

**FY 2012-13 Joint Budget Committee Staff Budget Briefing
DEPARTMENT OF LAW**

BRIEFING ISSUE

ISSUE: Performance-based Goals and the Department's FY 2012-13 Budget Request

This issue brief summarizes the Department of Law report on its performance relative to its strategic plan and discusses how the FY 2012-13 budget request advances the Department's performance-based goals. Pursuant to the State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act (H.B. 10-1119), the full strategic plan for the Department of Law can be accessed through both the Department's web site, and that of the Office of State Planning and Budgeting.

The issue brief assumes that the performance-based goals are appropriate for the Department. Pursuant to the SMART Government Act legislative committees of reference are responsible for reviewing the strategic plans and recommending changes to the departments. The issue brief also assumes that the performance measures are reasonable for the performance-based goals. Pursuant to the SMART Government Act, the State Auditor periodically assesses the integrity, accuracy, and validity of the reported performance measures. Please note that the Department's full strategic plan includes additional division-specific objectives and performance measures. This issue brief only deals with the five overarching objectives.

DISCUSSION:

Performance-based Goals and Measures

The Department's five top priority objectives are:

1. Represent Client Agencies

Objective: Provide quality legal counsel and representation and provide effort that is satisfactory or greater to client agencies.

Legal Representation: Annual Client Survey Results		
Fiscal Year	Percent Satisfied or Very Satisfied	
	Benchmark	Actual
2008-09	95.0%	98.0%
2009-10	95.0%	95.5%
2010-11	95.0%	95.4%
2011-12	95.0%	n/a

a. How is the Department measuring the specific goal/objective?

The Department conducts an annual survey of client agencies to measure the quality of legal counsel and legal representation. The most recent survey included five multi-part questions concerning

clients' experience with individual Department attorneys, including: client relationship, communication skills, analytical skills, effectiveness, and overall quality of legal services. The final survey question asks the client to indicate the level of satisfaction with the quality of legal services provided by the Department of Law, which is the data point used for this performance measure. The Department's goal is to achieve a rate of at least 95 percent of respondents indicating that they are "satisfied" or "very satisfied".

b. Is the Department meeting its objective, and if not, why?

Yes. The Department has exceeded its goal in the last three fiscal years.

c. How does the budget request advance the performance-based goal?

The Department indicates that the key to providing efficient and effective legal services is to attract and retain quality employees by: (1) providing competitive attorney compensation and benefits; (2) providing a dynamic work environment; and (3) providing high level and interesting work. The Department has submitted two requests that should further its efforts to provide efficient and effective legal services to state agencies:

- R-3: Implement a case management system, which will improve productivity and allow attorneys to spend more time practicing law rather than looking for files and documents.
- R-4: Add a Deputy Attorney General position to address a span of control concern in the Business and Licensing section.

2. Complex and/or multi-jurisdictional securities and insurance fraud investigations and prosecutions.

Objective: Conduct a statewide program for investigating and prosecuting violations of applicable state laws pertaining to securities fraud and insurance fraud which local jurisdictions would be unable to effectively handle.

Securities and Insurance Fraud Investigations: Restitution Ordered				
Fiscal Year	Securities Fraud		Insurance Fraud	
	Benchmark	Actual	Benchmark	Actual
2007-08	\$2,000,000	\$12,664,705	\$400,000	\$836,649
2008-09	2,500,000	12,921,409	450,000	274,905
2009-10	2,500,000	8,151,322	450,000	947,472
2010-11	4,000,000	20,680,887	450,000	164,386
2011-12	5,000,000	n/a	450,000	n/a

a. How is the Department measuring the specific goal/objective?

The Department tracks the amount of restitution ordered as a result of cases it investigates and prosecutes.

b. Is the Department meeting its objective, and if not, why?

Partially. The Department has exceeded its goals related to securities fraud in each of the last four fiscal years. With respect to insurance fraud restitution, the Department exceeded its goals in two of the last four fiscal years. However, total restitution over the last four fiscal years (\$2,223,412) exceeded the sum of the four corresponding benchmarks (\$1,750,000).

c. How does the budget request advance the performance-based goal?

The Department notes that it previously received additional resources to pursue criminal prosecutions, particularly in the area of insurance and securities fraud, and these additional resources are providing excellent results. The Department's FY 2012-13 budget request maintains these resource levels.

3. Medicaid Fraud Unit

Objective: Defend the financial integrity of the state's Medicaid program and the safety of patients in Medicaid-funded facilities.

Medicaid Fraud Unit: Total Recoveries		
Fiscal Year	Benchmark	Actual
2007-08	\$450,000	\$3,528,936
2008-09	450,000	5,359,478
2009-10	450,000	4,149,928
2010-11	450,000	5,197,152
2011-12	450,000	n/a

a. How is the Department measuring the specific goal/objective?

The Department tracks the amount of fines, costs, and restitution that is recovered by the Unit.

b. Is the Department meeting its objective, and if not, why?

Yes. The Department has substantially exceeded its goal in each of the last four fiscal years. The Department has acknowledged that, based on past performance, the target for this performance measure should be increased to \$2,000,000 in criminal and civil recoveries for the coming year.

c. How does the budget request advance the performance-based goal?

The Department's FY 2012-13 budget request maintains current resource levels.

4. Consumer Protection

Objective: Ensure compliance with consumer credit laws [this objective and the associated benchmarks on the next page were identified in the division-level detail concerning consumer credit unit].

Consumer Credit: Number of Cases Opened		
Fiscal Year	Benchmark	Actual
2007-08	125	114
2008-09	105	103
2009-10	60	107
2010-11	100	207
2011-12	200	n/a

Objective: Preserve competition in marketplaces affecting Colorado consumers and businesses by: (a) identifying and preventing deceptive trade practices; and (b) investigating and resolving conduct that is anti-competitive and unreasonably restricts trade in Colorado. [This objective and the associated benchmarks below were identified in the division-level detail concerning consumer fraud and antitrust units].

Activities Related to Deceptive Trade Practices or Antitrust Violations			
Fiscal Year	Deceptive Trade Practices (investigations opened, settlements/judgements, and lawsuits filed)	Antitrust Violations (investigations opened and lawsuits filed)	Total
2007-08	65	15	80
2008-09	82	9	91
2009-10	79	7	86
2010-11	69	8	77

a. How is the Department measuring the specific goal/objective?

Each unit in the Department tracks certain activities that are initiated each year. With respect to the performance measures above, the Department tracks the following activities:

- Consumer Credit - the number of investigations that mature and are opened as a case
- Deceptive Trade Practices - the number of investigations opened; the number of settlements, assurances of discontinuance or stipulated final judgements reached in cases; and the number of lawsuits filed
- Antitrust Violations - the number of investigations opened and the number of lawsuits filed

b. Is the Department meeting its objective, and if not, why?

Partially. With respect to consumer credit activities, the Department has exceeded its goals in two of the last four fiscal years. However, the total number of cases over the last four fiscal years (531) exceeded the sum of the four corresponding benchmarks (390). The Department has not identified benchmarks or targets related to deceptive trade practices or antitrust violation activities.

c. How does the budget request advance the performance-based goal?

The Department has submitted two requests that should further its consumer protection efforts:

- R-1: Add 5.0 FTE to the Consumer Protection and Antitrust Unit to address an increasing number of consumer complaints and improve the overall efficiency and productivity of the consumer protection section.
- R-2: Add 2.0 FTE to the Consumer Credit Unit to address an increase in the number of unlicensed entities offering products and services in violation of state law and to respond to certain licensed entities' legal challenges to Department enforcement actions.

5. Appellate Unit

Objective: Produce quality briefs appropriately tailored to the seriousness of the offense/appellate challenge while maintaining or improving the Unit's success rate.

Appellate Unit			
Fiscal Year	Briefs Filed	Cases Resolved	Percent of Cases with Successful Outcome on Appeal
2007-08	865	964	90.0%
2008-09	1,029	1,116	90.0%
2009-10	1,054	1,116	93.0%
2010-11	1,021	1,087	90.0%
2011-12 (estimate)	1,060	1,100	90.0%

a. How is the Department measuring the specific goal/objective?

The Department tracks the number of "cases resolved," which reflects the number of briefs filed by the Department plus the cases decided by the Court of Appeals via its expedited docket; expedited docket cases do not require a response from the Department of Law. The Department also tracks the percent of cases in which a successful outcome is reached on appeal.

b. Is the Department meeting its objective, and if not, why?

The Department has not identified benchmarks or targets related to this performance measure.

c. How does the budget request advance the performance-based goal?

The Department has submitted one request which should further the Appellate Unit's efforts to produce quality briefs and maintain or improve the number of cases in which a successful outcome is reached on appeal:

- R-5: Provide modest salary increases for some attorneys within the Appellate Unit to partially address salary discrepancies between this unit and other areas of the Department.

