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STATE OF COLORADO
DEPARTMENT OF LAW

Office of the Attorney General

November 1, 2022

The Honorable Julie McCluskie
Chair, Joint Budget Committee
Colorado General Assembly
Denver, Colorado 80203

RE: FY 2023-2024 Department of Law Budget Request

Dear Representative McCluskie:

Pursuant to Section 2-3-208(2)(a), C.R.S., enclosed is the FY 2023-2024 budget request submitted by the Department of Law (“Department” or “DOL”) to the Colorado General Assembly Joint Budget Committee (“JBC”). In the face of economic uncertainty and growing inflation, Colorado’s economy remains resilient. But in recognition of the need to do more with fewer resources, the Department is seeking to address existing funding needs without creating new obligations. Each of these items, if approved, are critical investments in ongoing State priorities and the Department’s core mission of advancing public safety, consumer protection, and supporting client agencies. 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 2023-2024 Budget Request

DOL Unit / Funding Request	FY 2023-2024 Request	FY 2024-25 Requests
<i>Decision Items</i>		
<i>Federal & Interstate Water Unit.</i> Additional staffing resources to manage litigation and legal services related to Colorado’s interstate water compacts and equitable apportionment decrees.	\$236,766 GF 1.8 FTE	\$242,048 GF 2.0 FTE
<i>Special Prosecutions Unit.</i> Create and staff a statewide retail theft taskforce to investigate and interrupt major crime rings including organized retail theft.	\$660,249 GF 4.5 FTE	\$678,016 GF 5.0 FTE
<i>Multiple Units.</i> Align criminal investigator salaries with the current labor market.	\$72,790 GF \$72,100 CF	\$66,783 GF \$66,150 CF
<i>Office of the Attorney General.</i> Additional staff to align patterns and practices investigation staffing to current needs.	\$143,122 GF 0.9 FTE	\$147,826 GF 1.0 FTE
<i>Administration Section.</i> Funding to support ongoing information and technology needs of department employees.	\$53,403 GF \$26,432 CF	\$53,403 GF \$26,432 CF
<i>Administration Section.</i> Administrative staffing resources to right-size HR/budget support with DOL staff and budget growth.	\$230,512 RF 2.0 FTE	\$216,372 RF 2.0 FTE
<i>Air Quality Unit.</i> Additional staffing resources to properly support and advise CDPHE’s Air Quality Control Commission and staff.	\$459,969 RF 2.4 FTE	\$459,969 RF 2.4 FTE
<i>False Claims Act.</i> Provide for spending authority to allow for awards, fines, and penalties to be distributed to necessary parties.	\$300,000 CF	\$300,000 CF
<i>Safe2Tell.</i> Change funding source for Safe2Tell staff from the Marijuana Cash Tax Fund to General Fund.	\$202,218 GF (0.2) FTE	\$13,206 GF 0.2 FTE

Decision Item Requests

\$236,766 GF (1.8 FTE) for Additional Resources to Assist with Ongoing Litigation and Negotiation Support. Colorado is a party to nine interstate water compacts and two United States Supreme Court equitable apportionment decrees. Protecting its rights under those agreements and decrees from increasing threats requires additional staffing. For example, due to the dire conditions in the Colorado River basin and the expiration of the operating guidelines for Lake Powell and Lake Mead, discussions are occurring among the Department of the Interior, the Basin States, water users, Tribes, and other stakeholders on significant cuts to water usage. The need for action to reduce uses to protect critical elevations at Lake Powell and Lake Mead is clear and we are likely to confront a series of legal issues in the years ahead. The Lower Division States still need to develop a plan to reduce use and meet future needs. How these modified use solutions are developed and implemented will continue to require extensive negotiations and could result in litigation. Colorado faces additional threats to its compact apportionments in other basins. In 2022, the Nebraska legislature appropriated \$53.5 million to advance preliminary planning and design of the Perkins County Canal, which would divert water from the South Platte River in Colorado for use in Nebraska. Whether and how the canal is planned, constructed, and operated will require extensive negotiations and could give rise to litigation. The DOL is requesting additional funds to ensure that we are well positioned to protect the State's interests under its various interstate compacts and equitable apportionment decrees.

\$660,249 GF (4.5 FTE) to Establish and Support a Retail Theft Task Force. With the rise of retail theft, Colorado's businesses have lost millions in inventory, leading to higher prices for consumers and greater safety risks to retail store employees. These thefts are often carried out by sophisticated crime rings and operate across many jurisdictions. Following the passage of House Bill 22-1099, the Department has new authority to fine any online marketplaces that fail to meet verification and disclosure requirements.¹ However, the magnitude of this issue requires a central coordinating body to collect and share data across jurisdictions. The Department has worked with the Colorado Retail Council and individual retailers as well as law enforcement agencies on this matter. To fully build out and staff this effort to combat organized retail theft, the Department requests funding for two prosecutors, two investigators, and support by a legal assistant, totaling 4.5 FTE to establish the task force and support local and multijurisdictional cases, and provide related support for other major crime rings such as catalytic converter theft.

\$72,790 General Funds and \$72,100 Cash funds to Align Criminal Investigator Salaries with the Current Labor Market. Criminal investigators play a key role in much of the Department's criminal law and consumer protection work, including investigating Medicaid Fraud and other consumer related issues along with large, organized criminal operations. These unique positions are difficult to hire and retain as they often require staff to be certified peace officers, a requirement most state agencies do not need to meet. Following an analysis of the state workforce for the criminal investigators the Department is seeking to increase the base salary of these position to align with other state agencies and local governments in the Denver metro area. If granted, the Department will be able to be a competitive employer and will be able to better fill and retain criminal investigators in the Department.

¹ COLO. REV. STAT. § 6-1-105(1)(ooo) (2022).

\$143,122 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 complaints against governmental authorities for engaging in patterns and practices of actions that violate rights, privileges, and immunities secured by the U.S. Constitution or Colorado Constitution.² Since then, the Department publicly acknowledged two investigations under this authority. On average, the investigations required approximately 6,200 hours of staff time – the equivalent of 3.0 FTE. The DOL relied heavily on volunteer, non-state employee, attorneys and by reassigning investigators and staff away from other priorities. While the Department cannot comment on any pending investigations, it anticipates similar staffing needs to support future investigations. With staffing data from two confirmed investigations, the DOL requests the 2.0 FTE currently allotted be supplemented with 0.9 FTE to provide additional resources for future patterns and practices investigations. If granted, this request will help the Department meet anticipated needs and eliminate the need to rely on pro bono attorneys for any future investigations or reassign staff from other statutory duties.

\$53,403 General Fund and \$26,432 Cash Fund to Support Ongoing Information and Technology Needs for Current Staff. During the fiscal note process, any equipment and technology needs for new staff are accounted for. However, there is no way to address aging or failed equipment once these positions are in place for several years. Work from home requirements put additional stress on equipment as all Department business moved to virtual activities. Properly functioning technology is necessary for the Department to provide effective services to their clients and for their work on statewide priorities. If granted, this funding will allow the Department to update obsolete equipment and maintain software licenses for existing staff.

\$230,512 Reappropriated Funds (2.0 FTE) for Administrative Services. The DOL Administration Section provides human resources and financial services support for the Department. These include recruiting and hiring new employees, contracts and procurement, grant management, and operations and budgeting. Over the past 10 years, Department staff grew by 162 FTE, or a 38% increase, due to increased legislative requirements on the Department’s duties. Yet, the Department’s administrative support units did not grow to match the increased need. As a result, the Department does not meet the industry standard ratio of administrative staff to employees despite the increase to staff in the previous budget cycle.³ To keep pace with market standards for proper operations and budget accountability and oversight, the Department requests 2.0 FTE - 1.0 Accountant II and 1.0 HR Specialist IV.

\$459,969 Reappropriated Funds (2.4 FTE) for Additional Support to the Air Quality Unit to Meet Ongoing Client Needs. The Colorado Department of Public Health and Environment (“CDPHE”) has grown in recent years to meet the State’s air quality goals. This has led to a significant increase in legal services needed by CDPHE and the Air Quality Control Commission (“AQCC”). Resources were accounted for as part of the fiscal note process; however, legal needs have outpaced previous estimates as rulemakings and litigation services continue to be required at a high rate. The Department requests to reappropriate resources to adequately support CDPHE and the AQCC. If granted, the DOL will be able to hire additional staff to meet current and anticipated legal services.

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

³ The Department received two HR specialists and a Budget Analyst III position during FY2022-23 figure setting following its initial approval in 2020 but delayed due to revenue reductions and budget cuts resulting from the budgetary impacts of the pandemic.

\$300,000 CF for Spending Authority for False Claims Actions. Following the distribution of billions of dollars to Colorado by the federal government through the American Rescue Plan Act (“ARPA”) and other stimulus packages, the General Assembly enacted legislation to ensure the Department has greater tools to pursue actions against those who defraud public funds.⁴ Now, the Department may investigate any accusation of fraud when public dollars are at stake and coordinate with the federal government and other states as part of larger, multijurisdictional actions. This funding request would provide the Department spending authority to return any awards to the appropriate parties. If granted, the Department will be able to fulfill its statutorily mandated responsibility of reimbursing defrauded programs and award funds to whistleblowers when appropriate.

\$202,218 General Funds and a Reduction of \$218,412 Cash Funds ((0.2) FTE) to Refinance Safe2Tell Staff Funding from the Marijuana Tax Cash Fund to General Fund. House Bill 18-1434 expanded Safe2Tell (“S2T”) program responsibilities and appropriated dollars to support 2.0 FTE to accommodate the program expansion. However, due to General Fund limitations, the General Assembly funded the 2.0 FTE and associated operating with Marijuana Tax Cash Fund (“MTCF”) dollars. The nexus between the Marijuana Tax Cash Fund and S2T training responsibilities is minimal. As such, the DOL is requesting a refinance of these positions and associated operating to the General Fund to better align program delivery with appropriate funding. If granted, operations will continue unaffected and unencumber MTCF to support other allowable uses.

Attorney Salary Survey Request: The Department has made a 6% salary survey request for all attorney positions. This request is a placeholder and is in line with the request the Department made for the FY2022-23 budget. The Department has engaged a vendor to analyze the Department’s attorney pay ranges, appropriate salary increases, and an assessment of the Department’s compliance with the Equal Pay for Equal Work Act. The Department anticipates the final report in early November and may modify the attorney salary survey request depending on the recommendations of the study.

Conclusion

Thank you for your consideration of the Department’s requests for FY 2023-2024. My staff and I look forward to working with you as you begin the important process of weighing spending priorities for the various agencies and the State.

Sincerely,



Phil Weiser
Attorney General

Enclosure

cc: Senator Chris Hansen, Vice Chair, Joint Budget Committee
Senator Rachel Zenzinger, Joint Budget Committee

⁴ COLO. REV. STAT. § 24-31-101(1)(s) (2022).

Letter to the Honorable Julie McCluskie
November 1, 2022

Senator Bob Rankin, Joint Budget Committee
Representative Leslie Herod, Joint Budget Committee
Representative Kim Ransom, Joint Budget Committee
Speaker Alec Garnett, Colorado House of Representatives
Minority Whip Rod Pelton, Colorado House of Representatives
President Stephen Fenberg, Colorado Senate
Minority Leader John Cooke, Colorado Senate
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. Jon Reitan, Budget Director, Department of Law
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