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STATE OF COLORADO
DEPARTMENT OF LAW

Office of the Attorney General

November 1, 2021

The Honorable Dominick Moreno
Chair, Joint Budget Committee
Colorado General Assembly
Denver, Colorado 80203

RE: FY 2022-2023 Department of Law Budget Request

Dear Senator Moreno:

Pursuant to Section 2-3-208(2)(a), C.R.S., enclosed is the FY 2022-2023 budget request submitted by the Department of Law (“Department” or “DOL”) to the Colorado General Assembly Joint Budget Committee (“JBC”). As the State’s budget and Colorado’s economic recovery continue to trend upward, the Department asks the JBC to consider several priorities for the coming year to return the Department’s operations and capacity to pre-COVID levels as well as invest in new and necessary priorities to protect Colorado consumers, patients, taxpayers, and natural resources. Table 1 and the following subsections summarize the decision items and other priorities submitted by the Department for your consideration.

Table 1.
Department of Law FY 2022-2023 Budget Request

DOL Unit / Funding Requests	FY 2022-23 Request	FY 2023-24 Request
<i>Decision Items</i>		
<i>Multiple Units.</i> Restoration of remaining 2020 budget balancing reductions to multiple DOL units not restored in 2021 budget cycle.	\$3,141,572 GF 6.5 FTE	\$3,141,572 GF 6.5 FTE
<i>Administration Section.</i> Administrative staffing resources to right-size HR/budget support with DOL staff and budget growth.	\$316,036 RF 3.0 FTE	\$296,236 RF 3.0 FTE
<i>POST Unit.</i> Assessment and development of new peace officer curriculum, additional staffing for POST Unit management.	\$350,259 CF 1.0 FTE	\$144,059 CF 1.0 FTE
<i>Medicaid Fraud Control Unit.</i> Additional staffing resources to investigate and prosecute Medicaid fraud crimes against the State.	\$224,115 GF 4.0 FTE	\$ 141,884 GF 4.0 FTE
<i>Office of the Attorney General.</i> Align patterns and practices investigation staff resources with anticipated future needs.	\$156,421 GF 0.9 FTE	\$161,418 GF 1.0 FTE
<i>Water Unit.</i> Updates to accounting of Colorado Water Conservation Board River Basin funding in DOL Long Bill line items.	No net change	No net change
<i>Consumer Credit Unit.</i> Extension of FY 2021-22 spending authority to commission a study of safe and affordable credit options.	\$215,000 GF	n/a
<i>Legislative Set-Aside Requests</i>		
Enactment of Colorado False Claims Act.	\$240,000 GF	\$240,000 GF
<i>Statewide Priority Funding Requests</i>		
Law enforcement mental health support, recruitment, and retention.	\$10M GF	n/a
Funding advancements for Colorado water projects.	\$100M FF	n/a

Decision Item Requests

\$3.1 million GF (6.5 FTE) to Restore Remaining 2020 Budget Reductions Not Restored in the FY 2021-2022 Long Bill. As part of the FY 2020-2021 reductions due to the COVID-19 pandemic, the Department absorbed the following budget cuts—(1) a reduction of \$1 million in Marijuana Tax Cash Fund transfers to the Peace Officer Standards and Training (“POST”) Unit for marijuana law enforcement training programs; (2) a reduction of all General Fund revenues for Consumer Protection Section staff; and (3) the loss of funding for a dedicated assistant attorney general specializing in the Colorado Open Records Act and Open Meetings Law, three Criminal Appeals Section assistant attorneys general, two assistant attorneys general specializing in water law, and one Safe2Tell youth outreach specialist. The Department prioritized absorbing these reductions over the past two fiscal years and doing more with less. The Department reviewed the impact of these reductions and undertook an evaluation to determine if funding restorations for these positions were necessary or could result in permanent General Fund savings. At the conclusion of this evaluation, based on customer and client needs, and the DOL’s growing workload, the Department requests restoration of remaining cuts in the 2022-2023 budget, thereby allowing the Department to return service and staffing to pre-pandemic levels.

\$316,036 RF (3.0 FTE) for Human Resource and Budget Personnel. The DOL Administration Section ensures the DOL performs its functions in line with state law and policies and provides necessary support for all Department sections and offices. These operations include human resources, contracts and procurement, financial services, and operations and budgeting. Over the past 12 years, the Department total staff and budget grew by approximately 150 FTE and \$51 million—this accounts for a staff growth of 36 percent during this period. Despite the increase in Department personnel and budget growth, Administrative Section staffing—which are charged with personnel hiring, training, and ensuring proper stewardship of the budget—remained constant. As a result, Administrative Section workloads have reached unsustainable levels, resulting in hiring backlogs and extended procurement delays. Furthermore, the Department’s budget, now exceeding \$100 million annually, has a single FTE devoted to overseeing and managing the DOL budget. To keep pace with growing workload and ensure proper budget accountability and oversight, the Department requests 3.0 FTE—1.0 FTE Budget Analyst III, 1.0 FTE Human Resources Specialist III, and 1.0 FTE Human Resources Technician IV.¹

\$350,259 CF (1.0 FTE) for POST Unit Management and Peace Officer Curriculum Assessment and Review. Currently, the POST staff is analyzing the required job tasks for peace officers to better inform POST’s curriculum for law enforcement academies. Continuing this work, the DOL requests \$200,000 to solicit and hire a vendor to conduct a peace officer curriculum assessment and development. In addition, with significant increases in legislation enacted by the General Assembly providing new statutory responsibilities and obligations of the POST Board and staff, the Department requests funding for 1.0 FTE for a management level position for the POST Unit. This position will provide needed oversight and management support for the unit’s 15 FTE, permitting the POST director greater flexibility to focus efforts toward long-term planning and goals,

¹ This decision item request was initially submitted to the JBC in 2020 and received approval. However, due to revenue reductions and budget cuts resulting from the budgetary impacts of the pandemic, the JBC’s approval was rescinded and not included in the 2020 Long Bill. The Department is resubmitting this request for consideration for the FY 2022-2023 Long Bill.

soliciting and receiving feedback from stakeholders such as law enforcement organizations and community members, supervision of large, long-term projects, and compliance with recently enacted legislation.

\$224,115 GF (4.0 FTE) for Additional Resources for Medicaid Fraud Investigations and Enforcement. The Medicaid Fraud Control Unit (“MFCU”) defends the financial integrity of the State’s Medicaid program and the safety of Colorado patients in Medicaid-funded facilities and pursues civil recoveries and damages against providers in violation of the law. The MFCU receives 25 percent of its funding from the State, matched with 75 percent federal funds. Colorado Medicaid enrollment has grown significantly in the past decade—569,084 Coloradans enrolled in 2010, rising to 1,484,080 in 2020. During that same period, MFCU recoveries for the State exceeded \$91 million. However, with the growth of funding and patients, the State’s resources dedicated to enforcement and protection of Colorado’s Medicaid funds has not kept pace. The Department requests an additional 4.0 FTE for the MFCU, increasing capacity to better address current investigative, prosecutorial, and reporting requirements, as well as incorporating proactive outreach, training, and investigative efforts.

\$156,421 GF (0.9 FTE) for Patterns and Practices Investigations. Under Senate Bill 20-217 (“SB 20-217”), the General Assembly authorized the Attorney General to investigate governmental authorities exhibiting patterns and practices of actions that violate rights, privileges, and immunities secured to individuals by the U.S. Constitution or Colorado Constitution.² In 2020 and 2021, the Department conducted one publicly acknowledged investigation opened under this authority. Data collected during the investigation showed that approximately 6,200 hours of staff time—the equivalent of 3.0 FTE—was consumed. The investigation’s workload was shouldered largely by reprioritizing existing staff from their primary duties and relying on non-state employee volunteer attorneys. While the Department cannot comment on any pending investigations, it anticipates a similar staffing need for future investigations. With the staffing data from one completed investigation known, the DOL requests that the 2.0 FTE funded in the prior budget cycle be supplemented with an additional 1.0 FTE to match the workload anticipated for future patterns and practices investigations. If granted, this request will better align staffing resources with anticipated needs and eliminate the need to rely on pro bono attorneys for future investigations or reprioritize staff from other statutory duties and requirements.

\$674,071 CF for Colorado Water Conservation Board River (“CWCB”) Basin Funding. Currently, any dollars granted to the Department by the CWCB that are greater than the Long Bill appropriated amounts are booked into “non appropriated” funding lines in the State’s financial system. Because the DOL has statutory authority to receive and spend gifts, grants, and donations outside of the General Assembly’s appropriations, the DOL books these revenues in non-appropriated lines, per State Controller direction. As such these additional dollars are not reflected in the Department’s Long Bill budget lines. The Department requests the CWCB FY 2021-2022 grant amounts for the Colorado River Basin and Rio Grande Basin line items to be reflected in the DOL Defense of the Colorado River Basin and Consultant Expenses line items. Importantly, this request is for accounting and transparency purposes only and will not increase any funding obligations from the CWCB to the DOL. If approved, this shift will better demonstrate the actual estimated expenses of the Department’s Water Unit.

² COLO. REV. STAT. § 24-31-113 (2021).

\$215,000 GF for Credit Availability Study. In the 2021 the session, the General Assembly, via an amendment to the Long Bill, appropriated \$215,000 GF to the DOL to conduct a study on credit affordability. The Department determined that a minimal number of qualified vendors for such a study exist and the timeframe to complete such a study will require several months to complete the data collection and review necessary. Accordingly, the Department determined it is unable to expend this one-time funding in the present fiscal year and requests the JBC to extend spending authority for one additional fiscal year.

Requests for Set-Asides for Anticipated Legislation

2.0 FTE for Enactment of a Colorado False Claims Act. With the rise of government contracts and federal grants, the federal government and many states have laws to deter and remediate against fraudulent activity committed against the government, thereby protecting taxpayer dollars for their intended and proper purposes. These laws—known as false claims acts—provide critical tools for the states to ensure government monies are not illegally diverted. False claims acts incentivize and protect whistleblowers who report fraud against the government and leverage private enforcement resources by authorizing *qui tam* actions while allowing governments to maintain oversight. After Congress enacted the modern federal False Claims Act in 1986,³ many states adopted state-specific statutes. The most recent comprehensive study of state-specific false claims acts reported that 19 states enacted state-level false claims act, 13 of which authorize *qui tam* actions.⁴

Colorado law contains a Medicaid fraud-specific false claims act,⁵ yet our State does not have a comprehensive false claims act. Given the magnitude of American Rescue Plan Act (“ARPA”) federal funds directed to Colorado, potential federal infrastructure funds (contingent on action by Congress), and the State’s annual budget now exceeding \$30 billion, the Department recommends the General Assembly enact a comprehensive false claims act targeted to *all* acts of fraud committed against the State and local governments. This approach would provide Colorado governments critical legal tools to better police against actors that defraud public funds. With the influx of billions of dollars in new ARPA relief payments to Colorado’s State and local governments,⁶ this is an important step to ensure proper oversight and greater enforcement against bad actors. Contingent on passage of false claims legislation in the 2022 legislative session, the Department urges the JBC to provide a Long Bill set-aside of funds equivalent to 2.0 FTE for one attorney and one investigator for false claim enforcement efforts.

Other Budget Matters and Requests

\$600,000 (GF) to the District Attorney Assistance for Bond Hearings Cash Fund. In the 2021 legislative session, the General Assembly enacted House Bill 21-1280 requiring courts to conduct initial bond hearings with arrested persons within 48 hours of

³ False Claims Act, 31 U.S.C.A. §§ 3729–33 (2020).

⁴ James F. Barger, *States, Statutes, and Fraud: An Empirical Study of Emerging State False Claims Acts*, 8 TUL. L. REV. 465, 479 (Dec. 2005).

⁵ Colorado Medicaid False Claims Act, COLO. REV. STAT. § 25.5-4-303.5 to 310 (2020).

⁶ Memorandum from the Joint Budget Committee Staff to the Joint Budget Committee (Mar. 19, 2021) *available at* <https://leg.colorado.gov/sites/default/files/arp-03-19-21.pdf>.

their arrival at a detention facility. This legislation established the District Attorney Assistance for Bond Hearing Grant Program to provide grants to support district attorney offices' compliance with the bill's bond hearing requirements.⁷ To ensure adequate resources for district attorney offices to implement this important priority, I urge the JBC to include \$600,000 in the FY 2022-2023 Long Bill for transfer to the District Attorney Assistance for Bond Hearings Cash Fund.

\$10 million (GF) for law enforcement officer mental health services, recruitment, and retention. Our communities rely on peace officers to protect public safety. But with the countless stresses and burdens upon the law enforcement profession, recruiting and retaining qualified officers is a significant challenge that we must overcome.⁸ Furthermore, peace officer mental health is an issue we absolutely must address. Suicide by law enforcement officers is at alarming rates. Thus far in 2021, 120 law enforcement officers nationwide have died by taking their own lives.⁹ We cannot ignore statistics showing that this is a crisis for law enforcement officers—one that deserves critical and immediate resources from the State. This challenge impacts all Colorado law enforcement agencies, urban and rural. We also recognize that, for those entering the profession, the costs of student debt and of the law enforcement academies can be a major burden, particularly for our rural communities. The POST Board developed a pilot program to provide scholarships to academies for rural jurisdictions, but we need to do more to support those entering this profession. To provide necessary support for Colorado's law enforcement, I urge the JBC to include \$10 million to invest in these priorities, and support legislation creating necessary programs to support law enforcement agencies and peace officers.

\$100 million (FF) for High Priority Water Projects. In addition to the Department-specific priorities above, I continue to urge the General Assembly's consideration for a major investment in the State's short- and long-term water infrastructure needs. Water is Colorado's greatest natural resource—driving our economies, communities, environment, and agricultural and recreation industries. As I stressed in prior correspondence to the JBC, the State should prioritize a robust investment of \$100 million or more to the CWCB, either from anticipated congressional spending for infrastructure projects or presently held ARPA funds.¹⁰ An investment of this magnitude could support water projects that increase the dependability of both groundwater and surface water supplies in all of Colorado's river basins in the face of continuing drought and a water-tight future.

Conclusion

Thank you for your consideration of the Department's requests for the FY 2022-2023 fiscal year. Please note that the Department submits this budget request to you based on current law as of the date of submission. Amendment 78, if enacted by the voters in the 2021 statewide election, will have notable impacts on the Department of Law's operations and

⁷ COLO. REV. STAT. § 16-4-117 (2021).

⁸ See https://www.coloradopolitics.com/covid-19-and-worries-about-future-of-policing-have-taken-toll-on-law-enforcement-retention/article_893bc4c2-bb9a-5a55-80bd-224405ddb90a.html.

⁹ Officer Suicide Statistics, <https://bluehelp.org/the-numbers/> (last visited Oct. 26, 2021).

¹⁰ 42 U.S.C.A. § 802(c)(1)(D) (providing that ARPA funding for water projects is an expressly stated priority—authorizing funds for “water, sewer, and broadband infrastructure”).

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funding streams. Should Amendment 78 be approved by the electorate at the November 2021 election, the Department will submit a budget request amendment to the Joint Budget Committee in January 2022.

My staff and I stand ready to work with you. Thank you.

Sincerely,



Phil Weiser
Attorney General

Enclosure

cc: Representative Julie McCluskie, Vice-chair, Joint Budget Committee
Representative Leslie Herod, Joint Budget Committee
Representative Kim Ransom, Joint Budget Committee
Senator Chris Hansen, Joint Budget Committee
Senator Bob Rankin, Joint Budget Committee
Speaker Alec Garnett, Colorado House of Representatives
Majority Leader Daneya Esgar, Colorado House of Representatives
Minority Leader Hugh McKean, Colorado House of Representatives
President Leroy Garcia, Colorado Senate
Majority Leader Steve Fenberg, Colorado House of Representatives
Minority Leader Chris Holbert, Colorado Senate
Representative Mike Weissman, Chair, House Committee on the Judiciary
Senator Pete Lee, Chair, Senate Committee on the Judiciary
Ms. Carolyn Kampman, Staff Director, Joint Budget Committee
Mr. Scott Thompson, Principal Legislative Analyst, Joint Budget Committee
Ms. Natalie Hanlon Leh, Chief Deputy Attorney General, Department of Law
Mr. Eric Meyer, Chief Operating Officer, Department of Law
Mr. Kurtis Morrison, Deputy Attorney General for Intergovt. Affairs, Department of Law
Mr. Jeff Riester, Assistant Attorney General/Director of Legis. Affairs, Department of Law
Mr. Jon Reitan, Budget Director, Department of Law