

PHIL WEISER
Attorney General
NATALIE HANLON LEH
Chief Deputy Attorney General
ERIC R. OLSON
Solicitor General
ERIC T. MEYER
Chief Operating Officer



RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

STATE OF COLORADO
DEPARTMENT OF LAW

Office of the Attorney General

May 24, 2021

The Honorable Dominick Moreno
Chair, Joint Budget Committee
Colorado General Assembly
200 E. 14th Avenue, Third Floor
Legislative Services Building
Denver, Colorado 80203

RE: American Rescue Plan Act—Department of Law Requests

Dear Senator Moreno:

As the Joint Budget Committee (“JBC”) focuses on the best use of federal funds provided to the State under the American Rescue Plan Act¹ (“ARPA”), the Department of Law (“Department” or “DOL”) respectfully submits the following priorities for your consideration.

The COVID-19 recession has been incredibly difficult for Colorado families and consumers. As the economy rebounds, and with the significant investments provided by the JBC and General Assembly through the 2021 Long Appropriations Act, Colorado is poised to recover swiftly. However, many challenges from the COVID-19 pandemic will remain with us for some time. This includes continued COVID-19-related scams that deceive and gouge consumers and government programs. As one prominent example, fraudsters stole hundreds of thousands of Coloradans’ identities and exploited our State’s unemployment insurance system, resulting in losses of over \$19 million and growing.²

The Department is charged with enforcing the laws of Colorado and protecting Colorado consumers.³ For the Department to respond to the high volume of new needs, prosecutions, and investigations—while also continuing to meet our existing statutory obligations—restoration of 2020 General Fund reductions not yet restored, along with additional personnel resources, specifically investigators and prosecutors, are needed. To that end, Table 1 and the following subsections summarize the Department’s COVID-19-specific priorities—both spending requests and a substantive legislation request—submitted for your consideration.

¹ American Rescue Plan Act of 2021, Pub. L. No. 117-2 (2021).

² Aldo Svaldi, *Colorado Unemployment Insurance Fraud: \$19.4M Lost, \$437.2M in Payments Blocked*, THE DENVER POST, Apr. 16, 2021, available at <https://www.denverpost.com/2021/04/16/colorado-unemployment-insurance-fraud-2/>.

³ COLO. REV. STAT. § 24-31-101(1)(i) (2020).

Table 1.
Department of Law ARPA Requests

| DOL Division/Unit | | Purpose | FY 21-22 Request | FY 22-23 Request |
|---|--|---------|-------------------------|-------------------------|
| <i>DOL Funding Requests</i> | | | | |
| Special Prosecutions | Resources for Unemployment Insurance fraud investigations | | \$277,000 FF 2.0 FTE | \$277,000 FF 2.0 FTE |
| Consumer Protection | Restoration of General Fund reductions due to COVID-19 recession budget cuts | | \$2,040,267 FF | n/a |
| Interstate Water Unit | Restoration of General Fund reductions due to COVID-19 recession budget cuts | | \$270,000 FF 2.0 FTE | n/a |
| Criminal Appeals | Restoration of General Fund reductions due to COVID-19 recession budget cuts | | \$174,000 FF 2.5 FTE | n/a |
| Community Engagement | Additional resources for Safe2Tell outreach to schools, students, enforcement training | | \$175,000 FF 2.0 FTE | \$175,000 FF 2.0 FTE |
| Consumer Protection | Resources for enforcing housing laws | | \$240,000 FF 2.0 FTE | \$240,000 FF 2.0 FTE |
| <i>Bill Requests</i> | | | | |
| Office of Attorney Gen. | Enactment of Colorado False Claims Act | | \$240,000 FF 2.0 FTE | \$240,000 FF 2.0 FTE |
| <i>Statewide Priority Funding Requests</i> | | | | |
| Additional funding for Colorado water infrastructure priorities | | | | |

I. ARPA Spending Requests

The Department of Law submits the following spending requests for consideration by the JBC and General Assembly.

- Priority 1—Funding for Additional Investigators and Prosecutors for Unemployment Insurance Fraud Investigations (\$277,000 FF / 2.0 FTE).*** With the staggering rise in identity theft and fraudulent Unemployment Insurance claims, the Department stood up a taskforce in partnership with other agencies to investigate these crimes. Once the investigations result in fileable criminal cases they will be referred to prosecutors to prepare cases for trial. This function is managed by the Special Prosecutions Unit—a lean unit with 4 FTE for investigators and 6 FTE for attorneys. Taking on this magnitude of fraud—which has already cost the state of tens of millions in taxpayer dollars—requires additional resources to ensure robust and effective enforcement. To increase the Special Prosecution Unit’s capacity to take on this volume of Unemployment Insurance investigations, the Department requests \$277,000 FF for the hiring of 2.0 temporary FTE.
- Priority 2—Restoring General Fund Reductions for Consumer Protection Division Staff (\$2,040,267 FF).*** In the 2020 Long Bill, the General Assembly opted to remove all General Fund monies from the Consumer Protection line; thereby requiring the Department to backfill those General Fund losses with custodial funds. While this funding shift meant that Consumer Protection attorneys and investigators were not laid off, it depleted the Custodial Funds Account by the same amount. The

Department requests one year of funding at \$2,040,267 in total ARPA funds to be used to restore these General Fund losses—thereby allowing the Department to return the shifted funds to the Custodial Funds Account to aid harmed consumers consistent with court orders, while not creating additional stress on the State General Fund.

- ***Priority 3—Restoring General Fund Reductions for Interstate Water Unit (\$270,000 FF)***. The Federal and Interstate Water Unit protects the State’s interests in interstate rivers with respect to both interstate water compact allocation and administration. It also protects the State’s interests under the federal Reclamation Act and environmental requirements, including the National Environmental Policy Act, Endangered Species Act, and Wild and Scenic Rivers Act. The Unit also works with state water users to protect the State’s interests in the resolution of federal claims for water rights, including reserved water rights—including Tribal water rights. This Unit lost funding from the General Fund for 2.0 FTE attorney positions due to state budget concerns resulting from the pandemic. Restoring these dollars will allow the DOL to fully staff the unit once more, allowing it to best represent Colorado’s interests on these crucial efforts, while also not creating additional stress on the General Fund.
- ***Priority 4—Restoring General Fund Reductions for Criminal Appeals Division (\$174,000 FF)***. The Criminal Appeals Division represents the prosecution when defendants challenge their felony convictions before state and federal appellate courts. Most cases handled by this section are heard in the Colorado Court of Appeals; the rest are heard by the Colorado Supreme Court and federal district and appellate courts. The outcome of any given case may significantly affect how law enforcement authorities conduct searches and arrests; influence criminal trials and sentencing hearings throughout the state; or impact the state’s Department of Corrections, and probation, parole, and county community corrections programs. As such, each case must be given thorough and careful attention. Furthermore, to ensure defendants receive swift reviews of their appeals, proper staffing if required. During the 2020 General Fund reductions, this line item was reduced by 2.5 attorney positions. The Department requests these reductions be restored by providing one full fiscal year of ARPA funds to restore these positions.
- ***Priority 5—Funding for Additional Safe2Tell Outreach to Schools and Students, and Law Enforcement Training (\$175,000 FF / 2.0 FTE)***. During the COVID-19 pandemic and as schools shifted to remote learning, we observed a significant drop in Safe2Tell tip volume, falling 58 percent. At the same time, Safe2Tell lost personnel due to pandemic-related General Fund budget cuts. While the program did not have a school outreach FTE previously, the need for such a position is evident as students return to in-person learning. Connecting with schools on best practices and engaging students through a variety of initiatives is vital to ensure that temporary drops in Safe2Tell visibility do not become permanent. Likewise, it is a priority for Safe2Tell to have a dedicated trainer for our law enforcement partners, particularly as new models emerge for mental health interventions that may not involve traditional law enforcement responses, and as we continue to work with stakeholders across Colorado on this sensitive and urgent topic that has only grown in importance with mental health needs rising during the pandemic. Of note, suicide tips remain Safe2Tell’s highest-volume tip category, and that category has grown 24 percent as a proportion of tips during the pandemic.

Unfortunately, since the Department lost law enforcement training FTE during the pandemic the DOL is currently unable to dedicate resources to this crucial training and partnership need. To address this matter, the Department requests \$175,000 for the hiring of 2.0 FTE for the Safe2Tell program.

- ***Priority 6—Funding to Enforce Housing Discrimination Laws (\$240,000 FF / 2.0 FTE)***. During the pandemic, housing insecurity increased, thereby revealing consumer legal concerns, unlawful evictions, foreclosures, and collections—all occurring under existing laws. These concerns will become more acute as moratoria on evictions and foreclosures expire. By way of example, the U.S. Consumer Financial Protection Bureau (“CFPB”) just issued an interim final rule requiring debt collectors, including attorneys, to provide written notice to tenants of their rights under the Centers for Disease Control and Prevention (“CDC”) eviction moratorium and prohibits debt collectors from misrepresenting tenants’ eligibility for protection under the moratorium. These same violations likely exist under state law. Funding is required for 2 FTE to support these housing protection efforts and enforce against unlawful housing activities. To support these efforts, the Department requests \$240,000 for the hiring of 2.0 FTE.

The Department evaluated each of the spending requests described in this Section I for consistency with the legal requirements of ARPA Coronavirus State Fiscal Recovery Fund⁴ (“CSFRF”) monies. Under the new law, CSFRF funds may be used by state governments, no later than December 31, 2024, for the following purposes:

(A) to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) *or its negative economic impacts*, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;

(B) to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the State, territory, or Tribal government that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;

(C) for the *provision of government services to the extent of the reduction in revenue of such State, territory, or Tribal government due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year* of the State, territory, or Tribal government prior to the emergency; or

(D) to make necessary investments in water, sewer, or broadband infrastructure.

42 U.S.C.A. § 802(c)(1) (2021) (emphasis added).

⁴ 42 U.S.C.A. § 802.

Each of the Department's expenditure requests summarized in Section I fall within the authorized uses of funds stated in § 802(c)(1). Priority 1 is in direct response to the negative impacts of the pandemic by combatting fraudulent claims made against the government, as allowed by § 802(c)(1)(A). Priorities 2, 3, and 4 are to restore staffing cuts made due to the pandemic-related 2020 budget reductions, as allowed by § 802(c)(1)(C). This expenditure is also allowed under U.S. Department of the Treasury guidance stating that funds may be expended on "costs associated with rehiring public sector staff, up to pre-pandemic staffing level [sic] of the government".⁵ Priority 5 provides needed services for students during a time of severe mental and emotional stress and trauma as they return to full in-person learning, as allowed by Treasury Department guidance.⁶ Priority 6 equips the Department with personnel to enforce against unfair and discriminatory housing and eviction practices to assist persons facing housing security issues due to the COVID-19 pandemic—consistent with ARPA's directive to assist against negative economic impacts, as well as Treasury Department guidance permitting activities to address "inadequate or poor-quality housing".

Should the JBC see fit to provide ARPA CSFRF monies to the Department for the priorities described in Section I of this letter, it is the position of the Department of Law that these are lawful expenditures under federal law and Treasury Department guidance.

II. Bill Request

Enactment of a Colorado False Claims Act. With the rise of government contracts and grants, the federal government and many states enacted laws to deter and remediate fraud committed against the government. These laws—known as false claims acts or the Lincoln Law—have become important tools to ensure government monies are not illegally diverted or misused. False claims acts incentivize and protect persons who report fraud against the government and leverage private enforcement resources by authorizing qui tam actions while allowing governments to maintain oversight. Since Congress enacted the modern federal False Claims Act in 1986,⁷ many states adopted state-specific statutes based on the federal law. 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.⁸

Colorado law contains a Medicaid fraud-specific false claims act.⁹ However, given the magnitude of ARPA federal funds directed to the State, on top of the State's annual budget that now exceeds \$30 billion annually, 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 would provide Colorado governments critical legal tools to better police against actors that seek to defraud public funds. With the influx of billions

⁵ Interim Final Rule: Coronavirus State and Local Fiscal Recovery Funds, 31 C.F.R. Part 35 (2021).

⁶ 31 C.F.R. § 35.6(b)(1)(xviii) (2021).

⁷ False Claims Act, 31 U.S.C.A. §§ 3729–33 (2020).

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

⁹ Colorado Medicaid False Claims Act, COLO. REV. STAT. § 25.5-4-303.5 to 310 (2020).

of dollars in new ARPA relief payments to Colorado’s State and local governments,¹⁰ this is an important step to ensure proper oversight and greater enforcement against bad actors—thereby ensuring these needed funds are preserved for their intended purposes as Colorado recovers from the pandemic. To properly implement this law, if enacted, the Department anticipates needs of 2.0 positions for one attorney and one investigator.

III. Other Statewide Spending Priorities

In addition to the Department-specific priorities above and other important priorities laid out by the Governor and legislature today, I also encourage the General Assembly to make 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. So much so, that the Department retains a dedicated unit of attorneys specifically to safeguard Colorado’s water rights. Protecting Colorado’s water resources is one of our highest priorities at the DOL. The State, with strong leadership from the General Assembly, made significant strides in recent years to create new revenue streams to fund the Colorado Water Plan,¹¹ or push meaningful transfers from the General Fund to the Colorado Water Conservation Board (“CWCB”) for plan implementation.¹² These important investments allowed the CWCB to support numerous water projects throughout the State since 2015. The CWCB’s work also extends beyond the Water Plan and includes securing a dependable supply of water for the citizens of the State.

Funding water projects is an expressly stated priority in the language of the ARPA—authorizing funds for “water, sewer, and broadband infrastructure”.¹³ As the State continues to seek new and innovative measures to fund water infrastructure and secure supplies, I urge the JBC to consider a robust investment of \$100 million or more of ARPA monies to the CWCB. Such an investment could support numerous water projects throughout the State, stimulating local economies and communities in all Colorado regions.

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. Those projects are essential to protect Colorado’s extensive interests in its many interstate rivers and streams—and supporting the communities reliant on these natural resources. This is particularly true for those basins experiencing the driest years on record and seeing dramatic declines in groundwater and surface water supplies. These funds would allow Colorado to advance innovative solutions to address these challenges. A significant transfer of ARPA funds could also support critical water projects and programs whose future is in question due to losses in hydropower revenues caused by decades of historic dry hydrology. Those projects and programs include operations, maintenance, repair and replacement of aging irrigation infrastructure that support communities across the West Slope and compliance with the

¹⁰ 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>.

¹¹ H.B. 19-1327, 72nd Gen. Assem., 1st Reg. Sess. (Colo. 2019).

¹² H.B. 21-1260, 73rd Gen. Assem., 1st Reg. Sess. (Colo. 2021).

¹³ 42 U.S.C.A. § 802(c)(1)(D).

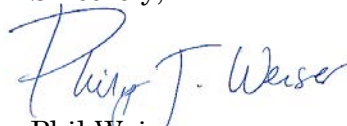
Endangered Species Act through collaborative programs that balance the needs of water users with the recovery of the identified endangered species. Maintaining these projects and programs provides certainty that Colorado can continue to develop its water supplies in the face of rapid growth and dry hydrology and avoid costly litigation, protect agricultural communities, maintain compliance with environmental laws and regulations, and cultivate collaborative relationships with our neighbors with whom we share water resources.

As the JBC weighs how best to spend ARPA funds, I strongly urge your consideration to devote a meaningful distribution of federal monies—at or exceeding \$100 million—to support Colorado’s water infrastructure and secure supplies as we continue to grow and best manage our limited water resources.

IV. Conclusion

As you begin the process to determine priorities worthy of ARPA funds, please know that I remain grateful for the JBC’s thoughtful consideration of the Department’s requests. My staff and I stand ready to work with you. Thank you.

Sincerely,



Phil Weiser
Attorney General

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