENT TOTAL	**2,608,316**		**2,809,499**		**2,950,911**		**2,950,911**		**3,253,100**	
General Fund										
Cash Funds										
Reappropriated Funds	**2,608,316**		**2,809,499**		**2,950,911**		**2,950,911**		**3,253,100**	
Indirect Cost Assess. Reconciliation										
Long Bill Appropriation	2,608,316		2,809,499				2,950,911			
Lapsed Appropriation Reappropriated	-		-							

SCHEDULE 3 - OPERATING PROGRAM DETAIL

Department of Law — **LEGAL SERVICES TO STATE AGENCIES**

Item	Actual FY 11		Actual FY 12		Approp FY 13		Estimate FY 13		Request FY 14	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
Other										
TOTAL	2,608,316		2,809,499				2,950,911			
GRAND TOTALS LSSA (PS, OP, IND)	**25,240,327**	**218.0**	**27,016,722**	**226.3**	**25,239,816**	**238.7**	**29,022,691**	**238.7**	**25,510,138**	**238.5**
General Fund	-		-		-		-			
General Fund Exempt	-		-		-		-		-	
Cash Funds	**1,582,388**		**1,560,550**		**280,576**		**280,576**		**280,576**	
Reappropriated Funds	**23,657,939**		**25,456,172**		**24,959,240**		**28,742,115**		**25,229,562**	

SCHEDULE 4 - SOURCE OF FINANCING - DIRECT REVENUES

Department of Law — **LEGAL SERVICES TO STATE AGENCIES**

Item	Actual FY 2011	Actual FY 2012	Approp FY 2013	Estimate FY 2013	Request FY 2014
Schedule 3 Total	25,240,327	27,016,722	25,239,816	29,022,691	25,510,138
General Fund	-	-	-	-	-
General Fund Exempt	-	-	-	-	-
Cash Funds	1,582,388	1,560,550	280,576	280,576	280,576
Reappropriated Funds	23,657,939	25,456,172	24,959,240	28,742,115	25,229,562
Federal Funds	-	-	-	-	-
CASH FUNDS					
Various Sources of Cash				280,576	280,576
Fringe Benefits					
AIDT Receiversip and Liquidation	5,134				
College Invest		3,195			
Florence State Nursing Home	192				
Trinidad State Nursing Home	23,809				
Colo State VA Center-Homelake	1,171				
Rifle State Nursing Home		757			
Service Director of Nursing Homes	176				
PERA	115	149			
Colorado Student Loan Program	9,436				
Student Obligation Bond Authority					
Correctional Industries	6,864	3,719			
Auraria Higher Education Ctr-Tabor Enterp		408			
CU Health Sciences Center	2,329	192			
Revenue - Lottery	11,615	20,833			
Division of Wildlife-Enterprise	598,742	549,121			
Cumbres & Toltec RR					
Colo School Dist Self Insurance PL					
Disability Insurance Trust	17,822	17,237			
SVC-State VA Center - Fitzsimons	51,935	42,130			
AHEC	64,821	80,805			
State Board of Agriculture	68,675	67,002			
DOAG/Brand BD	6,871	8,247			
School of Mines	315,866	251,374			
UNC	12,636	2,217			
Adams State College	141,486	125,465			

SCHEDULE 4 - SOURCE OF FINANCING - DIRECT REVENUES

Department of Law — **LEGAL SERVICES TO STATE AGENCIES**

Item	Actual FY 2011	Actual FY 2012	Approp FY 2013	Estimate FY 2013	Request FY 2014
Metro State College	31,156	113,294			
Mesa State College	45,724	29,434			
Western State College	26,575	26,046			
Ft. Lewis College	83,601	113,830			
CCCOES	35,894	45,497			
Private VOC School	48,425	38,632			
CU Boulder	826	2,074			
CSU-Global Campus					
White River Consv	336				
Authorities - State Comp.					
Student Loan	3,062	2,967			
Health Benefit Exchange Board		7,614			
DOLE Petroleum storage tank	56,666	8,313			
Reversion of Excess Earnings to G/F (CF)	(89,574)				
Subtotal Cash Funds	1,582,388	1,560,550		280,576	280,576
REAPPROPRIATED FUNDS					
Various Sources of Cash Exempt				28,742,115	25,229,562
Administration					
Agriculture	263,014	321,034			
Colorado Horse Develop,emt Authority					
Corrections	1,069,055	1,006,966			
Education	296,578	277,876			
Governor's Office	994,893	617,718			
Governor's Office - OIT					
Energy Conservation	97,369	87,128			
Public Health and Environment	2,021,469	2,260,015			
Higher Education	5,643	6,931			
HE - Comp Resort Auth	115	78			
Arts and Humanities Council					
Historical Society	53,259	67,599			
Health Care Policy and Financing	801,945	897,969			
Human Services	1,332,185	1,351,570			
Judicial	126,825	165,347			
Law - HIPAA					

SCHEDULE 4 - SOURCE OF FINANCING - DIRECT REVENUES

Department of Law — **LEGAL SERVICES TO STATE AGENCIES**

Item	Actual FY 2011	Actual FY 2012	Approp FY 2013	Estimate FY 2013	Request FY 2014
Law - POST	12,676	12,314			
General Assembly (GA)	7,164	5,201			
Labor & Employment	592,652	701,236			
Local Affairs	124,663	115,419			
Military Affairs	38,301	9,712			
Natural Resources	2,684,640	2,774,516			
Personnel	223,604	213,463			
Risk Management	2,331,986	2,337,118			
Public Safety	162,073	290,515			
Regulatory Agencies	7,485,354	7,359,709			
Revenue	1,578,581	2,673,273			
Revenue - Gaming	147,873	167,795			
Secretary of State	373,736	502,594			
Transportation	1,200,163	1,132,068			
Treasury		166,884			
State Fair Authority	10,713	27,614			
Rollforward	23,750				
Capital Construction Expenses					
Transfer to Fund Litigation Mgmt Fund	(325,000)	(93,490)			
Reversion of Excess Earnings to GF (CFE)	(77,338)				
Underearned Revenue					
Subtotal Reappropriated Funds	23,657,939	25,456,172		28,742,115	25,229,562
Total Revenues - CF and RA	**25,240,327**	**27,016,722**			