

**DEPARTMENT OF REGULATORY AGENCIES
FY 2018-19 JOINT BUDGET COMMITTEE HEARING AGENDA**

**Tuesday, November 28, 2017
3:00 pm – 4:30 pm**

3:00-3:20 INTRODUCTION AND OPENING COMMENTS

3:20-4:10 RURAL BROADBAND

1. What is the cost to local governments for an election associated with opting out of Senate Bill 05-152?

Response: The Department of Regulatory Agencies does not track the cost of local elections however has reached out to the Colorado Municipal League regarding this inquiry. According to the Colorado Municipal League, in the past few years, 86 municipalities and 30 counties¹ passed measures on their respective ballots to override the prohibitions in Senate Bill 152.

We respectfully refer you to individual local governments and the Colorado Municipal League and Colorado Counties Inc.², to further obtain information related to specific local elections.

2. How does rural broadband and the Broadband Deployment Board fit in with the other efforts that the state is taking with regard to broadband (i.e. broadband efforts in Department of Local Affairs, Colorado Department of Transportation, and local governments)? Is there a statewide vision for rural broadband?

Response: In March 2017, Governor Hickenlooper appointed Anthony Neal-Graves as the executive director to lead Colorado's Broadband Office, housed within the Governor's Office of Information Technology. Neal-Graves is responsible for driving the state's broadband strategy and collaborating closely with DORA, the Department of Economic Development and International Trade (OEDIT) and the Department of Local Affairs (DOLA), among others. These agencies, all of which have a part in realizing the statewide strategy regularly convene and communicate.

Established through House Bill 14-1328, the Broadband Deployment Board was created to implement and administer the deployment of broadband service in unserved areas of the state by awarding grants from the Broadband Fund. The fund exists to connect communities and fuel economic growth in these unserved areas. The board, within DORA, consists of 16 members³. The Governor and Legislative Leadership provide the appointments to serve on the board. The composition of the board is intended to represent state and local government as well as industry experts. More specifically, the current board is chaired by Brian Shepherd, the Chief Operating Officer of the Colorado

¹ Colorado has 271 municipalities and 64 counties

² Kevin Bommer (Colorado Municipal League) - kbommer@cml.org and Eric Bergman (Colorado Counties Inc.) - ebergman@ccionline.org

³ Jane Blackstone, Steamboat Springs - D (unserved Western Slope (Sen. Pres)), Mike Brazell, Fairplay - R (county commissioners, (Sen. Pres.)) Michael Nelson, Englewood -R (cable provider (Sen. Pres)), Stephanie Copeland - R (Colorado Office of Economic Development and International Trade, (Gov)), Gregory Winkler - R (Colorado Department of Local Affairs (Gov)), Brian Kenneth Shepherd, Denver - D (Colorado Office of Information Technology (Gov)), Lynn M.V. Notarianni, Lakewood - R (Public Utilities Commission (Gov)), Lisa R. Scalpone, Denver - D (Broadband Satellite Provider (Gov)), David R. Shipley, Colorado City - U (Rural local exchange carrier (Gov)), Karen Sheek, City of Cortez (Mayor/City Councilman (Speaker)), Roberta Robinette, Denver - U (wireless provider (House Min.)), Ed Bostick, Denver - D (unserved urban (Speaker)), Jeffrey Brown, Greeley - R (competitive local exchange carrier (Speaker)), Jeremy Weathers, Yuma - R (unserved Eastern slope (House Min.)), Roger Partridge, Sedalia - R (other local entity (Sen. Min.)), Brian Wagner - D (wireline provider (Sen. Min.))

Broadband Office and includes the Executive Director of OEDIT, a representative from DOLA, and the Mayor of Cortez, among others.

The board has awarded \$2.1 million in grants in an effort to close the broadband service gap between rural and urban Colorado communities. Last award cycle, seven recipients were awarded grant funding for eight infrastructure projects that will be completed by 2019. As a result, over 4,700 households and 175 businesses in Eagle, Cheyenne, Kiowa, Lake, Mesa, Montrose, Ouray, Prowers, Sedgwick, and Weld counties will benefit from Broadband internet access.

The board is currently reviewing applications for the 2017 grant cycle. Applications were due on September 12 and the comment period closed on November 15. The board is expected to deliberate the applications at the November 30 meeting.

3. How does the Department define broadband? What are the ways broadband can be defined? What does the term “broadband” mean to consumers and is it consistent with the Department’s definition?

Response: Pursuant to C.R.S. 40-15-102, the Broadband Deployment Board and other state entities define the term “broadband” as “broadband internet service provided over a broadband network⁴” and further defines “broadband internet service” as a “retail service that transmits and receives data from the customer's property or determined point of presence to substantially all internal endpoints. The term includes any capabilities that are incidental to and enable the operation of the broadband service.”

In the FCC’s 2015 Broadband Progress Report⁵, the benchmark or definition of broadband was changed from 4Mbps download to 25Mbps download and from 1Mbps to 3Mbps upload. Because state statute ties the definition of a “broadband network” to the speeds used in the FCC definition of broadband, the current speeds required to be considered broadband in Colorado are 25Mbps download and 3Mbps upload. The statutory language allows for the state’s definition of broadband to be consistent with the FCC and for it to be periodically updated to reflect changing technology and consumer usage.

4. How much money would the state need to bring broadband to all residents of Colorado?

Response: The exact amount of funding required to complete the infrastructure buildout is difficult to estimate. Our current assessment of the funds required to achieve 100% rural household broadband access is \$300 million. Assuming a 50/50 dollar match between the state and the private sector through the Broadband Fund, the state must provide \$150 million. The underlying assumptions are: 1) approximately 150,000 rural households require access (based on the OIT broadband mapping project); 2) average cost is \$2000 per household to provide service; 3) use of multiple technologies, including fixed wireless; 4) access is delivered through a single service provider. In this funding assessment, we do not address issues such as increased redundancy, improved competition in served areas, or network speeds above 25/3.

⁴ “Broadband Network” means that plant, equipment, components, facilities, hardware, and software used to provide broadband internet service at measurable speeds of at least four megabits per second downstream and one megabit per second upstream or at least equal to the federal communications commission’s definition of high-speed internet access or broadband, whichever is fastest, with sufficiently low latency to enable the use of real-time communications, including voice-over-internet-protocol service and either no usage limits or usage limits that are reasonably comparable to those found in urban areas for the same technology, C.R.S. 40-15-102(3.7)

⁵ <https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2015-broadband-progress-report>

5. Please discuss the mechanism the Department uses to assess the vulnerabilities (i.e. EMP attack, foreign/domestic terrorist attack, equipment failure/redundancy, HEMP, etc.) to all networks (i.e. internet, electricity, telecommunications, etc.) within Colorado?

Response: The state has no authority to assess vulnerabilities or any other element of private telecommunications networks. Any such authority resides solely with the federal government through agencies such as the National Security Administration (NSA) or the Federal Communications Commission (FCC).

However, the Colorado PUC has an indirect, secondary role in assessing vulnerabilities to the electric system within Colorado. The PUC's primary mechanism has been direct conversations (and checklist questions) with the Chief Information Security Officers (CISOs) of our two Investor-Owned Utilities (IOUs), Xcel Energy/Public Service Company of Colorado (PSCo) and Black Hills Energy. On October 12, 2017 the PUC held its second biannual executive session between the PUC Commissioners, senior PUC staff and PSCo President David Eaves and CISO Stephen Brown. In addition, PUC staff took part in a tour and review of Xcel's new Cyber Defense Center (CDC) on November 15, 2017. The CDC, located at 1800 Larimer Street in Denver, performs cyber mitigation work on their four operating companies (including Public Service Company of Colorado) in eight states.

While the PUC's role is limited in assessing vulnerabilities in the electric system within Colorado, it does have a formal role when there are actual statewide emergencies. The PUC is designated as the state and federal "Emergency Support Function 12 (ESF-12)" for energy emergencies and power outages. This role includes staffing the State Emergency Operations Center in the Denver Technology Center to report power outages during an emergency declaration by the Governor. We engage with electric utilities to ask if they are aware of possible emergency situations and if they need state-assisted resources.

Additionally, when reviewing Broadband Fund grant applications the Broadband Deployment Board, housed with the DORA Executive Director's Office, considers whether a project includes network redundancy (two or more separate communication pathways) and physical diversity (whether the communication pathways are located in physically different locations). Additionally, the Board's review of proposed infrastructure includes whether there are backup or independent power sources (e.g. solar and battery backup) for network equipment. The Board does not have authority over networks that do not receive a Broadband Fund grant.

4:10-4:30 OPEN DISCUSSION AND CLOSING COMMENTS

COMMON QUESTIONS

1. **Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not implemented or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.**

Response: The Department is not aware of any unimplemented or partially implemented legislation, with the exception of recently passed legislation from the immediate prior legislative session which are routinely in progress at the Department. Below are priority items from last year's legislative session:

HB17-1253 Protect Seniors from Financial Abuse by Rep. Danielson and Sen. Crowder

Summary: The bill required certain financial professionals to report to the securities commissioner if they believe an at-risk person is being financially exploited. The commissioner must forward any reports to local law enforcement and the county department of human or social services. The bill provides for delayed disbursements of moneys and other protective services under specified circumstances and immunity from administrative or civil liability when a financial professional makes a disclosure when acting in good faith and exercising reasonable care to protect the information.

Status: Fully Implemented. Became effective July 1st and we've already received 16 reports from firms on potential senior exploitation.

HB17-1165 Board Disciplinary Action Resolution Process by Rep. Lebsack and Sen. Aguilar

Summary: The bill modified the disciplinary procedures for six health care boards for healthcare professionals with prescriptive authority⁶ within the Department of Regulatory Agencies (DORA) and establishes deadlines for the boards to process complaints. Additionally, the bill required insurance carriers to update their participating provider lists every 30 days to remove providers whose licenses have been suspended or revoked.

Status: Partially Implemented. The bill set forth a six-month time frame from July for completion, in which we are on track. Thus far, the Division of Professions and Occupations has notified all licensees and boards about the new statutory requirements. Outreach will be completed in December. Additionally, the Division has taken additional steps beyond the legislation to increase notification of complaints and the status of cases to both the boards and licensees.

HB17-1231 - Market Conduct Examinations by Rep. Arndt and Sen. Tate

Summary: The bill reorganized and relocated statutes related to financial examinations and market conduct examinations of insurance companies into separate parts of the Title 10 of the Colorado Revised Statutes and makes conforming amendments.

Status: Bill takes effect January 1, 2018. In preparation, the Division of Insurance is updating all related bulletins and forms for a seamless transition. At this moment, we do not believe an extensive rulemaking process will be necessary to ensure quick implementation.

⁶ Colorado Podiatry Board; Colorado Dental Board; Colorado Medical Board; State Board of Nursing; State Board of Optometry; and State Board of Veterinary Medicine.

SB17-146 Access to Prescription Drug Monitoring Program by Sen. Jahn and Rep. Ginal

Summary: The bill increased access to the Prescription Drug Monitoring Program (PDMP) database by allowing a practitioner with prescribing authority to query the PDMP about a current patient, regardless of whether the practitioner is currently prescribing or considering prescribing any controlled substance; allowing a veterinarian with prescribing authority to query the PDMP about a current client or patient if the veterinarian has a reasonable basis to suspect the client has committed drug abuse or has mistreated an animal; and allowing a pharmacist to query the PDMP about a current patient for whom the pharmacist is dispensing any prescription drug, rather than only patients receiving controlled substances.

Status: Partially Implemented. Rulemaking is complete, but both the human and veterinarian opioid policies are currently under revision. Extensive outreach has been conducted through e-mail blasts, presentations, newsletters board meetings and webinars.

2. **Does the Department have any high priority outstanding recommendations as identified in the "Annual Report: Status of Outstanding Audit Recommendations" that was published by the State Auditor's Office and dated June 30, 2017 (link below)? What is the Department doing to resolve the high priority outstanding recommendations? Please indicate where in the Department's budget request actions taken towards resolving HIGH PRIORITY OUTSTANDING recommendations can be found.**

<http://leg.colorado.gov/audits/annual-report-status-outstanding-audit-recommendations-june-30-2017>

Response: The Department has no high priority outstanding recommendations as identified in this report.

3. **If the Department receives federal funds of any type, please respond to the following:**
- Please provide a detailed description of any federal sanctions or potential sanctions for state activities of which the Department is already aware. In addition, please provide a detailed description of any sanctions that MAY be issued against the Department by the federal government during FFY 2017-18 or 2018-19.**
 - Are you expecting any changes in federal funding with the passage of the FFY 2017-18 or 2018-19 federal budget? If yes, in which programs, and what is the match requirement for each program?**
 - Does the Department have a contingency plan if federal funds are eliminated?**

Response: There are no potential sanctions that might be issued against the Department by the federal government during FFY 2017-18 or 2018-19.

There are no material changes in permanent, ongoing federal awards expected to occur during FFY 2017-18 or 2018-19 however the Department is monitoring the passage of the federal budget and appropriations pending before Congress. While the Department is primarily cash-funded, there are a few programs that may be nominally impacted if there is a reduction of federal funds. For example, the State Health Insurance Assistance Program (SHIP) is funded through March 31, 2018 and funding may be reduced or eliminated starting April 1, 2018 depending the passage of the budget. Additionally, the Medicare Improvements for Patients and Providers Act (MIPAA) is funded through September 29, 2018 and the availability of funding is uncertain beyond that point. The respective program managers are looking at available funding options if SHIP funding is reduced or eliminated.

4. **Is the Department spending money on public awareness campaigns? If so, please describe these campaigns, the goal of the messaging, the cost of the campaign, and distinguish between paid media and earned media. Further, please describe any metrics regarding effectiveness and whether the Department is working with other state or federal departments to coordinate the campaign?**

Response: The Department is statutorily required to conduct outreach and public awareness campaigns via the Consumer Outreach and Education Program created in Section 24-34-108, C.R.S. The Department annually submits a report to the Joint Budget Committee on the activities of this program each November 1st.

Building upon the substantial progress made in its three years since launching the long-term awareness campaign “Take 5 to Get Wise - Ask DORA,” we are focused on continuing to encourage consumers to take “just five minutes” to access DORA's information and resources before making critical consumer decisions. Campaign messaging addresses common consumer interest issues, and in addition, serves as a reminder to licensees of their responsibilities to their customers. While not all costs associated with outreach that is conducted by the Department are funded by the Consumer Outreach Fund, it is integral to the overall initiative and performance objectives by the Department.

During FY 2016-17, the program collected \$180,446 in surcharges and interest. Total expenditures for the program were \$167,738. Approximately 80 percent of expenditures were for public service announcement development, distribution and other related purposes. Approximately 10 percent of expenditures were associated with educational materials, collateral, and miscellaneous expenses related to the program, and another 10 percent of expenditures were associated with building consumer protection awareness for community outreach.

This year's report highlighted some of the following achievements:

- This year, DORA developed its primary media partnerships with 9News and Univision TV and Radio programs to develop four new television Public Services Announcements (PSA), one of which was included in the development of its first Spanish-language media campaign for both radio and TV. It also included several live-to-tape interviews, as well as two live 9Help Line appearances with DORA leaders taking calls directly from consumers. Topics included insurance; healthcare; services/licenses; housing and real estate; financial fraud; utilities/energy; and civil rights/anti-discrimination laws. Take 5 PSAs aired on major local television stations reaching the metro-Denver-Boulder area, northern Colorado counties, as well as all 64 counties for cable and satellite TV subscribers. Spanish language PSAs aired on Univision and Azteca TV, and also reached all 64 counties across the state. Television interviews with DORA leaders and experts, as well as a televised consumer help hotlines, assisted in the overall effort to reach the broadest possible viewing audience across the state. This year DORA also boosted visibility of Take 5 on social media, targeted email, as well as including a new element of visibility by “airing” DORA PSAs via “Over the Top Television” (OTT) television networks. This included employing Denver7, CBS4, Rocky Mountain PBS, AztecaTV and Fox31/CW in these efforts.
- We are proud to have been recognized with the Silver Davey Award for the askDORA.colorado.gov site. In that light, we have added additional consumer friendly web resources. This includes “CO Health Professional Check” (Colorado.gov/cohpc), which launched in March 2017 to better provide information to the public about their licensed healthcare provider; and Military and Veterans Career Transition Programs (Colorado.gov/dora-military), which launched in May 2017 to better provide information occupational licensing information to active and retired military members and their spouses. Funds were used to advertise and promote awareness for these new consumer sites.
- We leveraged partnerships for earned media and outreach opportunities with existing campaigns and organizations, including Stop Fraud Colorado at the Attorney General's Office and financial literacy efforts taking place among DORA divisions internally. This included direct community outreach and hosting tables at high-traffic events, such

as New Year New You (12-15,000 people), the Denver Home and Garden Show (25,000 people), Salute to Seniors (2,000 people), Jeffco Safety Fair (5,000 people), several county fairs and more.

While we used several metrics to identify success, the following include some highlights:

- More than 700 Take-5 PSAs aired over English and Spanish speaking broadcast television networks around the state from March-June 2017.
- The overall reach over KUSA 9NEWS alone for this campaign is estimated to be approximately 61.6% of the statewide viewing audiences.
- Visitation to the askDORA.colorado.gov website went up by 47% percent during the active campaign period of March-June 2017.
- According to KUSA, the number of people that potentially saw information broadcast on “Over the Top Television” digital networks for digital television watchers reached over 2.7 million.
- Visits to DORA's social media sites increased by 350 people per post -- on average -- during active campaign periods when compared to non-campaign periods.

5. **Based on the Department’s most recent available record, what is the FTE vacancy and turnover rate by department and by division? To what does the Department attribute this turnover/vacancy? Do the statewide compensation policies administered by the Department of Personnel help or hinder in addressing vacancy or turnover issues?**

Response: Although the Department does not have division-specific data available at this time, the most recent State of Colorado Workforce Report published by the Department of Personnel and Administration, indicates that DORA has an 8.8% turnover rate, with a total of 47 employees leaving the department in FY 2016-2017.

(22 employees left the department due to retirement, 21 voluntarily left the department, and 2 left the department on an involuntary basis).

6. **Please provide an update on the Department’s status, concerns, and plans of action for increasing levels of cybersecurity, including existing programs and resources. How does the Department work with the Chief Information Security Office (CISO) in the Office of Information Technology (OIT)? Have your information technology infrastructure and policies been audited for cybersecurity capabilities? If so, was the audit completed by the legislative auditor or an outside entity? Do you have dedicated cybersecurity personnel? How do your cybersecurity staff interact with the CISO in OIT? What unique security issues does your Department have? Do you handle private or sensitive data? What unique cybersecurity processes or tools do you use to protect this data?**

Response: The Office of Information Security, under the leadership of the state CISO provides security governance, security architecture, risk management, compliance assessment support, and security operations functions for the Department of the Department of Regulatory Agencies (DORA). Therefore, this department does not have dedicated cybersecurity personnel.

The Office of Information Security has input into the 5-year plans for each Department, and has worked to prioritize projects benefiting each Department, such as: the Enterprise Firewall Refresh project, new quarterly security awareness training, two-step verification, and an enterprise security log collection and correlation engine.

Additionally, the Office of Information Security, within OIT, produces a quarterly risk report card, in which they measure risk for each Department, and have specific goals set, for reducing risk.

Annually, the CISO develops an enterprise information security plan, utilizing input from the Governor's goals, the 5 year plans for each department, and the OIT playbook. The information security plan includes communication and information resources that support the operations and assets of each department.

The Office of Information security, within the Office of Information Technology (OIT) implements enterprise-wide security controls, meant to secure sensitive data for each department. Some of these controls are: ensuring encryption is in place to secure data in transmission, utilizing Zix to encrypt sensitive data in email, implementing specific configuration and technologies to encrypt data in storage. Additionally, OIT has implemented two-step verification to add a layer of protection to email, contacts, and data stored within G-Suite. Each department implements additional procedures, such as training, data retention and access control policies, implemented at a department level to further protect and secure sensitive data. These local security procedures augment technical controls implemented by OIT to enhance the department's continued security health.

OIT supports all of the audits that occur for each department. OIT maintains a register of outstanding technology recommendations for each department, and works individually with the department to prioritize and secure funding to implement the recommendations. In addition to performing remediation, OIT continues to implement controls and improve processes in an attempt to proactively (rather than reactively) improve security.

7. What impact do the SMART Act and Lean processes have on your budget requests? Could they be used more effectively?

Response: The Department is committed to regularly identifying and implementing measures to improve efficiency. Over the past three years, DORA has matured its performance management program by creating measurable goals, identifying long-term desired outcomes, and fostering a more inclusive and collaborative strategic plan that incorporates all staffing levels of the organization. The structure, dictated by the SMART Act, has supported achievements such as reducing the average time to process professional and occupational licences by an average of 15 days (29%), enacting customer surveys for each division to gather continuous feedback on the customer experience, and protecting consumers through increasing public alerts by over 200%. By fostering a performance management system that focuses our staff more clearly on major goals and strategies, DORA has been able to avoid many costly budget requests for more resources to keep up with the rapidly growing customer base.

DORA utilizes the principles of Lean across the department. Led by the agency's Strategic Planning and Process Improvement Specialist, the department convenes a Lean Steering Committee, which includes representatives from each division to discuss opportunities to identify and implement Lean projects that will result in time and/or cost savings. In the past year, DORA's Division of Professions and Occupations completed a Lean project which moved paper forms to online systems. This project is projected to save the department \$125,875 annually. Additionally, the Division of Banking recently completed a Lean project improving the efficiency of money transmitter exams, which is projected to save the department \$16,500 annually. At DORA, 47 lean projects have been held in the last two years, resulting in time savings to the department as well as the customer, improved quality to the customer, and reduced process complexities that ensure less bureaucratic waste.

The Department has been focusing on instilling the value of LEAN in the departmental culture.

8. Does your Department use evidence-based analysis as a foundation for your budget request? If so, please provide a definition for your use of “evidence-based,” indicate which programs are “evidence-based,” and describe the evidence used to support these programs.

Response: The Department is required as a matter of course to support any budgetary change requests with a clear linkage to the Department's performance plan, as well as the ability to measure the success and/or failure to achieve targets of the budget request with discrete measures of performance and/or workload. In this way, change requests could be described as evidence-based. However, it is important to note that the budget process employed by the Executive and Legislative branches in Colorado has not adopted an evidence-based requirement in the base budget submission; rather, the budget process is largely a continuation budget process whereby deviations from prior year funding and the fiscal impacts of special legislation become the basis for budget changes. In this way, the budget request is neither zero-based, nor strictly performance-based.

Having said that, the Department routinely tracks and monitors its performance, and if such an initiative were developed, the Department believes that its workload statistics and measures would support its appropriated level of funding.

9. Please identify how many rules you have promulgated in the past two years (FYs 2015-16 and 2016-17). With respect to these rules, have you done any cost-benefit analyses pursuant to Section 24-4-103 (2.5), C.R.S., regulatory analyses pursuant to Section 24-4-103 (4.5), C.R.S., or any other similar analysis? Have you conducted a cost-benefit analysis of the Department's rules as a whole? If so, please provide an overview of each analysis.

Response: In fiscal year 15-16, 227 rules were included in DORA's regulatory agenda, 48 of which were newly promulgated rules and 149 of which resulted in revisions. In fiscal year 16-17, 183 rules were included in DORA's regulatory agenda, of which 19 were newly promulgated rules and 131 were revisions. Over the past two years, 67 new rules have been promulgated by DORA.

DORA agencies prepared cost-benefit analyses on two rules in fiscal year 15-16 and on two rules in 16-17. Section 24-4-103(2.5), C.R.S., mandates that CBAs include:

- The reason for the rule or amendment;
- Any anticipated economic benefits of the rule or amendment;
- Any adverse effects on the economy, consumers, private markets, small businesses, job creation and economic competitiveness; and
- At least two alternatives to the proposed rule or amendment, including the costs and benefits of pursuing each of the alternatives.

All four CBAs contained the required elements stated above. A brief overview of each follows:

- Division of Insurance: Rules pertaining to title insurance (FY 15-16)
 - Two requests for a CBA were received and a CBA was prepared on three sections of the proposed rules. Although the rules were submitted in fiscal year 14-15, all relevant activity occurred in fiscal year 15-16, so these rules are included in this response. One rule amended electronic rate and fee filing requirements, and the CBA concluded that industry would realize net economic benefits through optimal utilization of technology. Two rules pertained to the recording of title documents

and the issuance of policies, and the CBA concluded that industry would benefit from reduced risk of a title claim and consumers would benefit by being able to complete transactions in a more timely manner. No economic costs or adverse effects on the economy were anticipated under any of the rules reviewed.

- Public Utilities Commission: Rules regulating telecommunications providers, services and products related to emergency services (FY 15-16)
 - One request for a CBA was received and a CBA was prepared on 11 sections of the proposed rules. Although the rules were submitted in fiscal year 14-15, the CBA was submitted in fiscal year 15-16, so these rules are included in this response. Six rules created new or amended existing definitions, and the CBA concluded that industry would benefit from increased clarity. Five rules made substantive changes, and the CBA concluded that benefits would accrue due to increased reliability and enhancement of emergency infrastructure and procedures. While the agency could not anticipate direct costs to industry regarding any of the rules, no adverse effects on the economy were anticipated.
- Division of Professions and Occupations/Office of Barber and Cosmetology: Amending all existing rules for further clarification and to afford adequate infection control requirements for public protection (FY 16-17)
 - Three requests for a CBA were received and a CBA was prepared on a single rule pertaining to mandated waiting periods for certain cosmetology services. The CBA stated that economic benefits may accrue to non-physician healthcare providers as they would be able to authorize such procedures, but licensees may realize economic costs by complying with mandated waiting periods. Costs and negative economic impacts may accrue to licensed physicians by the creation of waiting periods and by allowing non-physicians to authorize such procedures.
- Division of Professions and Occupations/Colorado Medical Board: Rules regarding the delegation and supervision of medical services to unlicensed health care providers (FY 16-17)
 - One request for a CBA was received and a CBA was prepared on six sections of the proposed rules. While minimal to no economic benefits were expected to be realized, the CBA stated that failure to adopt the rules could result in unnecessary physical and irreversible harm to patients utilizing the services of unlicensed persons. While no adverse effects on the economy were anticipated for most of the provisions reviewed, some adverse impacts on small business were possible as a result of obtaining in-state physician supervision, one-time creation of protocols and mandated physician review of patient records.

10. Describe the expected fiscal impact of proposed changes to PERA made by both the Governor's Office and the PERA Board of Directors. In addition to direct budgetary impacts, please describe any anticipated secondary impacts of an increase in employee contribution rates. For instance, does the Department anticipate a need to increase employee salaries to compensate for the increase in PERA contributions?

Response: The proposed changes to PERA made by the PERA Board of Directors include a 2.0 percentage point increase in employer contributions from 20.15% to 22.15%, which will have a direct budgetary impact on the department. DPA will provide a statewide estimate for this impact. PERA's proposal makes this change starting January 2020, thus it will affect the department's budget starting with FY 2019-20. The PERA Board proposal also includes a recommendation for contributions to be made on gross pay rather than net pay, which increases the salary base upon which the annual contribution is calculated for both employers and employees. This would have a direct impact on the department's budget as well as employee take home pay. OSPB and DPA are looking into whether this impact can be estimated, and if so, a statewide response will be provided by DPA. The PERA Board proposal also

includes a 3.0 percentage point increase in employee contributions—from 8.0 percent to 11.0 percent of pay—beginning in January 2020. Without an increase in employee salaries, these changes would reduce take home pay for state employees beginning in FY 2019-20.

The Governor’s proposed changes to PERA will not have a direct budgetary impact on the department, with the exception of maintaining the PERA Board’s recommendation for employee and employer contributions to be made on gross pay rather than net pay. As mentioned above, this would increase the salary base upon which the annual contribution is calculated for both employers and employees. OSPB and DPA are looking into whether this impact can be estimated, and if so, a statewide response will be provided by DPA. The Governor’s proposal includes a 2.0 percentage point increase in employee contributions—from 8.0 percent to 10.0 percent of pay—beginning in January 2019, a year earlier than the PERA proposal. The Governor’s budget request includes an across-the-board salary survey increase of 3.0 percent for most state employees beginning July 1, 2018. With the proposed increase in employee contributions, this will average to a take home pay increase of 2.0 percent for the fiscal year. The proposed salary survey increase results in an increase of \$1,272,248 total funds, and \$44,121 General Fund for FY 2018-19 for the department.

11. **Senate Bill 17-267 required Departments, other than Education and Transportation, that submit budgets to OSPB to propose a budget that is 2.0 percent below the total funds budget in FY 2017-18. Please highlight the following regarding the 2.0 percent reduction:**
 - a. **Where these reductions can be found in the Department’s request;**
 - b. **What programs are impacted by the reduction; and**
 - c. **Total amount of the reduction.**

Response: In the course of its statutory duties, the Office of State Planning and Budgeting complied with the provisions of S.B. 17-267. A provision of the bill required OSPB’s consideration of proposed two percent reductions for certain principal department budgets. OSPB found the process to be useful. In recommending the budget request, especially in the General Fund, while considering each department’s budget reduction items, OSPB also took into account the various pressures on spending and needs throughout the state. Additionally, S.B. 17-267’s provisions informed decision making in the request, in particular the recommendation for a decrease in the Budget Stabilization factor in the School Finance Act as well as the recommendation to increase the statutory reserve in the General Fund. With respect to the two percent target of General Fund spending as defined in the bill, these two items exceeded the suggested target.

However, after reviewing the work done in support of SB 17-267, the Department did choose to proceed with budget reductions in its FY 2018-19 request. Specifically, change request R-02 requests a reduction of \$483,885 in the Personal Services line items of the Division of Professions and Occupations, and the Public Utilities Commission. These reductions represent 2% of the base personal services appropriations for these Divisions. As noted in the request, the Department does not believe that the proposed reductions will result in the failure to accomplish statutory directives, and vacancy savings/attrition are expected to be the primary strategies of implementing the reductions. The Department believes these reductions are a worthwhile and meaningful effort to return spending authority for FY 2018-19, and will continue to examine its resources for potential further reductions in future years.

12. Please provide the following information for the Department’s custodial funds and continuously appropriated funds:

- a. Name of the fund;
- b. Amount of funds received;
- c. Whether the revenues are one-time or multi-year;
- d. Current cash fund balance;
- e. Source(s) of the funds;
- f. A list of FY 2015-16 and FY 2016-17 expenditures from these funds;
- g. Expected uses of the funds in FY 2017-18 and FY 2018-19; and
- h. Legal authorization and restrictions/limitations on the Department’s use of these funds.

Response: The Department does not contain any cash custodial funds. However, the Department does have several funds that are continuously appropriated, and the requested information is organized into the table below:

A. Name of the fund.	Highway Crossing Protection Fund	Disabled Telephone Users Fund	Broadband Fund
B. Amount of funds	\$240,000 annually	Approximately \$3 million annually	\$2.7 million one-time
C. Whether the revenues are one-time or multi-year	Annual transfer of \$240,000 pursuant to SB 16-087	Annual revenues of approximately \$3 million	One-time transfer by the Public Utilities Commission
D. Current cash fund balance	FY 17-18 beginning balance was \$242,815	FY 17-18 beginning balance was \$55,597	FY 17-18 beginning balance was \$2,351,849
E. Source(s) of the funds	New revenue is from excise tax funding collected on fixed utilities	Revenue comes from a monthly surcharge (\$0.05 per line) on landlines and wireless phone lines	Revenue comes from one-time transfers as authorized by the Public Utilities Commission from the High Cost Support Mechanism
F. A list of FY 2015-16 and FY 2016-17 expenditures from these funds			
	<u>FY 2015-16</u>	<u>\$8</u>	<u>\$2,943,125</u>
	Personal Services/Administrative Expenses	\$0	\$178,875
	Operating/Other	\$8	\$52,108
	Transfers to Other Agencies	\$0	\$1,433,317
	Grant Awards/Contract Payments	\$0	\$1,278,825
	<u>FY 2016-17</u>	<u>\$3</u>	<u>\$2,878,585</u>
	Personal Services/Administrative Expenses	\$0	\$218,573
	Operating/Other	\$3	\$44,561
	Transfers to Other Agencies	\$0	\$1,619,868
	Grant Awards/Contract Payments	\$0	\$995,583
G. Expected uses of the funds in FY 2017-18 and FY 18-19	Expenditures will increase; multi-year encumbrances for matched-funding rail crossing safety projects will be drawn down	Same approximate level of expenditures as prior two years, with most funding used for TRS contract and/or appropriated transfers to other agencies	Expenditures will increase as the remaining balance of \$2.1 million in Broadband grants is drawn down

13. What is the Department’s process for engaging in (or disputing) federal land, environmental, jurisdictional, and/or water policy issues? How do you coordinate with other departments, the Governor’s Office, local governments, and/or citizens?

Response: Pursuant to C.R.S. 29-20-108(5), the Public Utilities Commission (PUC) has the authority in which electric and natural gas utilities can appeal local government land use decisions that impair the ability of the utility to provide safe, reliable and economic service to the public. As defined by the statute, the Commission may consult the Department of Local Affairs on land use issues in connection with any appeal, of which the information provided is considered part of the public record. In addition, the Commission must balance the local government and statewide interests⁷. The PUC has utilized this process only once since 2005, in which the Commission did not rule as the utilities ultimately withdrew their plan.

⁷ C.R.S. 29-20-108(5)(d) The public utilities commission shall balance the local government interest with the statewide interest in the location, construction, or improvement of major electrical or natural gas facilities. In striking such balance, the public utilities commission shall render a decision that is consistent with article 65.1 of title 24, C.R.S., including [section 24-65.1-105, C.R.S.](#), and the commission shall consider the following factors; (I) The demonstrated need for the major electrical or natural gas facility;(II) The extent to which the proposed facility is inconsistent with existing applicable local or regional land use ordinances, resolutions, or master or comprehensive plans; (III) Whether the proposed facility would exacerbate a natural hazard;(IV) Applicable utility engineering standards, including supply adequacy, system reliability, and public safety standards; (V) The relative merit of any reasonably available and economically feasible alternatives proposed by the public utility, the power authority, or the local government; (VI) The impact that the local government action would have on the customers of the public utility or power authority who reside within and without the boundaries of the jurisdiction of the local government; (VII) The basis for the local government's decision to deny the application or impose additional conditions to the application; (VIII) The impact the proposed facility would have on residents within the local government's jurisdiction including, in the case of a right of way in which facilities have been placed underground, whether those residents have already paid to place such facilities underground, and if so, shall give strong consideration to that fact; and (IX) The safety of residents within and without the boundaries of the jurisdiction of the local government.

DEPARTMENT OF REGULATORY AGENCIES
FY 2018-19 JOINT BUDGET COMMITTEE HEARING AGENDA

Tuesday, November 28, 2017
3:00 pm – 4:30 pm

3:00-3:20 INTRODUCTIONS AND OPENING COMMENTS

3:20-4:10 RURAL BROADBAND

- 1 What is the cost to local governments for an election associated with opting out of S.B. 05-152?
- 2 How does rural broadband and the Broadband Deployment Board fit in with the other efforts that the state is taking with regard to broadband (i.e. broadband efforts in Department of Local Affairs, Colorado Department of Transportation, and local governments)? Is there a statewide vision for rural broadband?
- 3 How does the Department define broadband? What are the ways broadband can be defined? What does the term “broadband” mean to consumers and is it consistent with the Department’s definition?
- 4 How much money would the state need to bring broadband to all residents of Colorado?
- 5 Please discuss the mechanism the Department uses to assess the vulnerabilities (i.e. EMP attack, foreign/domestic terrorist attack, equipment failure/redundancy, HEMP. etc.) to all networks (i.e. internet, electricity, telecommunications, etc.) within Colorado?

4:10-4:30 OPEN DISCUSSION AND CLOSING COMMENTS

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED

- 1 Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not implemented or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.
- 2 Does the Department have any HIGH PRIORITY OUTSTANDING recommendations as identified in the "Annual Report: Status of Outstanding Audit Recommendations" that was published by the State Auditor's Office and dated June 30, 2017 (link below)? What is the

Department doing to resolve the HIGH PRIORITY OUTSTANDING recommendations?
Please indicate where in the Department's budget request actions taken towards resolving HIGH PRIORITY OUTSTANDING recommendations can be found.

<http://leg.colorado.gov/audits/annual-report-status-outstanding-audit-recommendations-june-30-2017>

- 3 If the Department receives federal funds of any type, please respond to the following:
 - a. Please provide a detailed description of any federal sanctions or potential sanctions for state activities of which the Department is already aware. In addition, please provide a detailed description of any sanctions that MAY be issued against the Department by the federal government during FFY 2017-18 or 2018-19.
 - b. Are you expecting any changes in federal funding with the passage of the FFY 2017-18 or 2018-19 federal budget? If yes, in which programs, and what is the match requirement for each program?
 - c. Does the Department have a contingency plan if federal funds are eliminated?
- 4 Is the Department spending money on public awareness campaigns? If so, please describe these campaigns, the goal of the messaging, the cost of the campaign, and distinguish between paid media and earned media. Further, please describe any metrics regarding effectiveness and whether the Department is working with other state or federal departments to coordinate the campaign?
- 5 Based on the Department's most recent available record, what is the FTE vacancy and turnover rate by department and by division? To what does the Department attribute this turnover/vacancy? Do the statewide compensation policies administered by the Department of Personnel help or hinder in addressing vacancy or turnover issues?
- 6 Please provide an update on the Department's status, concerns, and plans of action for increasing levels of cybersecurity, including existing programs and resources. How does the Department work with the Chief Information Security Office (CISO) in the Office of Information Technology (OIT)? Have your information technology infrastructure and policies been audited for cybersecurity capabilities? If so, was the audit completed by the legislative auditor or an outside entity? Do you have dedicated cybersecurity personnel? How do your cybersecurity staff interact with the CISO in OIT? What unique security issues does your Department have? Do you handle private or sensitive data? What unique cybersecurity processes or tools do you use to protect this data?
- 7 What impact do the SMART Act and Lean processes have on your budget requests? Could they be used more effectively?

- 8 Does your Department use evidence-based analysis as a foundation for your budget request? If so, please provide a definition for your use of “evidence-based,” indicate which programs are “evidence-based,” and describe the evidence used to support these programs.
- 9 Please identify how many rules you have promulgated in the past two years (FYs 2015-16 and 2016-17). With respect to these rules, have you done any cost-benefit analyses pursuant to Section 24-4-103 (2.5), C.R.S., regulatory analyses pursuant to Section 24-4-103 (4.5), C.R.S., or any other similar analysis? Have you conducted a cost-benefit analysis of the Department’s rules as a whole? If so, please provide an overview of each analysis.
- 10 Describe the expected fiscal impact of proposed changes to PERA made by both the Governor’s Office and the PERA Board of Directors. In addition to direct budgetary impacts, please describe any anticipated secondary impacts of an increase in employee contribution rates. For instance, does the Department anticipate a need to increase employee salaries to compensate for the increase in PERA contributions?
- 11 Senate Bill 17-267 required Departments, other than Education and Transportation, that submit budgets to OSPB to propose a budget that is 2.0 percent below the total funds budget in FY 2017-18. Please highlight the following regarding the 2.0 percent reduction:
 - Where these reductions can be found in the Department’s request;
 - What programs are impacted by the reduction; and
 - Total amount of the reduction.
- 12 Please provide the following information for the Department’s custodial funds and continuously appropriated funds:
 - Name of the fund;
 - Amount of funds received;
 - Whether the revenues are one-time or multi-year;
 - Current cash fund balance;
 - Source(s) of the funds;
 - A list of FY 2015-16 and FY 2016-17 expenditures from these funds;
 - Expected uses of the funds in FY 2017-18 and FY 2018-19; and
 - Legal authorization and restrictions/limitations on the Department’s use of these funds.
- 13 What is the Department’s process for engaging in (or disputing) federal land, environmental, jurisdictional, and/or water policy issues? How do you coordinate with other departments, the Governor’s Office, local governments, and/or citizens?