

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney
General



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

March 21, 2025

M E M O R A N D U M

TO: Sen. Jeff Bridges, Chair, Joint Budget Committee
Scott Thompson, Joint Budget Committee Staff

FROM: Jefferey Riester, Senior Assistant Attorney General, Department of Law
Kurtis Morrison, Deputy Attorney General, Department of Law

RE: Comeback Request for Department of Law FY 2025-2026 Budget Request:
“BA1 Additional Litigation Resources”—Alternative Funding Source Option

In following up on our exchanges regarding the Department of Law (“Department”) comeback submitted to the Joint Budget Committee (“JBC”) entitled “BA1 Additional Litigation Resources”, this Memorandum describes an alternative funding source option that would provide the funding necessary to achieve the Department’s funding request without requiring General Fund monies.

COMEBACK REQUEST

Summary of Comeback Request. The Department decision item is for \$604,491 General Fund for 2.8 FTE in FY 2025-26 and \$637,600 General Fund for 3.0 FTE in FY 2026-27. This funding would support hiring dedicated attorneys for: (1) advising state agencies and institutions of higher education on federal funding risks and other legal risks given the evolving federal legal landscape; (2) defend the State in litigation brought by the federal government; and (3) bring legal actions against the federal government for unlawful federal actions that harm the State of Colorado and/or its citizens.^{1 2}

¹ Letter from Att’y Gen. Phil Weiser to Sen. Jeff Bridges, Chair, Joint Budget Comm., Colo. Gen. Assemb. (Jan. 15, 2025) (“FY 2025-2026 Department of Law Budget Amendment Request”).

² *Comeback Hearing for the Dep’t of Law FY 2025-2026 Budget Request Before the Joint Budget Comm.*, 75th Gen. Assemb. 1st Reg. Sess. (Mar. 13, 2025).

ALTERNATIVE FUNDING SOURCE OPTION

Given the pressures upon the General Fund, the Department reviewed its limited cash funds and their balances for alternative options to pose to the JBC. The Department did identify one cash fund option—one requiring no General Fund monies—that can support this decision item. In this alternative, the JBC could provide continuous spending authority to the Department for use of the cash fund established in § 24-31-108.5, C.R.S. This cash fund is designed for “unanticipated legal needs” and is relied on to support prosecutions in which the Attorney General was designated by the Governor to act as the State’s prosecutor. The fund is supported by attorneys fees received through litigation. The balance is sufficient to absorb an annual expenditure of approximately \$600,000 to support the comeback request—but full continuous spending authority is necessary should the fund also be required for unanticipated criminal prosecutions.

To use this fund, a bill is required to make statutory changes to: (1) provide the needed continuous spending authority; and (2) amend the statute to permit expenditures to allow legal counsel to state agencies clients; and (3) adjust the statute to remove personnel cost limitations as the 3 FTE are necessary for longer-term employment (making COLA adjustments necessary). Proposed bill language could be as follows:

§ 24-31-108.5. Use of funds for unanticipated legal needs.

The department may use money CREDITED ~~appropriated~~ to the department for litigation management to address unanticipated state legal needs that arise during the state fiscal year for which the money is appropriated; except that the department shall not use the money reallocated in accordance with this section ~~for any type of salary increase, promotion, reclassification, or bonus related to any present or future department employee, or~~ to offset present or future personal services deficits in any division in the department. SUCH MONEY MAY BE EXPENDED BY THE ATTORNEY GENERAL FOR PERSONNEL AND RELATED EXPENSES FOR:

- (1) LITIGATION BROUGHT BY THE ATTORNEY GENERAL AGAINST THE FEDERAL GOVERNMENT OR A FEDERAL AGENCY REGARDING UNLAWFUL FEDERAL ACTIONS IN WHICH THE STATE IS A PARTY OR INTERESTED;
- (2) DEFENDING THE STATE AGAINST LITIGATION BROUGHT BY THE FEDERAL GOVERNMENT OR A FEDERAL AGENCY, INCLUDING BUT NOT LIMITED TO LITIGATION BROUGHT TO CHALLENGE COLORADO LAWS; AND
- (3) LEGAL COUNSEL TO THE STATE, AGENCY CLIENTS, AND INSTITUTIONS OF HIGHER EDUCATION TO PROTECT FEDERAL FUNDING STREAMS RECEIVED BY THE STATE, INCLUDING BUT NOT LIMITED TO RESEARCH AND ANALYSIS OF FEDERAL EXECUTIVE ORDERS, LAWS, ADMINISTRATIVE REGULATIONS, AND AGENCY DIRECTIVES;

MONEY IN THE FUND IS CONTINUOUSLY APPROPRIATED TO THE DEPARTMENT.