

# **COLORADO GENERAL ASSEMBLY**

## **JOINT BUDGET COMMITTEE**



### **FY 2007-08 SUPPLEMENTAL: DEPARTMENT OF EDUCATION**

### **PRIORITIZED AND NON-PRIORITIZED REQUESTS**

**JBC Working Document - Subject to Change**  
**Staff Recommendation Does Not Represent Committee Decision**

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**DEPARTMENT OF EDUCATION  
 FY 2007-08 SUPPLEMENTAL RECOMMENDATION  
 JBC WORKING DOCUMENT - SUBJECT TO CHANGE**

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	FY 2005-06	FY 2006-07	Fiscal Year 2006-07 Supplemental		
	Actual	Appropriation	Requested Change	Approved Change	New Total with Approved Change

**DEPARTMENT OF EDUCATION**  
**Commissioner - Mr. Dwight D. Jones**

**Previously Approved 1331 Supplemental - Correct fund sources for liability and property insurance**

*(1) Management and Administration*

Payment to Risk Management and Property

Funds	<u>60,940</u>	<u>161,894</u>	<u>0</u>	<u>0</u>	<u>161,894</u>
General Fund	27,738	76,812	64,692	64,692	141,504
Cash Funds	2,398	7,387	0	0	7,387
Cash Funds Exempt	6,321	13,003	0	0	13,003
Federal Funds	24,483	64,692	(64,692)	(64,692)	0

**Previously Approved 1331 Supplemental - Adjust fund sources for school finance**

*(2) Assistance to Public Schools*

*(A) Public School Finance*

State Share of Districts' Total Program	<u>2,869,820,038</u>	<u>3,060,263,893</u>	<u>0</u>	<u>0</u>	<u>3,060,263,893</u>
General Fund	2,479,320,440	2,647,909,898	8,848,844	8,848,844	2,656,758,742
<i>General Fund Exempt Account (included above)</i>	<i>261,400,000</i>	<i>343,100,000</i>	<i>0</i>	<i>0</i>	<i>343,100,000</i>
Cash Funds - State Public School Fund	9,491,876	9,491,876	0	0	9,491,876
CF Exempt - State Education Fund	299,918,887	308,628,360	(8,848,844)	(8,848,844)	299,779,516
CF Exempt - State Public School Fund	81,088,835	94,233,759	0	0	94,233,759

	FY 2005-06	FY 2006-07	Fiscal Year 2006-07 Supplemental		
	Actual	Appropriation	Requested Change	Approved Change	New Total with Approved Change
<b>Totals</b>					
DEPARTMENT OF EDUCATION					
TOTALS for ALL Departmental line items	3,685,696,511	3,852,761,716	0	0	3,852,761,716
FTE	<u>447.6</u>	<u>466.0</u>	<u>0.0</u>	<u>0.0</u>	<u>466.0</u>
General Fund	2,445,706,636	2,531,113,080	8,913,536	8,913,536	2,540,026,616
General Fund Exempt	261,400,000	343,100,000	0	0	343,100,000
Cash Funds	15,088,414	14,636,398	0	0	14,636,398
Cash Funds Exempt	498,990,472	475,905,886	(8,848,844)	(8,848,844)	467,057,042
Federal Funds	464,510,989	488,006,352	(64,692)	(64,692)	487,941,660

	FY 2006-07	FY 2007-08	Fiscal Year 2007-08 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
<b>DEPARTMENT OF EDUCATION</b>					
Commissioner: Mr. Dwight D. Jones					
<b>Supplemental #1 - School Finance</b>					
<i>(2) Assistance to Public Schools</i>					
<i>(A) Public School Finance</i>					
State Share of Districts' Total Program	3,058,595,189	3,266,328,775	(114,133,533)	(114,133,533)	3,152,195,242
General Fund	2,657,663,684	2,824,496,821		(33,949,953)	2,790,546,868
<i>General Fund Exempt Account (included above)</i>			Fund sources not yet	0	343,900,000
Cash Funds - State Public School Fund	9,491,876	9,491,876		0	9,491,876
CF Exempt - State Education Fund	299,779,516	325,331,078		(66,783,580)	258,547,498
CF Exempt - State Public School Fund	91,660,113	107,009,000		(13,400,000)	93,609,000
<b>Supplemental #2 - Military Dependent Enrollment Aid</b>					
<i>(2) Assistance to Public Schools</i>					
<i>(C) Grant Programs and Other Distributions</i>					
Military Dependent Supplemental Pupil Enrollment Aid (NEW LINE ITEM) - GF	n/a	n/a	Not due until March 1	n/a	n/a

	FY 2006-07	FY 2007-08	Fiscal Year 2007-08 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
<b>Supplemental #3 - Legal Services</b>					
<i>(1) Management and Administration</i>					
Legal Services	<u>291,492</u>	<u>297,656</u>	<u>76,178</u>	<u>34,466</u>	<u>332,122</u>
General Fund	194,246	137,505	76,178	34,466	171,971
Cash Funds (Educator Licensure Cash Fund)	97,246	129,654	0	0	129,654
Cash Funds Exempt (On-line Education Cash Fund)	0	30,497	0	0	30,497
Hours	4,283.6	4,159.0	1,057.6	478.5	4,637.5
<hr/>					
<b>Supplemental #4 - Educator Licensure</b>					
<i>(1) Management and Administration</i>					
Office of Professional Services - (CF)	1,690,668	1,529,230	28,531	23,040	1,552,270
FTE	18.2	19.0	0.3	0.0	19.0
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<b>Supplemental #5 - Correct Fund Sources for Liability and Property Insurance</b>					
<i>(1) Management and Administration</i>					
Payment to Risk Management and Property Funds	<u>145,639</u>	<u>127,228</u>	<u>0</u>	<u>0</u>	<u>127,228</u>
General Fund	64,692	62,282	50,839	50,839	113,121
Cash Funds	7,387	5,805	0	0	5,805
Cash Funds Exempt	8,868	8,302	0	0	8,302
Federal Funds	64,692	50,839	(50,839)	(50,839)	0

	FY 2006-07	FY 2007-08	Fiscal Year 2007-08 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
<b>Non-Prioritized #1A - Enrollment-related Adjustments to State Charter School Institute Appropriations</b>					
<i>(1) Management and Administration</i>					
State Charter School Institute Administration, Oversight, and Management - (CFE - transfer from State Share line item)	456,531	762,698	86,714	31,945	794,643
FTE	2.6	7.0	0.0	0.0	7.0
Other Transfers to Institute Charter Schools - CFE	601,906	755,000	293,469	350,000	1,105,000
Department Implementation of Section 22-30.5-501 et seq., C.R.S. - (CFE - transfer from State Share line item)	313,793	508,465	21,297	21,297	529,762
FTE	3.0	5.0	0.0	0.0	5.0

	FY 2006-07	FY 2007-08	Fiscal Year 2007-08 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
<b>Non-Prioritized #9 - Statewide General Fund Balancing</b>					
<i>(2) Assistance to Public Schools</i>					
<i>(A) Public School Finance</i>					
State Share of Districts' Total Program	<u>3,058,595,189</u>	<u>3,266,328,775</u>	<u>0</u>	<u>0</u>	<u>3,266,328,775</u>
General Fund	2,657,663,684	2,824,496,821	(5,461,443)	0	2,824,496,821
<i>General Fund Exempt Account (included above)</i>	<i>343,100,000</i>	<i>343,900,000</i>	<i>0</i>	<i>0</i>	<i>343,900,000</i>
Cash Funds - State Public School Fund	9,491,876	9,491,876	0	0	9,491,876
CF Exempt - State Education Fund	299,779,516	325,331,078	5,461,443	0	325,331,078
CF Exempt - State Public School Fund	91,660,113	107,009,000	0	0	107,009,000
<hr/>					
<b>Non-Prioritized, JBC Staff-Initiated Supplemental #1 - Emeritus Retirement</b>					
<i>(1) Management and Administration</i>					
Emeritus Retirement - (GF)	21,607	17,330	0	(4,902)	12,428
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	FY 2006-07	FY 2007-08	Fiscal Year 2007-08 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
<b>Non-Prioritized, JBC Staff-Initiated Supplemental #2 - Small Attendance Center Aid</b>					
<i>(2) Assistance to Public Schools</i>					
<i>(B) Categorical Programs</i>					
<i>(I) District Programs Required by Statute</i>					
English Language Proficiency Program	16,769,779	18,478,985	0	18,484	18,497,469
FTE	<u>4.2</u>	<u>4.6</u>	<u>0.0</u>	<u>0.0</u>	<u>4.6</u>
General Fund	4,657,644	5,469,166	0	0	5,469,166
FTE	0.0	0.0	0.0	0.0	0.0
Cash Funds Exempt - State Education Fund	1,475,253	1,731,947	0	18,484	1,750,431
Federal Funds	10,636,882	11,277,872	0	0	11,277,872
FTE	4.2	4.6	0.0	0.0	
<i>(II) Other Categorical Programs</i>					
Small Attendance Center Aid	<u>961,817</u>	<u>961,817</u>	<u>0</u>	<u>(18,484)</u>	<u>943,333</u>
General Fund	834,479	834,479	0	0	834,479
Cash Funds Exempt - State Education Fund	127,338	127,338	0	(18,484)	108,854
<b>Previously Approved 1331 Supplemental - State Charter School Institute Spending Authority</b>					
<i>(1) Management and Administration</i>					
State Charter School Institute Administration, Oversight, and Management - (CFE - transfer from State Share line item)					
	456,531	762,698	637,157	637,157	1,399,855
FTE	2.6	7.0	0.0	0.0	7.0

	FY 2006-07	FY 2007-08	Fiscal Year 2007-08 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
<b>Totals Excluding Pending Items</b>					
DEPARTMENT OF EDUCATION					
TOTALS for ALL Departmental line items	3,881,534,333	4,068,616,142	(112,990,187)	(113,063,570)	3,955,552,572
FTE	<u>448.7</u>	<u>477.4</u>	<u>0.3</u>	<u>0.0</u>	<u>477.4</u>
General Fund	2,883,637,793	3,064,213,254		(33,869,549)	3,030,343,705
<i>General Fund Exempt Account (included above)</i>	<i>343,100,000</i>	<i>343,900,000</i>	Not all sources specified	<i>0</i>	<i>343,900,000</i>
Cash Funds	14,606,301	15,076,979		0	15,076,979
Cash Funds Exempt	458,854,798	492,437,514		(79,143,181)	413,294,333
Federal Funds	524,435,441	496,888,395		(50,839)	496,837,556
<b>Statewide Supplementals (Non-Prioritized #1 - 8)</b>					
(see narrative for more detail)	<u>N.A.</u>	<u>N.A.</u>	(44,959)	<u>Pending</u>	<u>N.A.</u>
General Fund			6,126		
Cash Funds			(8,698)		
Cash Funds Exempt			(30,912)		
Federal Funds			(11,475)		

	FY 2006-07	FY 2007-08	Fiscal Year 2007-08 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
<b>Totals Including Pending Items in Request</b>					
DEPARTMENT OF EDUCATION					
TOTALS for ALL Departmental line items	3,881,534,333	4,068,616,142	(113,035,146)	(113,063,570)	4,299,452,572
FTE	<u>448.7</u>	<u>477.4</u>	<u>0.3</u>	<u>0.0</u>	<u>477.4</u>
General Fund	2,883,637,793	3,064,213,254	Not all sources	(33,869,549)	3,030,343,705
<i>General Fund Exempt Account (included above)</i>	<i>343,100,000</i>	<i>343,900,000</i>	specified	<i>0</i>	<i>343,900,000</i>
Cash Funds	14,606,301	15,076,979		0	15,076,979
Cash Funds Exempt	458,854,798	492,437,514		(79,143,181)	413,294,333
Federal Funds	524,435,441	496,888,395		(50,839)	496,837,556

Key: "N.A." = Not Applicable

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**Supplemental # 1 - School Finance**

	<b>Request*</b>	<b>Recommendation</b>
Total	( <u>\$114,133,533</u> )	( <u>\$114,133,533</u> )
General Fund	Fund sources not yet specified	(33,949,953)
<i>General Fund Exempt (included above)</i>		0
Cash Funds - Rental Income		0
CFE - State Education Fund		(66,783,580)
CFE - State Public School Fund		(13,400,000)

\* The Office of State Planning and Budgeting does not intend to submit a formal supplemental request concerning school finance, specifying the associated fund sources, until mid-February.

<b>Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria?</b> [An emergency or act of God / a technical error in the appropriation / new data / an unforeseen contingency]	<b>YES</b>
This supplemental request is based on <u>new data</u> related to student enrollment, local revenues, and certain sources of state revenues.	

**Background Information.**

This line item reflects the state share of districts' total program funding pursuant to the School Finance Act of 1994 (as amended). While the applicable inflation rate is known at the time the Long Bill appropriation is established (and thus the required increase in base per pupil funding is known), other data that affects the required appropriation of state funds are not known. Specifically, the appropriation is based on estimates of the funded pupil count, the number of at-risk students, available local tax revenues, and certain sources of state revenues. By January within the fiscal year, this data has been collected by school districts and compiled by the Department.

As required by Section 22-54-106 (4) (b), C.R.S., the Department annually submits a supplemental request to adjust the current year appropriation based on actual student count and local tax revenue data. If existing appropriations are insufficient and the General Assembly does not provide additional funds, the Department is required to reduce state aid for each school district and each Institute charter school on a pro rata basis [see Section 22-54-106 (4) (c), C.R.S.]. Table A provides a history of supplemental appropriations for school finance since the existing School Finance Act was enacted.

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**TABLE A: Recent Supplemental Appropriations for School Finance**

Fiscal Year	Appropriations Made in Session Prior to Fiscal Year	Supplemental Adjustments		Final Appropriation
		Dollars	% Change	
FY 1994-95	\$1,442,667,337	(\$15,087,733)	-1.0%	\$1,427,579,604
FY 1995-96	1,528,611,353	(2,341,892)	-0.2%	1,526,269,461
FY 1996-97	1,646,300,014	1,404,276	0.1%	1,647,704,290
FY 1997-98	1,730,007,374	(4,414,173)	-0.3%	1,725,593,201
FY 1998-99	1,855,911,414	(5,065,406)	-0.3%	1,850,846,008
FY 1999-00	1,941,784,338	(11,649,747)	-0.6%	1,930,134,591
FY 2000-01	2,056,039,525	(7,965,651)	-0.4%	2,048,073,874
FY 2001-02	2,221,879,782	8,156,453	0.4%	2,230,036,235
FY 2002-03	2,455,147,022	29,395,541	1.2%	2,484,542,563
FY 2003-04	2,604,731,215	22,342,837	0.9%	2,627,074,052
FY 2004-05	2,732,460,144	11,444,662	0.4%	2,743,904,806
FY 2005-06	2,838,429,178	36,352,002	1.3%	2,874,781,180
FY 2006-07	3,040,302,744	20,866,091	0.7%	3,061,168,835
FY 2007-08 (requested)	3,266,328,775	(114,133,533)	-3.6%	3,152,195,242

**Total Funding Need for FY 2007-08**

**The Department has provided information indicating that the FY 2007-08 appropriation should be reduced by \$114.1 million (3.6 percent).** As detailed in the above Table A, this is the largest mid-year adjustment since the School Finance Act was enacted in 2004, and this is the first time since FY 2000-01 that a mid-year reduction was warranted. **This decrease is primarily due to higher than anticipated local revenues and lower than anticipated enrollment.** Table E, beginning on page 14, summarizes the changes in various components that affect the amount of state funding required for FY 2007-08. Each major change is described in detail below.

***Funded Pupil Count.* The actual funded pupil count is significantly lower than anticipated.** The original appropriations were based on an estimated funded pupil count of 768,416; the Department indicates that the actual funded pupil count is 760,840 -- 7,576 FTE (1.0 percent) lower than the estimate. As indicated in Table

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B, this is a relatively large mid-year adjustment. This reduction in the funded pupil count **decreases districts' total program funding by approximately \$50 million.**

<b>TABLE B: Comparison of Estimated and Final Funded Pupil Counts</b>				
<b>Fiscal Year</b>	<b>Estimate for Initial Appropriation</b>	<b>Mid-Year Adjustment</b>		<b>Estimate for Final Appropriation</b>
		<b>Funded Pupils</b>	<b>Percent Change</b>	
FY 2001-02	705,782.3	1,435.7	0.2%	707,218.0
FY 2002-03	715,793.4	1,955.3	0.3%	717,748.7
FY 2003-04	725,360.6	(2,130.6)	-0.3%	723,230.0
FY 2004-05	728,575.3	841.2	0.1%	729,416.5
FY 2005-06	738,014.1	3,389.2	0.5%	741,403.3
FY 2006-07	750,306.8	3,031.2	0.4%	753,338.0
FY 2007-08 (requested)	768,416.3	(7,576.5)	-1.0%	760,839.8

Appendix A provides detailed enrollment data for those 27 districts with the largest differences between the estimated and actual number of students (differences of 100 FTE or more). This analysis reveals that mid-year reductions related to pupil enrollment are primarily attributable to districts in three counties: El Paso, Arapahoe, and Adams. In addition, two of the school districts that operate some of the largest on-line programs in the state (Baca - Vilas and Las Animas - Branson) experienced larger than anticipated enrollment declines, further contributing to the mid-year reduction in total program funding.

***Per Pupil Funding.*** The *statewide average per pupil funding amount is \$2.66 higher than anticipated, slightly offsetting the above-described decrease in districts' total program funding.* This mid-year change is relatively small, as indicated in Table C. This increase is primarily due to a slightly larger than anticipated increase in the number of students considered to be "at-risk" based on eligibility for the federal free lunch program. Districts receive a greater amount of per pupil funding based on the presence and concentration of at-risk students in that district. A higher number of at-risk students results in a higher statewide average per pupil funding amount.

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<b>TABLE C: Comparison of Estimated and Final Statewide Average Per Pupil Funding</b>					
Fiscal Year	Estimate for Initial Appropriation	Mid-Year Adjustment		Estimate for Final Appropriation	
		Per Pupil Funding	Percent Change		
FY 2001-02	\$5,449.97	\$3.06	0.1%	\$5,453.03	
FY 2002-03	\$5,782.95	\$11.26	0.2%	\$5,794.21	
FY 2003-04	\$5,930.26	\$12.90	0.2%	\$5,943.16	
FY 2004-05	\$6,066.50	\$7.31	0.1%	\$6,073.81	
FY 2005-06	\$6,163.99	\$3.44	0.1%	\$6,167.43	
FY 2006-07	\$6,375.68	(\$16.76)	-0.3%	\$6,358.92	
FY 2007-08 (requested)	\$6,658.37	\$2.66	0.0%	\$6,661.03	

**The two changes described above result in a net \$48.4 million decrease in districts' total program funding under the School Finance Act (both state and local funding).**

**State Funding Need for FY 2007-08**

If the amount of available local tax revenues matched the estimates used to determine the FY 2007-08 appropriation, the state share of funding could be reduced by \$48.5 million. However, **actual local tax revenues are \$65.7 million higher than projected last May, allowing for an additional \$65.7 million decrease in the state share of funding.** Specifically, property tax revenues are \$61.5 million (3.6 percent) higher than projected, and specific ownership taxes<sup>1</sup> are \$4.2 million (2.7 percent) higher than projected. As indicated in Table D, this is the first time since FY 2001-02 that a mid-year reduction in state funding was warranted due to higher than anticipated local revenues.

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<sup>1</sup> Vehicle registration taxes are collected by counties and shared with school districts. Pursuant to Section 22-54-106 (1) (a) (I), C.R.S., each district's local share of funding for total program includes a portion of these district "specific ownership tax revenues" -- specifically, that portion that was collected for the previous budget year that is attributable to all property tax levies made by the school district, except those levies made for the purpose of satisfying bonded indebtedness obligations (both principal and interest) and those authorized pursuant to voter approval to raise and expend additional ("override") property tax revenues in excess of the district's total program [see Section 22-54-103 (11), C.R.S.]. Total specific ownership tax revenues are directly related to the number of and taxable value of vehicles. The portion of these revenues that count toward the local share of total program funding is impacted by school districts' general fund mill levies in relation to other school district mill levies, as well as other local mill levies.

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<b>TABLE D: Comparison of Estimated and Final Local Share of Funding</b>				
<b>Fiscal Year</b>	<b>Estimate for Initial Appropriation</b>	<b>Mid-Year Adjustment</b>		<b>Estimate for Final Appropriation</b>
		<b>Local Funding</b>	<b>Percent Change</b>	
FY 2001-02	\$1,629,630,908	\$1,833,498	0.1%	\$1,631,464,406
FY 2002-03	1,686,085,389	(10,006,172)	-0.6%	1,676,079,217
FY 2003-04	1,699,224,722	(25,647,702)	-1.5%	1,673,577,020
FY 2004-05	1,689,777,616	(1,149,886)	-0.1%	1,688,627,730
FY 2005-06	1,711,822,927	(9,357,746)	-0.5%	1,702,465,181
FY 2006-07	1,744,552,387	(14,398,874)	-0.8%	1,730,153,513
FY 2007-08 (requested)	1,850,072,036	65,707,519	3.6%	1,915,779,555

**Thus, existing appropriations of state funds are \$114.1 million higher than the amount required to fully fund the School Finance Act.**

**Summary of Changes for FY 2007-08.** Table E summarizes the above-described changes in the funded pupil count, total program funding, and the state and local shares of such funding.

<b>TABLE E: Changes to School Finance Based on Actual Enrollment and Local Revenues</b>				
<b>School Finance: Total Program</b>	<b>FY 06-07 Actual</b>	<b>FY 07-08</b>		
		<b>Original Appropriation</b>	<b>Appropriation Adjusted Per Supp. Recomm.</b>	<b>Change</b>
Funded Pupil Count	753,065.2	768,416.3	760,839.8	(7,576.5)
<i>Annual Percent Change</i>	<i>1.6%</i>	<i>2.0%</i>	<i>1.0%</i>	
Statewide <u>Base</u> Per Pupil Funding	\$4,863.87	\$5,087.61	\$5,087.61	\$0.00
<i>Annual Percent Change</i>	<i>3.1%</i>	<i>4.6%</i>	<i>4.6%</i>	
Statewide <u>Average</u> Per Pupil Funding	\$6,359.16	\$6,658.37	\$6,661.03	\$2.66
<i>Annual Percent Change</i>	<i>3.1%</i>	<i>4.7%</i>	<i>4.7%</i>	
Total Program Funding	\$4,788,862,198	\$5,116,400,811	\$5,067,974,797	(\$48,426,014)
<i>Annual Percent Change</i>	<i>4.7%</i>	<i>6.8%</i>	<i>5.8%</i>	



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<b>TABLE E: Changes to School Finance Based on Actual Enrollment and Local Revenues</b>				
<b>School Finance: Total Program</b>	<b>FY 06-07 Actual</b>	<b>FY 07-08</b>		
		<b>Original Appropriation</b>	<b>Appropriation Adjusted Per Supp. Recomm.</b>	<b>Change</b>
<u>Local Share</u> of Districts' Total Program Funding	<u>\$1,729,362,067</u>	<u>\$1,850,072,036</u>	<u>\$1,915,779,555</u>	<u>\$65,707,519</u>
Property Tax Revenue	\$1,569,856,530	\$1,693,756,602	\$1,755,295,069	\$61,538,467
Specific Ownership Tax Revenue	\$159,505,537	\$156,315,434	\$160,484,486	\$4,169,052
<i>Annual Percent Change on Total</i>	<i>1.6%</i>	<i>7.0%</i>	<i>10.8%</i>	
<u>State Share</u> of Districts' Total Program Funding (Excluding Additional State Aid Related to BIAs)	\$3,059,500,131	\$3,266,328,775	\$3,152,195,242	(\$114,133,533)
<i>Annual Percent Change</i>	<i>6.6%</i>	<i>6.8%</i>	<i>3.0%</i>	
<i>State Share as Percent of Districts' Total Program</i>	<i>63.9%</i>	<i>63.8%</i>	<i>62.2%</i>	

**Staff Recommendation**

Staff recommends decreasing the appropriation for the State Share of Districts' Total Program Funding for FY 2007-08 by \$114,133,533. As detailed in Table F, staff recommends reducing appropriations from three different fund sources. An explanation of each of these recommended adjustments follows the table.

<b>TABLE F: Recommended Adjustments to FY 2007-08 Appropriations for School Finance</b>			
<b>Fund Source</b>	<b>Existing Appropriation</b>	<b>Recommended Appropriation</b>	<b>Recommended Adjustments</b>
General Fund	\$2,824,496,821	\$2,824,496,821	(\$33,949,953)
Cash Funds: State Public School Fund (rental income earned on public school lands)	9,491,876	9,491,876	0
Cash Funds Exempt: State Public School Fund (federal mineral lease revenues, interest earned on the Public School Fund, audit recoveries, and reserves)	107,009,000	93,609,000	(13,400,000)
Cash Funds Exempt: State Education Fund	325,331,078	258,547,498	(66,783,580)
<b>Total Funds</b>	<b>3,266,328,775</b>	<b>3,152,195,242</b>	<b>(114,133,533)</b>

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**First, staff recommends reducing the appropriation from the State Public School Fund by \$13.4 million.** This reduction is primarily necessary due to lower than anticipated federal mineral lease revenues. Table G, details revenues and expenditures (continued on the next page) from the State Public School Fund for FY 2006-07 and FY 2007-08.

<b>TABLE G: State Public School Fund Revenues and Expenditures</b>				
<b>Revenue Source</b>	<b>FY 2006-07 Actual</b>	<b>FY 2007-08</b>		
		<b>Original Estimate</b>	<b>Revised Estimates</b>	<b>Change</b>
Beginning Fund Balance	\$18,151,683	\$7,286,344	\$15,529,361	\$8,243,017
Rental income earned on public school lands (CF)	12,000,000	12,000,000	12,000,000	0
Federal mineral lease revenues	60,398,179	78,339,000	61,225,500	(17,113,500)
Interest and investment income earned on the Public School Fund (also called the "Permanent Fund")	19,420,598	19,000,000	19,000,000	0
District audit recoveries	7,754,911	3,000,000	3,000,000	0
Unexpended appropriations for the State Share of Districts' Total Program Funding	<u>834,353</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b>Total Funds Available</b>	<b>118,559,724</b>	<b>119,625,344</b>	<b>110,754,861</b>	<b>(8,870,483)</b>

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<b>TABLE G: State Public School Fund Revenues and Expenditures</b>				
Line Item	FY 2006-07 Actual	FY 2007-08		
		Original Approp.	Adjusted Approp.	Recomm. Changes
State Share of Districts' Total Program Funding - Total	102,891,284	<u>116,500,876</u>	<u>103,100,876</u>	<u>(13,400,000)</u>
Cash Funds		9,491,876	9,491,876	0
Cash Funds Exempt		107,009,000	93,609,000	(13,400,000)
State Match for National School Lunch Program (CF)	2,472,644	2,472,644	2,472,644	0
Supplemental On-line Education Programs (CFE)	127,811	530,000	530,000	0
Transfer to the On-line Education Cash Fund (CFE)	0	830,000	830,000	0
Modifications to school accountability reports (CFE)	0	275,250	275,250	0
Creation and maintenance of data dictionary (CFE)	0	274,704	274,704	0
Comprehensive data systems assessment (CFE to Governor's Office)	0	150,000	150,000	0
Publishing of school laws (CF)	32,173	35,480	35,480	0
Accounting Adjustments and Transfers	<u>(2,493,549)</u>	n/a	n/a	n/a
<b>Total Expenditures / Appropriations</b>	<b>103,030,363</b>	<b><u>121,068,954</u></b>	<b><u>107,668,954</u></b>	<b><u>(13,400,000)</u></b>
Cash Funds		12,000,000	12,000,000	0
Cash Funds Exempt		109,068,954	95,668,954	(13,400,000)
<b>Ending Fund Balance</b>	<b>15,529,361</b>	<b>(1,443,610)</b>	<b>3,085,907</b>	
Less: Fund Balance Representing Accounts Receivable	<u>(5,482,523)</u>	<u>0</u>	<u>(3,000,000)</u>	(3,000,000)
<b>Fund Balance Available for Appropriation</b>	<b>10,046,838</b>	<b>(1,443,610)</b>	<b>85,907</b>	

**Second, staff recommends reducing the General Fund appropriation by \$33.9 million.** Section 17 of Article IX of the Colorado Constitution requires the General Assembly to annually increase the General Fund appropriation for the state share of districts' total program by at least five percent for FY 2001-02 through FY 2010-11. This five percent "maintenance of effort" requirement, however, does not apply in any fiscal year in which Colorado personal income grows less than 4.5 percent between the two previous calendar years<sup>2</sup>. The most recent projections by Legislative Council Staff indicate that the maintenance of effort requirement

<sup>2</sup> The determination of whether the General Fund maintenance of effort provision applies to a particular fiscal year is based on the Colorado personal income data that is released in December of that same fiscal year.

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will apply for FY 2007-08 through FY 2010-11. Table H details the calculation of the recommended adjustment to the General Fund appropriation.

<b>TABLE H: Calculation of Recommended General Fund Reduction</b>	
<b>Fiscal Year</b>	<b>General Fund</b>
Existing FY 2006-07 Appropriations	2,648,814,840
Previously Approved "1331" Supplemental Request for <i>FY 2006-07</i>	<u>8,848,844</u>
FY 2006-07 Base for Purposes of Calculating MOE Requirement	2,657,663,684
Plus: 5.0 percent increase	132,883,184
Minimum General Fund appropriation for FY 2007-08	2,790,546,868
Less: Existing FY 2007-08 appropriations	2,824,496,821
<b>Maximum allowable reduction in FY 2007-08 appropriation</b>	<b>(33,949,953)</b>

**Updated Projections of General Fund Appropriations Required to Maintain State Education Fund Solvency.** Staff has again updated the model originally developed by Pacey Economics Group to estimate the impact of various levels of General Fund appropriations on the solvency of the State Education Fund. Since staff's presentation last December, staff has updated the model to reflect Legislative Council Staff's December 2007 revenue forecast, actual student enrollment and local funding data for FY 2007-08, as well as more recent Legislative Council Staff projections of the funded pupil count and local funding.

The updated model provides an outlook that is markedly different from previous years. This change is due to significant changes in Legislative Council Staff's projections of both local funding and the funded pupil count. Table I provides a side-by-side comparison of these projections.

<b>TABLE I: Changes in Legislative Council Staff's Projections of Local Funding and Student Enrollment</b>						
<b>Fiscal Year</b>	<b>Local School Finance Funding</b>			<b>Funded Pupil Count</b>		
	<b>May 2007</b>	<b>January 2008</b>	<b>Change</b>	<b>January 2007</b>	<b>January 2008</b>	<b>Change</b>
2008-09	\$1,886,686,496	\$1,965,480,336	\$78,793,840	781,301	771,555	(9,746)
2009-10	1,989,670,466	2,112,078,679	122,408,213	792,846	781,880	(10,966)
2010-11	2,027,779,173	2,201,655,204	173,876,031	804,474	793,178	(11,295)
2011-12	2,162,103,561	2,425,733,374	263,629,813	816,984	804,275	(12,709)

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Based on the updated Pacey model, staff is comfortable recommending that the Committee reduce the FY 2007-08 General Fund appropriation by the maximum allowable amount. Under this scenario, staff estimates that the State Education Fund balance will rise from \$225 million at the end of FY 2006-07 to \$365 million at the end of FY 2007-08. Further, the updated model indicates that the General Assembly could appropriate the minimum amount of General Fund allowed through FY 2010-11<sup>3</sup> (the last year that the General Fund maintenance of effort provision applies), and the State Education Fund balance would continue to increase by about \$90 million per year. [Please note that if the General Assembly elects to spend additional amounts from the State Education Fund for new or expanded programs in FY 2008-09 and future fiscal years, the fund balance will not grow as fast or may decline.]

**Third, staff recommends reducing the appropriation from the State Education Fund by the remaining \$66.8 million.**

**Finally, please note that the actual adjustments to FY 2007-08 appropriations could either be included as part of the FY 2007-08 supplemental bill for Education that is introduced in early February, or it could be included as a section in the FY 2008-09 Long Bill.** As staff anticipates making recommendations to adjust FY 2007-08 appropriations from the General Fund Exempt Account based on the March 2008 revenue forecast, it may be simpler to include all the adjustments to the State Share line item in the FY 2008-09 Long Bill.

**Supplemental # 2 - Military Dependent Enrollment Aid**

	Request	Recommendation
Total - General Fund	Not due until March 1	n/a

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God / a technical error in the appropriation / new data / an unforeseen contingency]	YES
This supplemental request (when submitted) will be based on <u>new data</u> related to pupil count data that is collected by districts in February. [See Section 22-54-128, C.R.S. (H.B. 07-1232).]	

**Background Information**

House Bill 07-1232 established a process to provide mid-year funding increases to school districts that are impacted by military troop movements. For FY 2007-08 through FY 2010-11, this act allows school districts to request additional funding for pupils who are dependents of full-time active-duty members of the military

<sup>3</sup> For FY 2008-09, the minimum amount of General Fund allowed (assuming the Committee approves staff's recommendations in this packet) is \$2,930,074,211. This amount is \$44.1 million lower than the amount requested by the Department in November 2007.

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and who enroll after the annual October pupil count. Districts are eligible for additional funding if the number of eligible students, counted in February, represents an increase of at least one percent or 25 pupils. The Department is required to request a supplemental appropriation by March 1 each year sufficient to provide each eligible district with one-half of its per pupil revenues for each eligible pupil.

The Legislative Council Staff fiscal note for this bill indicated that over the next five years, 11,000 military personnel with 6,000 dependents are expected to relocate to Fort Carson - the primary location impacted by this bill. School districts in the region can anticipate growth of approximately 1,200 students each year. Assuming relocations occur at an even rate month-to-month, 400 of the 1,200 children are expected to be eligible for reimbursement each year. **The fiscal note thus estimated that the Department would request a \$1.3 million General Fund appropriation in FY 2007-08.**

**Department Request**

This request cannot be submitted until eligible districts submit data from the February student count. Staff anticipates presenting the request at the same time that funding recommendations for FY 2008-09 are presented. **Staff has included information in this packet so the Committee is aware that the Department will likely be submitting a request for additional General Fund appropriations for FY 2007-08.**

**Supplemental # 3 - Legal Services**

	Request	Recommendation
Total - General Fund	\$76,178	\$34,466

<b>Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria?</b> [An emergency or act of God / a technical error in the appropriation / new data / an unforeseen contingency]	<b>YES</b>
This supplemental request is based on <u>new data</u> related to legal services expenditures.	

**Background Information**

Prior to FY 2007-08, funding for the purchase of legal services was provided as part of a larger, consolidated line item ("General Department and Program Administration"). The FY 2007-08 Long Bill includes a separate line item for this purpose, consisting of three funding sources:

- \$30,497 cash funds exempt (from the On-line Education Cash Fund) to cover services provided to the Division of On-line Learning pursuant to S.B. 07-215;
- \$129,654 cash funds (from the Educator Licensure Cash Fund) to cover services provided to the Office of Professional Services; and

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- \$137,505 General Fund for all other legal services required by the State Board or Department staff.

In addition, the State Charter School Institute utilizes a portion of its annual cash funds exempt administrative appropriation to purchase legal services.

**Department Request**

**The Department requests an increase of \$76,178 General Fund to purchase an additional 1,057.6 hours of legal services** (based on \$72.03 per hour blended rate). For FY 2008-09, the Department has requested that this increase continue, plus an additional \$21,357 General Fund, for a total of \$364,694 to purchase 5,063.0 hours of service. The increase requested for FY 2007-08 represents a 26 percent increase in the total appropriation, and a 55 percent increase in the General Fund portion of the appropriation.

The following Table A details the Department's legal services expenditures for the last three fiscal years.

<b>TABLE A Actual Expenditures to Purchase Legal Services: FY 2004-05 through FY 2006-07</b>			
<b>Description (Fund source)</b>	<b>FY 2004-05</b>	<b>FY 2005-06</b>	<b>FY 2006-07</b>
Charter school appeals (GF)	\$29,074	\$84,010	\$94,833
Administration (GF)	54,106	26,376	60,553
School finance (GF)	4,493	58,389	22,636
Special Education - children with disabilities (GF)	8,477	4,655	9,370
Colorado School for the Deaf and the Blind (GF)	11,134	4,771	4,860
Educational services (GF)	0	0	1,994
Miscellaneous (GF)	953	645	0
Teacher licensure (CF)	<u>59,384</u>	<u>104,079</u>	<u>97,246</u>
<b>Subtotal: Legal Services line item</b>	<b>167,621</b>	<b>282,925</b>	<b>291,492</b>
State Charter School Institute (CFE - paid by SCSI)	24,452	23,972	36,970
<b>Total Expenditures</b>	<b><u>192,073</u></b>	<b><u>306,897</u></b>	<b><u>328,462</u></b>
<i>Hours</i>	<i>3,147.3</i>	<i>4,792.2</i>	<i>4,826.9</i>
General Fund	108,237	178,846	194,246
Cash Funds (Educator Licensure Cash Fund)	59,384	104,079	97,246
Cash Funds Exempt (SCSI)	24,452	23,972	36,970

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Based on current projections, the continuation request for the General Fund component of the legal services appropriation will not be sufficient in FY 2007-08 or FY 2008-09 to cover anticipated costs. The Department estimates that the shortfall in the existing General Fund appropriation ranges from \$56,743 (if expenditures in FY 2007-08 equal those incurred in FY 2006-07) to \$137,570 (if expenditures increase by 19 percent in FY 2007-08).

The Department indicates that recent increases in legal expenditures primarily relate to charter schools and the State Charter School Institute. First, charter school appeals have doubled since 2003 and tripled since 2002. Written briefs are submitted by both parties in any given appeal along with a thorough record on appeal. The Attorney General's Office reviews each complete record and brief and offers a legal overview and summary for the State Board of Education. A representative from the Attorney General's Office attends the hearing for the appeal and provides legal clarification where needed. The Department indicates that charter appeals are becoming more complicated in nature, and the State Board is more likely to receive second appeals than before.

Second, the Department indicates that legal costs have increased substantially since the General Assembly established the State Charter School Institute in 2004 (H.B. 04-1362). The Attorney General's Office has reviewed several districts' applications to retain exclusive authority to authorize charter schools. Also, the law allows for any party to challenge a district's chartering authority, and those challenges come before the State Board. The representative from the Attorney General's Office is involved in reviewing these documents and in providing legal clarification for the State Board. The Department anticipates that appeals and challenges related to exclusive chartering authority will continue to rise and occur year-round.

**Staff recommendation**

Staff has prepared Table B, beginning on the following page, to attempt to summarize the statutory provisions concerning the State Board's responsibilities related to charter school appeals and exclusive chartering authority.



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<b>TABLE B: Statutory Provisions Concerning Charter School Appeals and Exclusive Chartering Authority</b>	
<b>Statutory Citation (C.R.S.)</b>	<b>Description</b>
Sections 22-2-107 (1) (t)	The State Board has the power to "render a decision on the appeal of the state charter school institute's approval or denial of an institute charter school application or the revocation or nonrenewal of an institute charter school contract...".
Section 22-30.5-107 (3)	If a local board of education denies a charter school application, does not review an application, or unilaterally imposes conditions that are unacceptable to the charter applicant, the charter applicant may appeal the decision to the State Board.
Section 22-30.5-107.5	A charter school and its chartering school district may agree to be bound by the written findings of the neutral third party resulting from any alternative dispute resolution. In such case, the findings shall be final and not subject to appeal. However, if the parties do not agree to be bound by the findings of the neutral third party, the parties may appeal the findings to the State Board. The State Board may consider the neutral party's written findings or other relevant materials in reaching its decision and may, on its own motion, conduct a de novo review of and hearing on the underlying matter.
Section 22-30.5-108 (1)	Acting pursuant to its constitutional supervisory power, the State Board, "upon receipt of a notice of appeal or upon its own motion", may review decisions of any local board of education concerning the denial of a charter school application, the nonrenewal or revocation of a charter school's charter, or the unilateral imposition of conditions on a charter applicant or a charter school. A local board of education's refusal to review a charter application constitutes a denial of the charter application and is appealable as a denial.
Section 22-30.5-108 (3)	<p>If the appeal or review by the State Board relates to a local board's decision to deny, to refuse to renew, or to revoke a charter, or to the unilateral imposition of conditions that are unacceptable to the charter applicant or school, the appeal and review process are as follows:</p> <ul style="list-style-type: none"> <li>• Within 60 days, the State Board shall review the decision of the local board of education. If the State Board finds that the local board's decision was "contrary to the best interests of the pupils, school district, or community", the State Board shall remand such decision to the local board of education with written instructions for reconsideration</li> <li>• Within 30 days, the local board shall reconsider its decision and make a final decision. If the local board's final decision does not change, the charter school may appeal to the State Board a second time.</li> <li>• Within 30 days, the State Board shall determine whether the final decision of the local board of education was "contrary to the best interests of the pupils, school district, or community". If such a finding is made, the State Board shall remand its final decision to the local board with instructions to approve the charter application, to renew or reinstate the charter, or to approve or disapprove the conditions imposed on the charter applicant or the charter school. The decision of the State Board shall be final and not subject to appeal.</li> </ul>

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<b>TABLE B: Statutory Provisions Concerning Charter School Appeals and Exclusive Chartering Authority</b>	
<b>Statutory Citation (C.R.S.)</b>	<b>Description</b>
Section 22-30.5-108 (3.5)	In lieu of a first appeal to the State Board, the parties may agree to facilitation. If one party subsequently rejects facilitation, the local board shall make a final decision. The charter applicant may subsequently file a notice of appeal with the State Board if the local board's final decision is to deny the application, to refuse to renew or to revoke a charter, or to unilaterally impose conditions on a charter applicant or a charter school.
Section 22-30.5-504 (4) and (5)	Beginning in FY 2005-06 "and for each fiscal year thereafter", a local board may seek to retain exclusive authority to authorize charter schools within the geographic boundaries of the school district by presenting a resolution to the State Board. The State Board shall grant exclusivity to a local board (unless the local board elects otherwise) if the district's pupil enrollment is under 3,000 or if the percentage of pupils in charter schools who are eligible for free or reduced-cost lunch is at least one percentage point below the overall percentage of pupils eligible for free or reduced-cost lunch. For other districts, the State Board shall grant the local board exclusive chartering authority if it determines that the local board has "provided fair and equitable treatment to its charter schools during the four years prior to the local board's submission of the resolution". A party may challenge the grant of exclusive authority made by the State Board. The State Board shall permit the school district the opportunity to appear and respond in writing to the challenge, and the State Board shall make a determination upon the challenge within 60 days.
Section 22-30.5-510 (4) and (5)	If the State Charter School Institute denies a charter school application, the applicant may appeal to the State Board. The State Board shall review the decision within 60 days and determine whether the decision was "arbitrary and capricious". The State Board shall remand the matter to the Institute with instructions to approve or deny the application. The State Board's decision shall be final and not subject to appeal.

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**Staff Recommendation**

With respect to the General Fund portion of the Department's legal services appropriation, the appropriation did not significantly exceed or fall short of expenses until FY 2005-06. In FY 2006-07, expenditures exceeded the appropriation by nearly \$65,000 (50 percent).

<b>TABLE C Recent History: General Fund Appropriations for Legal Services and Expenditures</b>							
	Appropriations		Actual Expenditures			Excess/(Shortfall)	
	Dollars	Hours	Dollars	Hours	% Change	Dollars	Hours
FY 2003-04	\$116,048	1,909	\$120,871	1,988		(\$4,823)	(79)
FY 2004-05	117,537	1,909	108,237	1,758	-11.6%	9,300	151
FY 2005-06	123,035	1,909	178,846	2,775	57.9%	(55,811)	(866)
FY 2006-07	129,373	1,909	194,248	2,866	3.3%	(64,875)	(957)
FY 2007-08	137,505	1,909	n/a	n/a	n/a	n/a	n/a
FY 2007-08 with Supp. Request	213,683	2,966	n/a	n/a	n/a	n/a	n/a
FY 2008-09 Request	235,040	3,263	n/a	n/a	n/a	n/a	n/a

As detailed in Table A, the three primary areas for which the Department expends General Fund to purchase legal services include charter school appeals, administration, and school finance. While expenditures for the latter two areas have fluctuated up and down in the last three years, expenditures related to charter school appeals increased steadily and rapidly. Specifically, these expenditures increased by \$54,936 in FY 2005-06 and by another \$10,823 in FY 2006-07 -- a more than three-fold increase from FY 2004-05 to FY 2006-07. These amounts cover expenditures related to both charter school appeals and exclusive chartering authority.

The large increase in legal costs associated with charter schools occurred in FY 2005-06 (a 189 percent increase). The Department is not able to easily split out expenditures associated with charter school appeals from those associated with exclusive chartering authority. However, it seems reasonable given the passage of H.B. 04-1362 to assume that a significant portion of this increase related to the latter.

As of July 2007, all but 11 school districts have been granted exclusive chartering authority by the State Board; these exceptions include the following:

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Adams 12 - Northglenn  
 Adams - Westminster 50  
 Cheyenne RE-5 - Cheyenne Wells  
 Costilla - Sierra Grande  
 El Paso - Fountain 8  
 Garfield RE-2 - Rifle

Garfield - Roaring Fork  
 La Plata - Durango 9-R  
 Larimer - Poudre  
 Mesa -Mesa Valley  
 Sedgwick - Julesburg RE-1

It is staff's understanding that the above districts may apply again for exclusive chartering authority. It is unclear to staff whether those districts that have been granted exclusive chartering authority are required to request continuation of that authority each year. In addition, statute allows "a party" to challenge a district's exclusive chartering authority, and it appears that such a challenge can occur at any time. Thus, it is certainly possible that the State Board will continue to incur legal services expenses related to exclusive chartering authority. [Please note that a bill has been introduced, H.B. 08-1159, which may clarify some of the statutory ambiguity.]

However, the Department has been using General Fund appropriations to purchase these legal services. Pursuant to Section 22-30.5-513 (4), C.R.S., the Department is authorized to retain up to two percent of the amount withheld from per pupil funding for Institute charter schools "as reimbursement for the reasonable and necessary costs to the department to implement the provisions of [Part 5 of Article 30.5 of Title 22, C.R.S.]". As detailed in Table B, the State Board's duties related to exclusive chartering authority are included in Part 5. Thus, staff believes that the Department could and should be using a portion of the two percent that it is authorized to withhold to cover the legal services associated with exclusive chartering authority.

With respect to charter school appeals, the Department provided the following information concerning charter school appeals from 2003 through 2006.

<b>TABLE D: Charter School Appeals</b>			
<b>Case</b>	<b>Case Number</b>	<b>Calendar Year</b>	<b>Date</b>
Steamboat Springs Montessori v. Steamboat Springs RE-2		2003	1/15/2003
Avalon v. Montezuma-Cortez		2003	2/12/2003
Bessemer v. Pueblo 60		2003	3/5/2003
Steamboat Springs Montessori v. Steamboat Springs RE-2		2003	4/9/2003
Flagstaff v. St Vrain Valley School District		2004	1/7/2004
Adams 14 v. Community Leadership Academy		2004	4/7/2004
Leadership Prep v. Widefield 3		2004	10/13/2004

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<b>TABLE D: Charter School Appeals</b>			
<b>Case</b>	<b>Case Number</b>	<b>Calendar Year</b>	<b>Date</b>
Mountain Peaks Montessori School v. Jeffco	04-CS-03	2005	1/12/2005
Teddy Roosevelt Academy v. Jeffco	04-CS-04	2005	1/12/2005
Madison HS v. Jeffco	04-CS-05	2005	2/9/2005
CO Arts v. Jeffco	04-CS-06	2005	2/9/2005
College Prep HS v. Jeffco	04-CS-07	2005	2/10/2005
Mtn Peaks Mont (2 <sup>nd</sup> )	04-CS-03 (2nd Appeal)	2005	3/9/2005
Lotus v. Aurora	04-CS-08	2005	3/9/2005
Centennial CS v. Centennial SD	05-CS-02	2005	3/9/2005
T Roosevelt (2 <sup>nd</sup> )	04-CS-04 (2nd Appeal)	2005	3/10/2005
New Vision v. Thompson	05-CS-01	2005	3/10/2005
Zenith v. BVSD	05-CS-03	2005	3/10/2005
T Roosevelt v. Jeffco	05-CS-06	2006	1/11/2006
Madison HS v. Jeffco	05-CS-07	2006	1/11/2006
Ecole Francoise de Denver v. Cherry Creek SD	05-CS-10	2006	2/9/2006
Mtn Montessori v. Pueblo 70	06-CS-03	2006	2/27/2006
Global Village v. Aurora Public Schools	06-CS-04	2006	2/27/2006
Rolling Hills Charter v. Hanover SD	06-CS-01	2006	3/8/2006
Sterling CS v. Valley Re-1 SD	06-CS-02	2006	3/8/2006
CP Charter Schl v. Aurora	05-CS-11	2006	3/9/2006
Teddy Roosevelt (2 <sup>nd</sup> ) v. Jeffco	05-CS-06 (2nd Appeal)	2006	4/5/2006
Transition 2 Success v. El Paso D11	06-CS-05	2006	4/5/2006
Madison HS (2 <sup>nd</sup> ) v. Jeffco	05-CS-07 (2nd Appeal)	2006	4/6/2006
Ecole Francoise de Denver (2 <sup>nd</sup> ) v. Cherry Creek	05-CS-10 (2nd Appeal)	2006	5/11/2006
Rolling Hills (2 <sup>nd</sup> ) v. Hanover	06-CS-01 (2nd Appeal)	2006	5/11/2006
Ridgeview Classical v. Poudre SD	06-CS-06	2006	9/13/2006

As indicated in Table D, the number of charter school appeals increased sharply in 2005, rising from three in 2004, to 11 in 2005, to 14 in 2006. Staff also notes that the number of second appeals (shaded in table by staff) has also increased, rising from one in 2003, to two in 2005, to four in 2006.

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The Department's FY 2007-08 supplemental request is based on the assumption that the Department will need to purchase 100 more hours of legal services hours than it purchased in FY 2006-07 (an increase of 3.5 percent). **Staff recommends approving the Department's request with two modifications. First, while it seems reasonable, under current circumstances, to assume that the Department will need to purchase a similar number of hours of legal services as in FY 2006-07 (2,866, or an increase of 957), staff is not convinced that an increase in hours is warranted. Second, staff recommends funding only one-half of these additional hours with General Fund, and requiring the Department to utilize a portion of its appropriation for "Department Implementation of Section 22-30.5-501 et seq., C.R.S." to cover the other half.** Absent detailed information to determine what portion of the hours purchased in FY 2006-07 related to exclusive chartering authority, staff assumes that splitting the recommended increase in the number of hours in half is a reasonable approximation. **Thus, staff recommends increasing the General Fund appropriation by \$34,466.**

In the longer term, staff believes that the Department and the General Assembly should consider whether there are appropriate statutory or procedural changes that may reduce the number of cases that reach the State Board. Could actions be taken to encourage charter schools and authorizers to resolve disputes through alternative mechanisms? Why are a greater number of disputes resulting in a second appeal to the State Board? Are statutory changes necessary to clarify the General Assembly's intent with respect to the retention or recovery of exclusive chartering authority? At the Department's hearing in December 2007, the Committee asked, "What statutory changes could the General Assembly consider that would decrease the State Board's need for legal services?". The Department did not suggest any statutory changes. Staff recommends that the Committee make members of the Education Committees aware of the Department's growing legal expenses related to charter school appeals and exclusive chartering authority.

**Supplemental # 4 - Educator Licensure**

	Request	Recommendation
Total - Educator Licensure Cash Fund	\$28,531	\$23,040
FTE	0.3	0.0

<b>Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria?</b>	<b>YES</b>
[An emergency or act of God / a technical error in the appropriation / new data / an unforeseen contingency]	
This supplemental request is based on <u>new data</u> related to the impact of procedural and data system changes associated with processing criminal background checks.	

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**Background Information: Criminal Background Check Requirement**

- The Office of Professional Services is responsible for administering the Colorado Educator Licensure Act. The Office of Professional Services line item provides funding to support 19.0 FTE staff, including associated operating expenses and legal services. This Office is funded entirely through fees paid by educators seeking licenses, endorsements, and authorizations. Pursuant to Section 22-60.5-112, C.R.S., the State Board of Education is to annually adjust fees charged for licensing purposes, if necessary, so that the revenue generated approximates the direct and indirect costs of administering the Act. Fee revenues are deposited into the Educator Licensure Cash Fund.
- Pursuant to Section 22-60.5-103, C.R.S., the Department is required to conduct background checks on all applicants for educator licenses and authorizations. This includes accessing Colorado Bureau of Investigation (CBI) and Federal Bureau of Investigation (FBI) criminal history records using the applicant's fingerprints. In addition, the Department is also required to conduct a fingerprint-based criminal history record check for each educator renewing a license or authorization who has not previously been fingerprinted for purposes of licensure (some of these educators may have been previously fingerprinted due to school district requirements, but not for licensure)<sup>4</sup>. The Department is authorized to use the Judicial's ICON system or any other available source of criminal history information that it deems appropriate to determine the crime(s) for which a person was arrested or charged and the disposition of any criminal charges.

In FY 2006-07, the Educator Licensure Unit processed approximately 20,000 CBI reports and 20,000 FBI reports. Staff from CBI have indicated that this Unit submits the highest number of civilian fingerprint background checks of any state agency, followed by the Division of Real Estate (approximately 30,000 annually). Prior to FY 2006-07, an applicant was required to submit a complete set of his or her fingerprints to the Educator Licensure Unit along with the licensure application, and the Unit forwarded the fingerprint card to the CBI. Pursuant to S.B. 06-176, the applicant now submits the fingerprints directly to the CBI prior to submitting an application. The Department does not issue a license or authorization prior to receiving the results of a fingerprint-based criminal records check from the CBI.

**Background Information: Changes to Background Check Procedures and Resulting Backlog**

In November 2006, the CBI implemented a new web-based system for distributing results of background checks and this change increased the Licensure Unit's workload and slowed license processing time frames. Prior to November 2006, the Licensure Unit received the results of criminal history record checks (both

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<sup>4</sup> This requirement began in 2005 and it has significantly increased the number of fingerprint cards processed for educator licensure (increasing from approximately 6,000 in CY 2003 to over 19,000 in 2005). Due to the renewal cycle, the Department expects this heightened workload to continue through 2009 and then decline in 2010.

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clearances and those "hits" indicating that an applicant has a felony or misdemeanor criminal history) via modem in a "batch". Staff could quickly scan the results of multiple checks, picking out those applicants with hits and printing results for review by the Investigations Unit. The Unit could then update the status of the remaining applicant's electronic files to authorize the issuance of a license once the application is approved. The process of receiving and reviewing criminal history record results did not impact the time frame associated with issuing or renewing a license.

The Licensure Unit received fingerprints that were rejected by CBI and/or FBI as unclassifiable via interoffice mail in hardcopy. Staff would then mail the card and a memo to the applicant instructing them to get their fingerprinting done again, and resubmit both the rejected and new fingerprint cards together (to avoid having to pay a second fee).

Once the new "Secure Document Delivery System" was implemented by the CBI in November 2006, the Licensure Unit's workload increased as follows:

- The Department began receiving criminal history record check results through the CBI and FBI via website access in single subject files that had to be opened individually and could not be identified as containing a hit or clearance information until opened. The Department was thus no longer able to quickly triage or process the results. Instead, each electronic file had to be opened individually, and each identified hit was then printed out and given to the Investigations Unit for review. Specifically, the Licensing Unit could previously enter background check results into its licensure system at a rate of about 60 per hour (480/day). Initially, when the new CBI system was implemented, the Unit could only process about 60 per day.

The CBI subsequently made some changes to the way that results are accessed and processed, as well as the information that appears in the results file<sup>5</sup>. In early 2007 the Unit was able to process about 200 per day. As a result, while the Unit previously devoted 0.3 FTE to process background check results, 1.0 FTE was processing results full-time (including overtime). Thus, other licensure activities were being impacted as well.

*UPDATE: The CBI has made some additional improvements to the system in the last year, including: (1) working with the vendor to address the general slowness of downloads; (2) separating files with a criminal history ("hits") from those without, allowing the Department to quickly forward those with hits to the Investigations Unit; and (3) adding a search function to allow one to search for a specific file by name and date of birth or social security number. The Department indicates that due to these changes, as well as efficiencies associated with practice and experience, the Department is able to*

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<sup>5</sup> Previously, the applicant's social security number did not appear in the results file, making the process of matching the results to an individual in the licensure system very cumbersome.



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*enter background check results into its licensure system at a rate similar to that prior to November 2006. It has not, however, been able to significantly reduce or eliminate the backlog.*

- In early 2007, the Licensure Unit was receiving fingerprints that were rejected by CBI and/or FBI as unclassifiable via website access in single subject files that needed be opened individually (rather than simply receiving the rejected cards in the mail). Staff were required to open each file, open a separate card reader, and print a copy of the rejected fingerprint card in order to mail it out as before. Staff also had to copy tracking numbers to a cover letter to the applicant to ensure that the applicant does not have to pay a second fee. Previously, staff processed 1,900 rejected fingerprint cards at a rate of about 12 cards per hour. In early 2007, the Unit was able to process about six cards per hour.

*UPDATE: The Department indicates that processing times have improved only modestly due to practice and experience. However, the Department has identified a problem that it was not aware of in January 2007. In May of 2007, the CBI changed its procedures so that if CBI staff determine that fingerprints are out of sequence or of such poor quality that they cannot even be entered into the system, they send the fingerprint card and payment directly back to the applicant. Apparently, there have been instances where the second fingerprint card that was submitted by the applicant was good enough to enter into the CBI system but was rejected by the FBI. In this case, CBI sends the card to the Licensure Unit, and the Unit forwards it to the applicant. The Licensure Unit has not been made aware of the initial returned fingerprint card until they are contacted by the applicant. This problem is creating frustration for both the applicant and the Licensure Unit, in addition to delaying licensing time frames.*

The Department has indicated the overall licensing/authorization process time is about eight weeks (and up to 12 weeks during peak times in Summer and December/January). This time frame, however, does not include any delay related to accessing fingerprint information. After the implementation of the new CBI system in November 2006, a backlog of 4,000 criminal history results developed (i.e., the Licensure Unit had not yet downloaded 4,000 results and transferred the information to its licensing system). This backlog, in turn, created a backlog of applications that had been approved but were awaiting criminal history check results.

*UPDATE: As of January 16, 2008, the backlog of criminal history record results was 3,833 (including 904 CBI results and 2,929 FBI results). This compares to a January 2007 backlog of 821 CBI results and 2,282 FBI results. The Department notes that CBI and FBI reports which have not been downloaded within 90 days are automatically deleted from the system. When this occurs, the applicant is required to resubmit the fingerprint card and pay another \$39.50. However, the CBI reports are not sent to the Department in chronological order, so it is difficult for the Licensure Unit to prioritize the oldest reports in order to ensure that they are not deleted.*

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Last January, the Department requested \$50,000 cash funds spending authority to hire contract staff (the equivalent of 3.0 FTE for five months) to eliminate both the backlog of criminal history check results that had not yet been processed and the associated backlog of approved applications. The Committee approved this request and the General Assembly provided supplemental spending authority accordingly. Staff indicated at that time that it was unclear whether any additional funding and staff will be required in FY 2007-08.

**Department Request**

**The Department requests a \$28,531 increase in cash funds spending authority from the Educator Licensure Cash Fund and 0.3 FTE for FY 2007-08 to process criminal background check information.** The Department indicates that approval of this request would not increase licensure fees. The Department's request for additional funding and staff for both FY 2007-08 and subsequent fiscal years is detailed in the following table.

	<b>FY 2007-08 Supplemental Request</b>	<b>FY 2008-09 Budget Amendment</b>	<b>FY 2009-10 Projection</b>
<i>Personal Services:</i>			
Salary for Program Assistant II (4 months in FY 2007-08; does not reflect salary increases in future fiscal years)	\$15,000	\$45,000	\$45,000
PERA (10.15%)	1,523	4,568	4,568
Medicare (1.45%)	218	653	653
Prior Year SAED	0	75	263
SAED	75	263	225
AED	195	720	720
<i>Operating Expenses:</i>			
Supplies	0	500	500
Computer	0	900	0
Office Suite Software	0	330	0
Office Equipment	0	2,225	0
Telephone	0	450	0
<i>Temporary Services</i> (the equivalent of 1.0 FTE for four months, working 160 hours/month at a cost of \$18/hour)	11,520	0	0
<b>Total - Educator Licensure Cash Fund</b>	<b>28,531</b>	<b>55,684</b>	<b>51,929</b>
<b>FTE</b>	<b>0.3</b>	<b>1.0</b>	<b>1.0</b>

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The Department indicates that the new staff position would be responsible for the following:

- receiving CBI and FBI criminal background history results and entering the information into the licensing database;
- communicating with courts, law enforcement agencies, and district attorneys to obtain criminal history records;
- storing background information for individuals for whom a licensing application has not yet been received;
- storing license applications for individuals for whom verification of submission of fingerprints has not yet been received; and
- cross-referencing CBI e-mails concerning rejected fingerprint cards, logging in correct documentation identification numbers, and returning rejected fingerprint cards to applicants.

The Department indicates that there is an ongoing need for additional support related to background checks, and it would prefer a full-time position rather than temporary services due to issues related to training, turnover, and confidentiality.

**Staff Recommendation**

*Background Information.* Based on conversations with staff from the Department of Public Safety (DPS) in January 2007, staff understands that the CBI has been working toward a paperless system for processing criminal history record checks. The FBI accepts requests for fingerprint-based background checks in two forms: (1) physical cards (either an "ink and roll" fingerprint on a card or a copy of a scanned print); or (2) electronic fingerprint files. The FBI processing time frame is significantly shorter for electronic files compared to physical cards: less than 72 hours, compared to 4 to 6 weeks. The Department of Public Safety has assisted many local law enforcement agencies by using federal funds to provide "live-scan" machines to collect fingerprints electronically. These machines thus significantly reduce the time frame for receiving FBI results. In addition, fingerprints that are collected in this manner are much less likely to be rejected as unclassifiable.

In late 2006, the CBI purchased an off-the-shelf system (using existing resources) that eliminated much of the paper involved in the process. Response data from the FBI is now directly downloaded into the new Secure Document Delivery System, which has created some efficiencies for the CBI. Specifically, the CBI is no longer required to mail documents to the FBI, nor is it required to make photocopies of responses, enter data from the response, and mail the response information to the requesting agency.

This new system is being used by law enforcement and most state agencies. The Department of Education's Licensure Unit was the first state agency to use the new system in November 2006. Staff from CBI acknowledged that the new system created a workload impact on the Licensure Unit, particularly in the first several weeks. Although CBI staff were able to address the extraordinarily slow processing times that were

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experienced initially, they indicated last January that much of the workload impact to the Licensure Unit could only be addressed by upgrading the new CBI software. Specifically, DPS indicated that it planned to modify the new system so that an agency could, with one click, print all responses that are "hits" or "rejects" without having to open each individual file. DPS indicated that it hoped to make these changes within the first six months of 2007. As mentioned above, DPS has made this change, and it has also added a search function.

*Current Challenges.* Based on discussions with both the Licensure Unit and CBI staff, there appear to be five problems that have not yet been adequately addressed:

1. Allowing the Licensure Unit to sort CBI results chronologically in order to ensure that no records are purged because they have exceeded the 90-day limit. *DPS indicated that their vendor is working on this sorting function. Staff also asked whether the 90-day purge could be "turned off", at least temporarily. DPS said it would talk to the vendor about this option (in addition to the chronological sort function) and discuss it with Licensure staff.*
2. The Licensure Unit has determined that it is also losing files before they are downloaded if CBI staff open a record in order to send it to the FBI before the data has transmitted to the Licensure Unit. *DPS staff indicate that this issue has been addressed through retraining of CBI staff.*
3. For fingerprint cards that are rejected, the process of sending these cards electronically to the Licensure Unit and requiring the Unit to make a hard copy and forward it to the applicant is cumbersome and time consuming. In addition, the Licensure Unit would prefer to know when an applicant has already been required to resubmit prints once, but is not informed of this by DPS. *DPS does not plan to change its practice with respect to returning some rejected prints directly to the applicant without notifying the Licensure Unit. However, when staff asked whether it would be possible to take the Licensure Unit out of the loop and have DPS handle all aspects of rejected cards, DPS indicated that it should be able to make that change if so desired by the Licensure Unit. Staff suggested to both DPS and the Licensure Unit that they discuss this option to reduce processing time frames and reduce the potential for two different state agencies providing conflicting information to applicants.*
4. The Licensure Unit is currently manually downloading background check information (or notations that an applicant is "cleared") into its licensure system. *DPS has indicated that both the Department of Regulatory Agencies and the Department of Public Health and Environment (agencies which also process large numbers of background checks) have had their own programmers "map" the background check responses from CBI so that the information can be uploaded into their internal systems. Although DPS has indicated that the Department of Education should be able to accomplish the same task, it is not yet clear whether this is possible.*

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5. Finally, the time required for the CBI to process fingerprint cards is currently averaging 60 days (per CBI staff). *DPS indicates that it is aware of this problem and it is working on potential solutions.*

*Staff Recommendation.* **Staff recommends increasing the appropriation for the Licensure Unit by \$23,040.** It is critical that the Department address the existing backlog in the next four to five months, prior to entering the peak Summer months. School districts and educators rely on the Department to process licensure applications in a timely manner in order to ensure that teaching positions are filled at the beginning of each semester. If these backlogs persist through the Summer, extended licensing time frames could impair districts' ability to staff their classrooms in the Fall. The recommended amount should allow the Department to hire the equivalent of 2.0 FTE for four months (working 160 hours/month at a cost of \$18/hour) -- essentially twice the temporary services requested.

**However, staff does not recommend approving the Department's request to add full-time staff.** First, the Department's rate of processing background check results has improved in the last year and it is not clear that additional staff will be needed once the backlog is minimized or eliminated.

Second, it appears that the Department may be able to work with the CBI to make a couple of additional improvements that would assist the Licensure Unit and potentially reduce licensure time frames, including: (a) implementation of a chronological sort function and/or elimination of the 90-day purge process; and (b) potentially eliminating the Licensure Unit's responsibilities related to rejected fingerprint cards.

Third, the Department may be able to make programming changes similar to those made by other state agencies in order to upload the background check information into its licensure system electronically. This change should eliminate the backlog of "cleared" records that need to be downloaded and processed.

Finally, it is not clear to staff that the Licensure Unit has considered other internal changes that could alleviate the backlog, such as cross-training staff and/or re-distributing duties among existing staff. As staff indicated a year ago, the Unit needs to evaluate its own procedures for processing licensure applications. The existing paper-intensive procedures are not compatible with the new paperless system implemented by the CBI. The Licensure Unit hired a new Director last July who is working hard to improve the Unit's processes and significantly improve services to districts and individuals. She is interested in developing an on-line licensure application process, thereby improving the convenience and timeliness for applicants and districts. Staff has encouraged the Department to move forward as quickly as possible and provide the Committee with information about potential resource requirements when appropriate.

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**Supplemental #5 - Correct fund sources for liability and property insurance**

	Request	Recommendation
Total	\$0	\$0
General Fund	50,839	50,839
Cash Funds	0	0
Cash Funds Exempt	0	0
Federal Funds	(50,839)	(50,839)

<b>Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria?</b> [An emergency or act of God / a technical error in the appropriation / new data / an unforeseen contingency]	<b>YES</b>
This supplemental request is intended to correct a <u>technical error</u> .	

**Department Request**

*Background Information.* In June 2007, the Department requested an adjustment to the sources of funds comprising the FY 2006-07 appropriation for the Payment to Risk Management and Property Funds line item. The adjustment was necessary to correct a technical error and avoid a General Fund over expenditure, which would needed to have been addressed in FY 2007-08.

Recently hired Department staff have been reviewing the Department's fiscal practices. These staff determined that the Department's previous practice of direct charging a portion of risk management costs against federal funds based on the number of federally-funded FTE was inconsistent with federal guidance on the treatment of such costs. Specifically, in order to direct charge federal programs, the Department must be able to clearly trace the benefit of the expense to the program charged. Current Department staff do not believe there is an equitable and reasonable basis to continue to direct charge federal funds for liability and property insurance expenses. The Department ended this practice, beginning with FY 2006-07, and now includes these expenses with other indirect costs to recover an appropriate amount of federal funds through an indirect cost rate or allocation plan (consistent with the practices of other state agencies).

Due to the time lag associated with calculating indirect cost rates, the federal share of expenses incurred in FY 2006-07 will not be recovered until FY 2008-09. The Department thus sought an increase in the General Fund share of the FY 2006-07 appropriation to offset the elimination of the federal funds portion. The Committee approved this request.

*Department Request for FY 2007-08.* The Department has submitted a supplemental request to make similar adjustments to the sources of funds comprising the FY 2007-08 appropriation for the Payment to Risk Management and Property Funds line item.

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**Staff Recommendation**

**Staff recommends approving the Department's request** to ensure that it is expending federal funds in an appropriate manner. If the Committee does not approve this request, the Department will over expend the General Fund appropriation for this line item by \$50,839; this would require the Controller to restrict the FY 2008-09 appropriation for this line item by the same amount.

**Non-Prioritized Supplemental #1A - Enrollment-related Adjustments to State Charter School Institute Appropriations**

	Request	Recommendation
Total - Cash Funds Exempt	\$401,480	\$403,242
FTE	0.0	0.0

<p><b>Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria?</b> <span style="float: right;"><b>YES</b></span>          [An emergency or act of God / a technical error in the appropriation / new data / an unforeseen contingency]</p> <p>This supplemental request is based on <u>new</u> student enrollment <u>data</u>, as well as updated estimates of grants, distributions, and other state funds available to individual Institute charter schools.</p>
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**Background Information**

House Bill 04-1362 created the State Charter School Institute as an independent agency in the Department of Education. The Institute is allowed to authorize charter schools located within a school district's boundaries if the school district has not retained exclusive authority to authorize charter schools. The bill also created a board to oversee the operations of the Institute, and permits the Institute to hire staff and contract for services.

The Department is directed to withhold a portion of the State Share of Districts' Total Program funding from the school district where an Institute charter school is located, and to forward the withheld amount to the Institute. The Department is permitted to retain up to 2.0 percent of the amount withheld from the State Share "as reimbursement for the reasonable and necessary costs to the department to implement the provisions of [Section 22-30.5-501 et seq., C.R.S.]" (see Section 22-30.5-513 (4) (a), C.R.S.). The bill also permits the Institute to retain up to 3.0 percent of the amount withheld from the State Share for the "actual costs incurred by the institute in providing necessary administration, oversight, and management services" to Institute charter schools (see Sections 22-30.5-513 (2) (b) and (4) (a), C.R.S.).

Since FY 2006-07, the Long Bill has included four line items related to the State Charter School Institute:

- State Charter School Institute Administration, Oversight, and Management - This line item provides spending authority to the Institute to spend up to 3.0 percent of the amount withheld from the State

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Share for providing the necessary administration, oversight, and management services to Institute charter schools.

- Other Transfers to Institute Charter Schools - This line item provides spending authority to the Institute to forward categorical funding, grants, and other distributions, as appropriate, to individual Institute charter schools.
- Direct Administrative and Support Services Provided by the Department to the State Charter School Institute - This line item provides spending authority for the Department to receive funds from the Institute out of the above line item to cover the costs incurred by the Department in providing administrative or other support services directly to the Institute -- services that would normally be performed at the school district level (e.g., payroll, accounting, purchasing, human resources, contracting, etc.).
- Department Implementation of Section 22-30.5 501 et seq., C.R.S. - This line item provides spending authority to the Department to spend up to 2.0 percent of the amount withheld from the State Share for performing Department-level duties associated with the implementation of H.B. 04-1362.

**Department Request**

**The Department requests an increase of \$401,480 in cash funds exempt spending authority provided by three line items associated with the Institute.** These increases are requested based on higher than anticipated enrollment in Institute charter schools and corresponding increases in state funding available to these schools, as well as unspent funds from FY 2006-07. In the context of staff's recommendation below, staff has described those differences between the requested and recommended adjustments (see narrative in italics).

**Staff Recommendation**

**The FY 2007-08 appropriations related to the Institute were based on estimates of the number of Institute charter schools, the total enrollment for these schools, the statewide average per pupil funding, and other available grants and distributions. Staff recommends adjusting three of the four appropriations** as detailed in the following table and described in narrative form following the table.



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<b>State Charter School Institute: Recommended Funding Adjustments for FY 2007-08</b>			
<b>Description</b>	<b>Spring 2007 Estimates/ Existing Appropriations</b>	<b>January 2008 Estimates/ Recommended Appropriations</b>	<b>Increase/ (Decrease)</b>
Number of Schools	10	12	2
Funded Pupil Count	3,823.0	4,087.5	264.5
Per pupil funding	\$6,650.08	\$6,480.27	(\$169.81)
<b>Total transfer from State Share line item</b>	<b>\$25,423,256</b>	<b>\$26,488,112</b>	<b>\$1,064,856</b>
<u>Transfers from categorical programs:</u>			
Special Education - Children with Disabilities		\$271,112	
English Language Proficiency Program		30,357	
Public School Transportation		145,519	
Special Education - Gifted and Talented Children		<u>36,583</u>	
Subtotal - Categorical funding	275,256	483,571	208,315
<i>Categorical funding / funded pupil count</i>	<i>\$72</i>	<i>\$118</i>	<i>\$46</i>
<u>Other grants and distributions:</u>			
Charter school capital construction		\$437,506	
Smart Start Nutrition Program		14,000	
State Match for School Lunch Program		<u>3,058</u>	
Subtotal - Other grants and distributions	479,977	454,564	(25,413)
<u>Unspent funds from FY 2006-07:</u>			
Grants and distributions		110,334	
SCSI administrative funding (3.0 percent)		<u>54,769</u>	
Subtotal - Unspent funds from prior years	0	165,103	165,103
<b>Total: Other transfers to Institute schools</b>	<b>\$755,233</b>	<b>\$1,103,238</b>	<b>\$348,005</b>

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<b>State Charter School Institute: Recommended Funding Adjustments for FY 2007-08</b>			
<b>Description</b>	<b>Spring 2007 Estimates/ Existing Appropriations</b>	<b>January 2008 Estimates/ Recommended Appropriations</b>	<b>Increase/ (Decrease)</b>
<u>Recommended Appropriation Changes:</u>			
State Charter School Institute Administration, Oversight, and Management (3.0 percent)*	\$762,698	\$794,643	\$31,945
FTE	7.0	7.0	0.0
Other Transfers to Institute Charter Schools	\$755,000	\$1,105,000	\$350,000
Department Implementation of Section 22-30.5-501 et seq., C.R.S. (2.0 percent)	\$508,465	\$529,762	\$21,297
FTE	5.0	5.0	0.0

\* The existing FY 2007-08 appropriation for this line item is \$762,698 and 7.0 FTE. However, as described more fully at the end of this document, the Committee previously approved a request to increase this line item by \$637,157 to allow the Institute to pay the Pikes Peak Board of Cooperative Services (BOCES) for special education services provided to individual Institute charter schools. Thus, if the Committee approves staff's recommendation in the above table, the supplemental bill will reflect a total appropriation of \$1,431,800.

As detailed in the above table, **staff recommends three mid-year adjustments:**

- **Increase the "State Charter School Institute Administration, Oversight, and Management" line item by \$31,945 to allow the Institute to spend three percent of per pupil revenues as authorized by statute.** The total funded pupil count for Institute charter schools is 6.9 percent higher than anticipated last Spring, and the average per pupil funding for Institute charter schools is 2.6 percent lower than anticipated last Spring. These changes result in a total transfer from the State Share of Districts' Total Program Funding line item that is \$1,064,856 (4.2 percent) higher than anticipated. The Institute is allowed to spend 3.0 percent of this amount to cover administrative expenses.

*The Department requested an increase of \$86,714 for this line item, including \$54,769 in funds that were unspent in FY 2006-07. As described below, staff recommends including these unspent funds in another line item so that they can be forwarded to individual schools rather than being expended on Institute administrative expenses. This portion of the request is inconsistent with statutory provisions concerning the Institute's administrative expenditures. In addition, even if it were consistent with statutory provisions, staff would not recommend allowing the Institute to use these moneys to cover administrative expenses. Through its powers and duties related to reviewing and approving applications for new schools and converting existing school district charter schools to*

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Institute charter schools, the Institute Board has the ability to control its rate of growth. The Institute has grown rapidly since its creation in 2004, and the projections provided to the Committee in December 2007 indicate that the Board plans to continue to grow rapidly. This rapid rate of growth has contributed to the challenges faced by the Institute and the Department with respect to managing cash flows (for both the Institute and its schools), determining how to equitably allocate federal and state funds, providing adequate oversight over Institute charter schools, and determining the best way to provide and pay for educational and administrative services.

- **Increase the "Department Implementation of Section 22-30.5-501 et seq., C.R.S." line item by \$21,297 to allow the Department to spend two percent of per pupil revenues as authorized by statute.** Similar to the above recommendation, the Department is allowed to spend 2.0 percent of the additional \$1,064,856 in per pupil funding to cover its administrative expenses. *Staff's recommendation is consistent with the Department request.*
  
- **Increase the "Other Transfers to Institute Charter Schools" line item by \$350,000 (46.4 percent) to allow the Institute to forward all available state funding to individual Institute charter schools.** This recommendation includes an increase of \$210,000 for categorical programs, and a decrease of \$25,000 associated with three other grants and distributions. In addition, this adjustment includes an increase of \$165,000 in state funds that were available in FY 2006-07. A portion of these funds (\$110,334) is from grants and distributions that were made available late in the fiscal year and the Institute did not have the spending authority to forward these amounts to individual schools. The remaining portion (\$54,769) appears to be from the 3.0 percent that the Institute was allowed to withhold from per pupil funding, but did not expend for administrative purposes.

*The Department requested an increase of \$293,469 for this line item. Staff's recommendation differs from the request because staff uses rounded dollar amounts and staff has included the \$54,769 in unspent funds (discussed above). Pursuant to Section 22-30.5-513 (2), C.R.S., the Institute "may retain no more than the actual cost of the administrative overhead costs not to exceed three percent of the accounting district's adjusted per pupil revenues for each pupil..." Further, this Section states that within 90 days after the end of the fiscal year, the Institute is to provide each charter school with an itemized accounting of the Institute's administrative overhead costs; any difference between the amount initially charged and actual costs is to be "reconciled and paid to the owed party". Thus, staff recommends providing the Institute with the spending authority to forward these funds to its schools, rather than expending these moneys for administrative purposes in FY 2007-08.*

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**Non-Prioritized Supplemental #9 - Statewide General Fund Balancing**

	<b>Request</b>	<b>Recommendation</b>
Total	<u>\$0</u>	<u>\$0</u>
General Fund	(5,461,443)	0
Cash Funds Exempt - State Education Fund	5,461,443	0

<b>Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria?</b> [An emergency or act of God / a technical error in the appropriation / new data / an unforeseen contingency]	<b>NO</b>
This supplemental request did not identify any relevant criteria.	

**Background Information**

As more fully described later in this document, the Joint Budget Committee approved a number of supplemental requests for *FY 2006-07* in June 2007. The Committee also approved a request to offset other approved changes in General Fund appropriations by adjusting the fund sources for the State Share of Districts' Total Program Funding. Specifically, the Committee approved a \$8,848,844 net increase in the General Fund appropriation for the State Share, and a \$8,848,844 decrease in the cash funds exempt appropriation from the State Education Fund for the State Share. This adjustment was made to offset the following:

- Department of Education - an increase of \$64,692 General Fund to correct fund sources for risk management;
- Department of Corrections - a decrease of \$3,452,093 General Fund based on various anticipated reversions; and
- Department of Human Services - a decrease of \$5,461,443 General Fund based on anticipated reversions.

**Department Request**

The Department submitted a request to adjust the fund sources for the State Share of Districts' Total Program Funding for FY 2007-08. Specifically, **the Department requests a \$5,461,443 decrease in the General Fund portion of the appropriation for the State Share, and a \$5,461,443 increase in the cash funds exempt portion of the appropriation (from the State Education Fund).**

Although this request does not include a narrative description, the schedule submitted indicates, "This action reverses the June 2007 '1331' Emergency Supplemental". It also notes that it is connected to a request submitted by the Department of Human Services ("DHS Supplemental #5 'DDD Holdharmless Funding']"). Thus, this request appears to be designed to free up General Fund to cover one or more supplementals that have been submitted by the Department of Human Services.

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**Staff Recommendation**

This request has been submitted for the sole purpose of offsetting one or more requests submitted by the Department of Human Services. **Staff does not recommend approving this request.** Instead, staff recommends that the Committee consider any supplemental requests for additional funding that have been submitted by the Department of Human Services on their merits (the same practice that is occurring with respect to other departments). Staff has included a recommendation related to the FY 2007-08 appropriation for the State Share of Districts' Total Program Funding at the beginning of this packet. Staff's recommendation on supplemental #1 already reduces the General Fund appropriation for the State Share by the maximum allowable amount.

**Non-Prioritized, JBC Staff-Initiated Supplemental #1 - Emeritus Retirement**

	Request	Recommendation
Total - General Fund	\$0	(\$4,902)

<b>Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria?</b> [An emergency or act of God / a technical error in the appropriation / new data / an unforeseen contingency]	<b>YES</b>
This supplemental is based on <u>new data</u> concerning retirement payments.	

This line item provides supplemental retirement payments to eligible K-12 and higher education teachers, as required pursuant to Section 22-64-119, C.R.S. The FY 2007-08 Long Bill appropriation for this purpose is \$17,330 based on the number of individuals who were receiving monthly payments at that time. In response to an inquiry from staff, **the Department has indicated that** based on expenditures through December 2007 (\$6,265.20), and current monthly payments (\$1,027.04), **only \$12,427.44 will be expended in FY 2007-08. Thus, staff recommends reducing this appropriation by \$4,902 General Fund.**

**Non-Prioritized , JBC Staff-Initiated Supplemental #2 - Small Attendance Center Aid**

	Request	Recommendation
Total - Cash Funds Exempt	\$0	\$0

<b>Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria?</b> [An emergency or act of God / a technical error in the appropriation / new data / an unforeseen contingency]	<b>YES</b>
This supplemental is based on <u>new data</u> concerning student enrollment.	

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**State Funding for Categorical Programs**

Programs designed to serve particular groups of students (e.g., students with limited proficiency in English) or particular student needs (e.g., transportation) have traditionally been referred to as "categorical" programs. Section 17 of Article IX of the Colorado Constitution requires the General Assembly to increase total state funding for all categorical programs annually by at least the rate of inflation plus one percent for FY 2001-02 through FY 2010-11, and by at least the rate of inflation for subsequent fiscal years. This constitutional provision also defines "categorical programs" to include a number of existing programs, including small attendance centers.

**Small Attendance Center Aid**

Pursuant to Section 22-54-122, C.R.S., school districts that operate a school with fewer than 200 pupils that is located twenty or more miles from any similar school in the same district are eligible to receive additional state funding to offset the unique costs associated with operating such schools. The amount of additional state aid that a district is eligible to receive is based on the number of eligible schools it operates, the number of pupils in each eligible school, and the district's per pupil funding. Similar to other categorical programs, whether a school district eligible for small attendance center aid actually receives the maximum reimbursement allowable is subject to appropriation. However, the amounts appropriated for small attendance center aid annually since FY 1998-99 have provided adequate funding to reimburse eligible districts for the full amount statutorily allowed.

The FY 2007-08 appropriation of \$961,817 was based on the actual number of districts and small attendance centers that were eligible to receive additional state funding under the statutory formula in FY 2006-07. **The Department has indicated that the amount needed to fully fund the amount schools are eligible to receive in FY 2007-08 is only \$943,333.** If this appropriation is not adjusted, the Department will revert \$18,484.

**Staff Recommendation**

For the last eight fiscal years, the General Assembly has adjusted the appropriation for Small Attendance Center Aid based on actual student count data. The following table details the increases and decreases approved to date.

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<b>Small Attendance Center Aid: History of Annual Appropriations</b>			
	<b>Original Appropriation</b>	<b>Mid-year Change to Appropriation</b>	<b>Final Appropriation</b>
FY 2007-08 Recomm.	\$961,817	(\$18,484)	\$943,333
FY 2006-07	890,777	71,040	961,817
FY 2005-06	843,781	45,760	889,541
FY 2004-05	808,089	35,692	843,781
FY 2003-04	848,594	(40,505)	808,089
FY 2002-03	880,600	(32,006)	848,594
FY 2001-02	841,013	(53,368)	787,645
FY 2000-01	849,219	98,921	948,140
FY 1999-00	800,000	20,258	820,258
FY 1998-99	800,000	0	800,000

In those three previous instances when the initial appropriation for Small Attendance Center Aid was too high, the General Assembly has chosen to shift the unneeded funding to Special Education for Children with Disabilities (in both FY 2001-02 and FY 2002-03) or to English Language Proficiency Programs (FY 2003-04).

**Consistent with previous practice, staff recommends decreasing the cash funds exempt appropriation from the State Education Fund for Small Attendance Center Aid by \$18,484.** Due to the requirements of Article IX, Section 17 of the Colorado Constitution, the \$18,484 must be shifted to another categorical program. Accordingly, **staff also recommends increasing the cash funds exempt appropriation from the State Education Fund for English Language Proficiency Act programs by \$18,484.** Staff recommends adding funding to this line item because: (1) it is a program that districts are legally required to provide; (2) it has the largest relative gap between state funding and the maximum amount which districts are eligible to receive; (3) it has the largest relative gap between district expenditures and available state and federal funding; and (4) there is significant variance among districts in terms of the proportion of their budget that is spent on this program. This amount would be paid out to districts as part of the final, fiscal year-end payment<sup>6</sup>.

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<sup>6</sup> The Department pays out 90 percent of available state funds in January, and the remaining 10 percent in June.

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**Statewide Common Policy Supplemental Requests**

These requests are not prioritized and are not analyzed in this packet . These items will be acted on separately by the Committee when it makes a decision regarding common policies.

<b>Education Department's Portion of Statewide Supplemental Request</b>	<b>Total</b>	<b>General Fund</b>	<b>Cash Funds</b>	<b>Cash Funds Exempt</b>	<b>Federal Funds</b>	<b>FTE</b>
1. Vehicle Lease Payments	(\$5,545)	(\$5,545)	\$0	\$0	\$0	0.0
2. Workers' Compensation	(6,637)	(2,298)	(779)	(1,987)	(1,573)	0.0
3. Capitol Complex Leased Space	8,685	2,620	950	606	4,509	0.0
4. Computer Center Services	31,037	31,037	0	0	0	0.0
5. Multiuse Network Payments	1,411	1,411	0	0	0	0.0
6. Risk Management and Property Funds	(36,062)	(17,653)	(1,645)	(2,353)	(14,411)	0.0
7. Administrative Law Judge Services	(34,402)	0	(7,224)	(27,178)	0	0.0
8. Communication Services Payments	(3,446)	(3,446)	0	0	0	0.0
<b>Total Statewide Supplemental Requests for Education Department</b>	<b>(44,959)</b>	<b>6,126</b>	<b>(8,698)</b>	<b>(30,912)</b>	<b>(11,475)</b>	<b>0.0</b>

**Staff Recommendation**

The staff recommendation for these requests is pending Committee approval of common policy supplementals. **Staff asks permission to include the corresponding appropriations in the Department's supplemental bill when the Committee approves this common policy supplemental.** If staff believes there is reason to deviate from the common policy, staff will appear before the Committee later to present the relevant analysis.

**Previously Approved 1331 Supplemental - Correct fund sources for liability and property insurance for FY 2006-07**

	<b>Previously Approved for FY 2006-07</b>	<b>Changes That Will Be Reflected in Supplemental</b>
Total	<u>\$0</u>	<u>\$0</u>
General Fund	64,692	64,692
Federal Funds	(64,692)	(64,692)



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**Description of Supplemental**

In June 2007, the Joint Budget Committee approved a request to adjust the sources of funds comprising the FY 2006-07 appropriation for the Payment to Risk Management and Property Funds line item. The adjustment was necessary to correct a technical error and avoid a General Fund over expenditure (which would otherwise needed to be addressed in FY 2007-08). Department staff determined that the Department's previous practice of direct charging a portion of risk management costs against federal funds based on the number of federally-funded FTE was inconsistent with federal guidance on the treatment of such costs. Specifically, in order to direct charge federal programs, the Department must be able to clearly trace the benefit of the expense to the program charged. Department staff did not believe there was an equitable and reasonable basis to continue to direct charge federal funds for liability and property insurance expenses. The Department thus ended this practice beginning with FY 2006-07, and now instead includes these expenses with other indirect costs to recover an appropriate amount of federal funds through an indirect cost rate or allocation plan (consistent with the practices of other state agencies). Due to the time lag associated with calculating indirect cost rates, the federal share of expenses incurred in FY 2006-07 will not be recovered until FY 2008-09. The Department thus sought an increase in the General Fund share of the FY 2006-07 appropriation to offset the elimination of the federal funds portion.

Thus, staff will prepare an adjustment to the FY 2006-07 appropriation to the Department of Education for the Payment to Risk Management and Property Funds line item, adjusting fund sources as outlined in the above table. However, staff intends to include this adjustment in the same bill that reflects adjustments to appropriations from the General Fund Exempt Account (based on actual revenues for FY 2006-07). Thus, this change will be included as a section in the FY 2008-09 Long Bill, rather than as a section of the FY 2007-08 supplemental bill for the Department of Education.

**Previously Approved 1331 Supplemental - Refinance Public School Funding for FY 2006-07**

	Previously Approved for FY 2006-07	Changes That Will Be Reflected in Supplemental
Total	<u>\$0</u>	<u>\$0</u>
General Fund	8,848,844	8,848,844
Cash Funds Exempt - State Education Fund	(8,848,844)	(8,848,844)

**Description of Supplemental**

In June 2007, the Joint Budget Committee approved a number of supplemental requests for FY 2006-07. The Committee also approved a request to offset other approved changes in General Fund appropriations by adjusting the fund sources for the State Share of Districts' Total Program Funding. Specifically, the Committee approved a \$8,848,844 net increase in the General Fund appropriation for the State Share, and a

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\$8,848,844 decrease in the cash funds exempt appropriation from the State Education Fund for the State Share. This adjustment included: a reduction of \$64,692 General Fund (to offset the approved increase in the General Fund appropriation to the Department of Education for risk management), an increase of \$3,452,093 General Fund (to offset approved reductions in various appropriations to the Department of Corrections based on anticipated reversions), and an increase of \$5,461,443 General Fund (to offset approved reductions in various appropriations to the Department of Human Services based on anticipated reversions).

Thus, staff will prepare an adjustment to FY 2006-07 appropriations to the Department of Education for the State Share of Districts' Total Program Funding, adjusting these fund sources as outlined in the above table by \$8,848,844 (based on the supplementals approved by the Committee last June). However, staff intends to include this adjustment in the same bill that reflects adjustments to appropriations from the General Fund Exempt Account (based on actual revenues for FY 2006-07). Thus, this change will be included as a section in the FY 2008-09 Long Bill, rather than as a section of the FY 2007-08 supplemental bill for the Department of Education.

**Previously Approved 1331 Supplemental - Increase spending authority for the State Charter School Institute for FY 2007-08**

	Previously Approved for FY 2007-08	Changes That Will Be Reflected in Supplemental
Cash Funds Exempt - (transfer from State Share line item)	\$637,157	\$637,157

**Description of Supplemental**

In October 2007, the Joint Budget Committee approved a request to increase cash funds exempt spending authority provided through the "State Charter School Institute Administration, Oversight, and Management" line item by \$637,157 to allow the Institute to pay the Pikes Peak Board of Cooperative Services (BOCES) for special education services provided to individual Institute charter schools. The source of funding is a transfer from the State Share of Districts' Total Program Funding line item; these are moneys that would otherwise flow directly to individual Institute charter schools. As the BOCES will only contract with the Institute, rather than individual schools, this change authorizes the Institute to withhold from the distributions to individual Institute schools the amounts necessary to pay the BOCES for contract services.

Thus, staff will prepare an adjustment to FY 2007-08 appropriations to the Department of Education for the State Charter School Institute Administration, Oversight, and Management line item. This change will be included as part of the FY 2007-08 supplemental bill for the Department of Education.

### Districts With the Largest Differences Between Estimated and Actual FTE

District	FY 07-08 October FTE Count (Including On-line Students)				Annual Change: FY 06-07 to FY 07-08		
	Estimate as of 07/07	Actual as of 01/08	Actual vs. Estimate		Actual FY 06-07	Annual Change	
			FTE	Percent		FTE	Percent
El Paso - Falcon	13,013.0	12,173.0	(840.0)	-6.5%	11,544.5	628.5	5.4%
Adams - Northglenn	37,411.0	36,649.5	(761.5)	-2.0%	35,209.0	1,440.5	4.1%
Arapahoe - Aurora	31,734.5	31,048.5	(686.0)	-2.2%	31,198.0	(149.5)	-0.5%
Adams - Westminster	9,756.5	9,205.0	(551.5)	-5.7%	9,775.0	(570.0)	-5.8%
Baca - Vilas	4,054.5	3,506.0	(548.5)	-13.5%	3,922.5	(416.5)	-10.6%
El Paso - Harrison	10,501.5	10,133.0	(368.5)	-3.5%	10,170.5	(37.5)	-0.4%
Douglas	50,038.0	49,669.5	(368.5)	-0.7%	47,337.5	2,332.0	4.9%
El Paso - Fountain	6,484.0	6,119.0	(365.0)	-5.6%	5,701.0	418.0	7.3%
El Paso - Widefield	8,308.5	7,954.5	(354.0)	-4.3%	7,940.0	14.5	0.2%
Arapahoe - Cherry Creek	47,982.5	47,630.5	(352.0)	-0.7%	46,915.0	715.5	1.5%
El Paso - Academy	20,586.0	20,237.0	(349.0)	-1.7%	20,038.5	198.5	1.0%
El Paso - Lewis-Palmer	5,879.5	5,574.0	(305.5)	-5.2%	5,703.0	(129.0)	-2.3%
Pueblo - Pueblo Rural	8,546.0	8,314.0	(232.0)	-2.7%	8,287.5	26.5	0.3%
Las Animas - Branson	855.0	625.0	(230.0)	-26.9%	883.0	(258.0)	-29.2%
Adams - Commerce City	6,259.5	6,032.5	(227.0)	-3.6%	6,190.0	(157.5)	-2.5%
El Paso - Colorado Springs	27,827.0	27,627.5	(199.5)	-0.7%	28,365.5	(738.0)	-2.6%
Garfield - Roaring Fork	5,071.0	4,883.5	(187.5)	-3.7%	4,808.0	75.5	1.6%
Mesa - Mesa Valley	20,209.0	20,029.5	(179.5)	-0.9%	20,011.0	18.5	0.1%
Adams - Brighton	11,906.0	11,736.5	(169.5)	-1.4%	10,807.0	929.5	8.6%
Adams - Mapleton	5,098.0	4,987.0	(111.0)	-2.2%	5,084.0	(97.0)	-1.9%
Morgan - Ft. Morgan	2,970.0	2,865.0	(105.0)	-3.5%	2,947.5	(82.5)	-2.8%
Montrose - Montrose	5,764.5	5,874.0	109.5	1.9%	5,682.0	192.0	3.4%
Pueblo - Pueblo City	16,606.0	16,739.0	133.0	0.8%	16,527.5	211.5	1.3%
Weld - Greeley	17,078.0	17,301.5	223.5	1.3%	17,112.0	189.5	1.1%
Denver	66,151.5	66,492.0	340.5	0.5%	66,205.0	287.0	0.4%
Larimer - Poudre	23,729.5	24,110.5	381.0	1.6%	23,846.5	264.0	1.1%
Jefferson - Jefferson	79,700.0	80,503.0	803.0	1.0%	80,634.5	(131.5)	-0.2%
Statewide	749,141.0	742,854.0	(6,287.0)	-0.8%	737,427.5	5,426.5	0.7%