DEPARTMENT OF REGULATORY AGENCIES
FY 2022-23 JOINT BUDGET COMMITTEE HEARING AGENDA

Thursday, December 9, 2021
10:00 am – 11:00 am

10:00-10:10 INTRODUCTIONS AND OPENING COMMENTS

Presenter: Patty Salazar, Executive Director

10:10-10:20 COMMON QUESTIONS

Main Presenters:
- Patty Salazar, Executive Director
- Justin Lippard, Budget Director

Supporting Presenters:
- Michael Conway, Division Director for Insurance and Commissioner of Insurance
- Doug Dean, Division Director for the Public Utilities Commission

Topics:
- COVID-19 Remote work planning: Page 2, Question 1 in the packet
- One-time federal stimulus funds: Page 3, Questions 2 in the packet

10:20-10:30 R4 INCREASE RESOURCES FOR THE EDO

Main Presenters:
- Patty Salazar, Executive Director
- Justin Lippard, Budget Director

Topics:
- Volunteer Board Staffing: Page 3, Question 3 in the packet
- Existing EDO Resources: Pages 4 & 5, Questions 4 & 5 in the packet

10:30-10:40 R1 IMPLEMENTATION OF PRIMARY CARE AND MATERNAL HEALTH APMS

Main Presenters:
- Michael Conway, Division Director of Insurance and Commissioner of Insurance

Topic:
- Primary Care and Maternal Health APMs: Pages 5 & 6, Questions 6 & 7 in the packet

10:40-10:50 OTHER TOPICS

- Prescription Drug Affordability Board: Page 7, Question 8 in the packet
- Cost Benefit Analyses in Rule-Making: Page 7, Question 9 in the packet
- PUC Vacancy Rates: Page 11, Question 10 in the packet
- Process Changes: Page 12, Question 11 in the packet

DEPARTMENT OF REGULATORY AGENCIES
FY 2022-23 JOINT BUDGET COMMITTEE HEARING AGENDA

Thursday, December 9, 2021
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COMMON QUESTIONS FOR DISCUSSION AT DEPARTMENT HEARINGS

1 **Please provide an update on how remote work policies implemented in response to the COVID- 19 pandemic have changed the Department's long-term planning for vehicle and leased space needs. Please describe any challenges or efficiencies the Department has realized, as well as to what extent the Department expects remote work to continue.**

Response: Since the outset of the pandemic the Department of Regulatory Agencies (DORA) has been committed to safely and effectively managing the challenges presented by COVID-19, including ensuring remote work operations, while continuing to provide services to the people of Colorado. The Department developed and executed a multi-step emergency preparedness plan to maximize workforce capability and avoid service disruption during the COVID-19 pandemic, which resulted in the successful transition of 90 percent of staff to remote work within less than a two-week period. Prior to the pandemic, the department did not have any employees who worked from home on a full-time and permanent basis. Pre-COVID-19, approximately 20 percent of the workforce had some standard telecommuting arrangement where they worked from home on a part-time basis and either from DORA offices or the field the rest of the time. Successfully proceeding from zero percent full-time remote-work to 90 percent of the workforce in a period of time -- without service disruption -- was achieved via a number of strategies, including: enhancing telework tools and the development of online portals, resources, training, and guidelines for employees; creating remote alternatives for plumbing and electrical inspections and financial examinations; increasing virtual engagement with employees, board and commission members and the public; reducing in-person interaction where possible in order to lessen the risk of exposure; increased safety and accessibility for our employees and the public, ensuring that all boards and commissions are able to meet and be publicly accessible online; acquiring sufficient PPE for our critical state employees that conduct field work; and, various other important communications strategies and website improvements.

With respect to long-term planning for leased space, certainly potential exists for changes in the longer term. A few considerations are worth noting: (1) First and foremost, the timing of existing lease agreements, which suggests no flexibility until 2027 and for which the requisite long term planning will not begin for a few years and are dependent on actions taken by statewide lease planners. (2) Return-to-office implementation is ongoing, including pilot models. Precise forecasting is not possible until we are truly farther into a post-pandemic state, universal return-to-office is fully implemented, and testing of pilot initiatives are complete to determine the impact on such things as business needs, services to the public, and productivity. (3) DORA has maximized existing space and the department telecommuting program to accommodate considerable growth, and will continue to do so, to avoid an increase in our physical footprint. However, significant additional FTE and responsibility were added even as recently as the 2021 session. The growth rate of the Department must be carefully evaluated in step with assessing long term leased space needs into the future.

With respect to long term planning for vehicles, the Department does not believe that a remote work environment will affect fleet needs given the nature of Department vehicles. In fact, the majority of DORA's fleet, which are used for statutorily required physical inspections across wide geographic areas throughout the State, were assigned to home offices prior to the pandemic, and no structured commuting arrangements using state vehicles exists in DORA.

2 **Please describe the most significant one-time federal funds from stimulus bills (e.g., CARES Act and ARPA) and other major new federal legislation (e.g., Federal Infrastructure Investment and Jobs Act) that the Department has received or expects to receive. For amounts in new federal legislation that have not yet been distributed, please discuss how much flexibility the State is expected to have in use of the funds.**

The Department has not received one-time federal funds from stimulus bills, and does not presently expect to receive such funding. We will continue to track current federal stimulus legislation to understand any future impacts on the Department.

R4 INCREASE RESOURCES FOR THE EDO

VOLUNTEER BOARD STAFFING

3. *[Sen. Hansen]* Can you provide more detail about current staffing and support for volunteer boards? Along with this, can you describe what kind of resources are necessary to provide adequate, high- quality support for these boards?

Response: Boards and Commissions that help DORA fulfill its public involvement obligation are considerable.To provide a sense of proportion, the department's over 330 volunteer board members would increase the department's FTEby over 50% if they were not unpaid volunteers, thereby the need for training, logistical support, and meetings is substantial.

Currently, staffing support for the department's boards and commissions varies from division to division, depending on the board's work nature. Some boards have division staff that serve as directors or program managers while others share responsibilities among staff. For example, as noted below in the response from the Division of Insurance, their request to operate the Prescription Drug Affordability Board (PDAB) requires three FTE. Other boards such as the Conservation Easement Oversight Commission depend on the Division Director to fulfill its obligations. While these examples are very diverse, it represents the complexity and breadth of coordination required for the agency to meet statutory and volunteer expectations.

In an effort to modernize and further professionalize DORA Board and Commissions, the department adopted a Wildly Important Goal (WIG) to identify best practices, opportunities for consistency, ensure compliance with state statutes, and to improve board support for improved public outcomes.

Phase one of the WIG represents the first comprehensive endeavor to align boards and commissions across the department with legislative and executive branch expectations. Noteworthy for phase one was the distribution of a survey to appointees, which was the first solicitation of feedback from the department's boards and commissions, to identify enhancements to be contemplated. All the work accomplished in phase one was centrally coordinated through existing resources within the Executive Director's office and staff from the ten divisions. Each division representative served a critical role to evaluate best practices. Currently, phase two includes implementing recommendations from phase one and incorporating legislative and executive expectations to improve diversity, equity and inclusion practices. Phase three is the final phase of the modernization effort. During the final phase and into the future, the Executive Director's Office will focus on institutionalizing activities and recommendations from previous years. Ultimately, the modernization effort will unify all divisions' basic practices and procedures for how board and commission members participate successfully, ensure compliance with state statutes and fulfill their role as essential contributors to government processes.

EXISTING EDO RESOURCES

***4. [Sen. Moreno]* Why is the EDO lacking in resources? Aren't these resources included in fiscal notes for bills that the Department has requested? Is the Department including the required resources in its fiscal impact submissions to Legislative Council Staff?**

The accumulation of a significant number of bills and FTE over the years collectively, without provision for Department overhead, explains this resource issue. The legislative fiscal note process typically does not account for Department-level human resources, accounting, budget, procurement and other operational overhead needs, when an individual bill does not require more than a few FTE at the program level. And this makes sense in light of the fact that no single bill or policy idea itself accounts for a quantifiable administrative impact -- adding 0.5 FTE for overhead, for instance, on a bill that only costs 1.5 FTE in total would be 30% overhead which is not reasonable. Rather, the need results from the accumulated volume of new legislative policies and bills that have affected DORA incrementally over the years. The following is a comprehensive listing of the numbers of new legislation that has affected the Department in just the last 5 years, with 2021 being particularly voluminous:

Session	FY	Total Bills	Total Funding	Total FTE	Avg. FTE/Bill
2016	2016-17	10	$1,249,311	3.7	0.4
2017	2017-18	6	$817,794	1.2	0.2
2018	2018-19	7	$456,148	1.8	0.3
2019	2019-20	14	$3,742,270	18.9	1.4
2020	2020-21	8	$109,501	0.3	0.0
2021	2021-22	23	$5,335,791	29.8	1.3
Total	N/A	68	$11,080,815	55.7	0.8

5. ***[Sen. Rankin]*** **How are the existing FTE divided among the responsibilities described on p.13 of the briefing document? How would the newly requested FTE be divided among those responsibilities if the request is approved? Are costs related to overhead and indirect functions considered and included when the department calculates the fiscal impact of each bill, and how is that split between the affected division(s) and the department as a whole?**

In the absence of this request, existing FTE across respective sections would be required to absorb the currently centralized responsibilities discussed in the request, specifically including staff from the Administrative Operations functions, including Human Resources, Department Operations, and Accounting and Purchasing, as well as the Office of Policy, Research, and Regulatory Reform. Newly requested FTE would be divided among those responsibilities as follows: 2.0 FTE Analyst III for Business Innovation (business operations service delivery goals); 1.0 FTE Technician IV for Modernizing Boards and Commissions (statutory compliance, training, recruitment/retention); 1.0 FTE Analyst III for Collective Bargaining/Labor Relations (administration of partnership agreements/engagement in collective bargaining process); 1.0 FTE Accountant I for Accounting Redundancy and Succession Planning (department transactional complexity/financial recording/payroll/procurement).

Overhead and indirect functions are typically not accounted for in the fiscal impact and appropriations clause of a bill. Although the potential for this exists with very large fiscal impacts (for instance bills appropriating greater than 20 FTE), bills affecting DORA are on average too small to argue for overhead impacts of centralized responsibilities of the Executive Director's Office, and this is what has led to the accumulated need at the Department.

R1 IMPLEMENTATION OF PRIMARY CARE AND MATERNAL HEALTH APMS

6. ***[Sen. Rankin]*** **Can you describe in more detail how DORA and HCPF are working together on this issue?**

Response: The Division of Insurance's (Division) funding request was submitted in coordination with the Department of Health Care Policy and Financing (HCPF), which will be implementing aligned APMs in Health First Colorado (Colorado Medicaid). While the Division and HPCF submitted separate budget requests, they have collaborated closely and share a common goal of supporting the successful implementation of aligned APMs across all markets.

The Division has an established partnership with HCPF and the Department of Personnel Administration (DPA), under the leadership of the Office of Saving People Money (OSPMHC), to begin the development of Colorado-specific, consensus-based primary care and maternity APMs that align payment approaches for private (fully-insured, self-funded plans) and public payers (Medicaid, Medicare, and state employee health plans). The agencies are engaged in a series of multi-stakeholder meetings, which include sub-groups of experts in both primary care and maternity care, to develop parameters for aligned primary and maternity care APMs. HCPF, DORA, and DPA are all active participants in these meetings.

Through its budget request, the Division will continue to advance the alignment of APMs in coordination with HCPF. The request will support commercial carriers' adoption of the aligned APMs by hiring a contractor to provide ongoing technical assistance to commercial carriers in implementing the aligned primary care and maternal care APMs. The majority of commercial insurers in Colorado are currently pursuing payer-specific models that may require modification to come into alignment with a statewide all-payer APM.

7 *[Sen. Moreno]* Why did the Department choose maternal health as the pilot for this payment model as opposed to some other medical service?

The Division of Insurance, in collaboration with HCPF, DPA, and OSPMHC, has chosen two priorities for APM alignment: primary care and maternal health. The maternal health APM was chosen as one of the two priorities because of the feasibility of achieving alignment across payers and the potential for a maternal health APM to reduce health disparities and improve health outcomes.

In the APM work already underway, a series of key stakeholder interviews were held. with representatives of state agencies (DORA, HCPF, DPA), commercial payers, providers, consumers, and health care purchasers to determine the current level of interest and engagement in APM alignment in the state. During these conversations, multiple stakeholders cited maternity care as an area of opportunity for payer alignment across markets (private and public). Several payers are currently pursuing maternal health APMs, and it was determined this is an area where alignment across markets was both achievable and desirable. Providers and payers have also expressed interest in aligned APMs. The Primary Care Payment Reform Collaborative - a multi-stakeholder group consisting of providers, consumers, and private and public payers (including representatives from four commercial health plans, HCPF, and CMS) - included specific recommendations around increasing investment in primary through APMs and the crucial importance of multi-payer alignment in the successful implementation of value-based payments in their 2019 and 2020 Recommendation Reports.

Health equity has been a key consideration in APM discussions. As a state, Colorado continues to perform poorly on maternal health outcome measures. According to the Colorado Maternal Mortality Review Committee Report published in July 2020, 76.6% of maternal deaths in Colorado are preventable. Both nationally and in Colorado, maternal mortality disproportionately impacts Black, indigenous, and people of color (BIPOC). The Health First Colorado Maternity Report released in September 2021 found that BIPOC Medicaid members were least likely to have received timely prenatal care, were more likely to have preterm births, and had higher rates of cesarean (C-section) deliveries. An aligned maternal health APM could facilitate tailored approaches to health equity by focusing resources on patient populations with the greatest health needs and incentivizing providers to prevent and manage chronic conditions and address social determinants of health, which could, in turn, improve maternal health outcomes. This will help the state achieve shared goals around improving health equity and outcomes while reducing avoidable costs for the commercial and Medicaid populations.

Other states pursuing maternity care APMs have seen success. For example, the Tennessee Division of Health Care Finance and Administration implemented a maternity APM (an episode-based model covering prenatal care, delivery, postpartum care, and treatment of any complications or related readmissions of the mother) in 2015. Tennessee experienced significant cost savings of over

4 million dollars in the program's first year. It saw positive improvements in quality measures, including a 2.2% point decrease in C-section birth rates.

OTHER TOPICS

PRESCRIPTION DRUG AFFORDABILITY BOARD

8. *[Rep. McCluskie]* Can you provide an update on the prescription drug affordability board – including an update on the budget for establishing the board and resources for the implementation of the legislation?

As required by SB21-175, the five members of the Prescription Drug Affordability Board (PDAB) were appointed by the Governor on October 1, 2021.

The five board members are:

Gail Mizner, MD, FACP, AAHIVS, Board Chair
Sami Diab, MD,
Amarylis "Amy" Gutierrez, PharmD
Catherine Harshbarger
James Justin VandenBerg, PharmD, BCPS

The Board held its first meeting on November 12th. At that meeting, the Board was provided an overview of the PDAB legislation and training by the Attorney's General on various procedural issues, such as open meetings laws. The Board's next meeting is scheduled for December 17th.

In the legislation establishing the PDAB, the Division was appropriated $730,711 in FY 2021-22, which included personal services for 3.0 FTE. The Division of Insurance has hired a PDAB Director and is in the process of hiring a PDAB policy analyst. The Division also intends to hire a data analyst. The remaining funds are targeted for legal and consultant support as well as to obtain All-Payer Claims Database data for the Board to conduct its statutory duties and obligations. Based on the funds appropriated through SB21-175, the Division anticipates sufficient funding and resources for implementation.

The Division has set up a webpage for the PDAB. The webpage can be accessed at:
https://doi.colorado.gov/insurance-products/health-insurance/prescription-drug-affordability-review-board.

COST-BENEFIT ANALYSES IN RULE-MAKING

9. *[Sen. Rankin]* Please address the process for, and the effectiveness of Cost-Benefit Analysis as those analyses relate to rulemaking. Please review the attached paper prepared by Senator Rankin and his staff and comment on the need for revisions to the process. Specifically, address how the process can be revised to ensure more stakeholder participation and how the Cost-Benefit Analysis can affect the final rule. Can the process be revised to align with JBC's focus on evidence-based budgeting?

There are two primary statutory mechanisms for rulemaking agencies to utilize to consider costs as rules are promulgated. The Cost-Benefit Analysis (CBA) program, part of the Administrative Procedures Act, is intended to compel state agencies to consider the potential economic impacts of proposed rules on Coloradans, especially small business owners. Further, Mandatory Review of Rules by Agencies (24-4-103.3) is required by each principal department and requires each agency to establish a schedule to review all of its rules and assess the continuing need for and appropriateness and cost effectiveness of rules. This assessment determines if the rules should be continued in their current form, modified, or repealed.

The 2017 Sunset Report of the CBA program concluded that because small businesses make up such a large portion of all businesses in the state, that the imposition of new regulatory requirements can increase costs for small businesses, affecting their profitability and payroll. Results from the 2017 informational survey showed that 29 percent of agencies revised their rules based on a CBA, demonstrating the process's value to the public and warrants its continuation. Ultimately, COPRRR recommended to the General Assembly that the program continue indefinitely.

Other documentation of effectiveness includes a 66.8 percent increase in the number of stakeholders that have proactively signed up to receive notification about the program between August 2017 and present day. Also, from 2011 to 2016, COPRRR received 2,272 rule filings requiring 21 CBAs. In a subsequent time frame from 2017 to 2021, COPRRR received 2,191 rule filings, requiring 41 CBAs. This increase in CBAs almost doubles the CBAs required from 1.0 percent to 1.9 percent of rules filings..

In essence, the role of COPRRR is to facilitate the applicability of the CBA statute between the public and the rulemaking agency. More specifically, COPRRR's consultation with the rulemaking agency is limited to the following four topics: 1) Was language describing the rule submitted in plain language? 2) Was a redlined version of the proposed rule submitted, showing the proposed changes? 3) If a member of the public requests a CBA, should it be required (i.e., it will be required unless exempt); and 4) If it appears that the agency did not answer all of the questions asked in the CBA form, then the analysis of the actual CBA is limited. COPRRR must ensure that the CBA is complete so that it can be concluded that a good faith effort was made to comply with the law.

Given the broader scope of the CBA program, which impacts all rulemaking agencies and not just DORA, these comments are specific to the process which only applies to DORA's regulatory divisions and COPRRR.

To provide scope, our respective department promulgates approximately 25% to 30% of all rules. In FY 2020 -21 there were 477 rules promulgated across all rulemaking agencies.

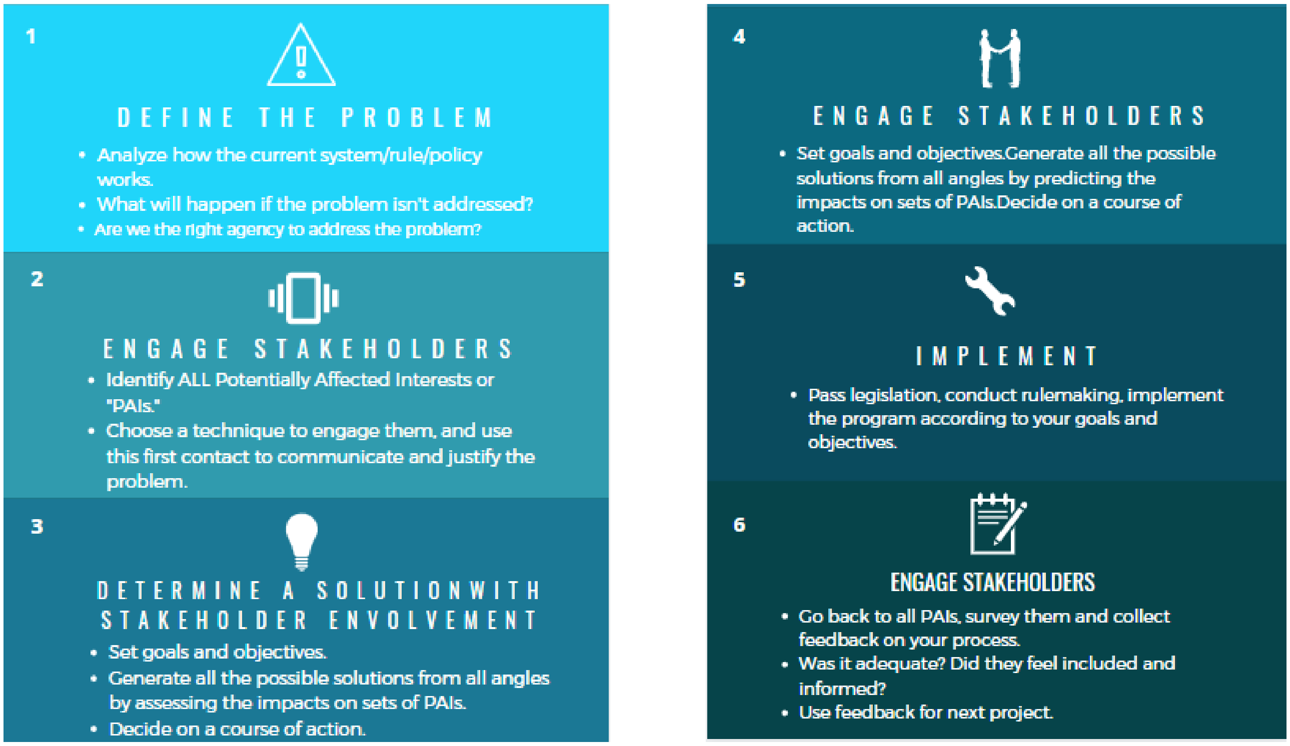
No.	Recommendation	Agency Response
1	Design a Cost/Impact Threshold in the statute that requires DORA to estimate regulatory impact for all rules before the Notice of Rulemaking. If DORA's estimate for a given rule is over the threshold, CBA is required for the given rule without additional consultation.	A deeper evaluation of the rules across all rulemaking agencies is warranted to determine a threshold, if appropriate. Once the requirements are identified, DORA can estimate the expertise and labor necessary to analyze all rules to ascertain whether they meet the proposed threshold..
2	Combine the Regulatory Analysis and the CBA.	Combining the Regulatory Analysis and the CBA for purposes of streamlining would require engagement of all rulemaking agencies and an evaluation of operations at every respective agency. The rulemaking agency proposing the rule receives the request for regulatory analysis and then prepares it. DORA facilitates the CBA process. This delineation of the process does not lend itself to a simplistic response for streamlining.
3	Update Timing: a. If under the cost threshold, the public has ten days to request a CBA through DORA. b. DORA shall require that the rulemaking agency complete and publish the CBA within ten days before the hearing, pending an independent review of the analysis.	This seems unnecessary. DORA notices are sent out before information is published in the *Colorado Register*. So, stakeholders who register with DORA already have more than the five days envisioned in the statute. Adding to the limitations of this suggestion is how it might conflict with the publication in the *Colorado Register*. Determining which date to use as a baseline would also need to be determined, and changing this information being published in a well-established document might cause more confusion for individuals who already access the system.
4	Create an independent regulatory analysis board or require third-party review of CBA by Legislative Council Staff	Potentially, an independent oversight body reviewing the CBAs would increase the CBA's scrutiny and would also be a discussion about separation of powers between the executive and legislative branches. Using the already established Rule Review Committee might serve in this capacity since this committee is already responsible for reviewing agency rules. The referenced federal model lengthens the review and comment period. However, it is not readily evident how this might be beneficial to the current process. For example, Colorado has streamlined its legislative process, by limiting all bills to have their contents fit under the title. The federal government does not have this same type of legislative efficiency and perhaps finds the lengthier time for rule review and comment necessary due to the multiple topics covered in one

		piece of legislation. Therefore, the rules promulgated by Executive Branch agencies are already very explicitly authorized by the General Assembly and closely mirror the legislative intent.
5	Each rulemaking shall specify, when applicable, key performance metrics of the proposed rule that are accountable to the desired impact established in the rulemaking process: a. Allow for Members of the Colorado General Assembly to request a Post-Implementation Report one year after the rule has passed. b.This provision aims to allow for the General Assembly to test whether or not the rule is creating the desired effects in consideration of enacting legislation and performance metrics established in the rulemaking process.	This would have to be evaluated by all rulemaking agencies to evaluate if one year after promulgation is adequate time to gather meaningful information for evaluation.Additionally, under the APA, the agency is already required to keep a list of stakeholders for rule-makingto gather feedback from stakeholders concerning the rules' effectiveness and impact.
6	Require in the statute that CBA must be prepared upon the final rule if changes have been made to the proposed rule.	This changes the purpose of the CBA process, which was to bring attention to the costs and benefits of rules *as they are being mad*e so that those costs and benefits can be taken into consideration when promulgating the final rule. A CBA at this stage would have no impact.
7	Require that quantitative data is presented in a CBA when at all available or applicable.	COPRRR believes that most agencies already use this information when it is available.

The Administrative Procedures Act requires many opportunities for agencies to engage stakeholders early on in the rulemaking process. Specifically, 24-4-103(2) requires that when rule-making is contemplated, the agency shall establish a representative group of participants interested in the subject to submit views or otherwise participate informally in conferences on the proposals under consideration or participate in the public rulemaking proceedings on the proposed rules. The law requires that agencies diligently solicit input from stakeholders affected positively and negatively about a potential change.

Information from the 2017 survey provided a glimpse into stakeholder involvement in general and specific to the CBA process. In particular, the informational poll noted that 63 percent of survey respondents said that stakeholders frequently participate in the rule-making process. COPRRR concluded that this statistic is high and suggests that agencies effectively comply with the Administrative Procedures Act.

For DORA in particular, a robust stakeholder process is an organizational priority. It is evidenced by having one dedicated staff person in the Executive Director's Office responsible for institutionalizing a stakeholder engagement process across all divisions (as described below) that goes beyond the requirements of the Administrative Procedures Act.



Furthermore, when a Cost-Benefit Analysis is required, the agency must publicly post the analysis on its website.

Aligning with the JBC evidence-based budgeting would require additional conversation with all rulemaking agencies. However, showing how data and evidence were incorporated into a decision, when appropriate, could increase public confidence that objective analysis is used.

PUC Vacancy Rates

10. *[Sen. Hansen]* What is the discrepancy between the vacancy rates for the PUC on D-2 and D-11? What is the anticipated timeline for filling vacancies – particularly those added through 2021 legislation?

The department-wide table on page D-2 shows 25.9 total vacancies through October, while the table on D-11 shows 21 vacancies through November (11 vacancies plus 10 new positions from 2021 legislation), which reflects a difference in when this information was extracted. Vacancy information is the net change between filled positions and positions that become vacant at a given time - including when existing staff move to new positions. Further information can be provided at any given time and can be updated.

Given the volume of legislation, the PUC has developed and is implementing a plan to prioritize and fill ten new positions from the 2021 legislation. This plan is underway, and all positions are under active recruitment in varying stages of completion. Qualified candidates are at a premium in present economic conditions, and highly specialized positions such as these are challenging indeed. With respect to ongoing vacancies, progress continues to be made year-over-year despite ongoing market conditions as a result of continuing efforts. In fact, FTE utilization by fiscal year improved considerably by 8.4 (12%) between FY 19-20 and FY 20-21.

PROCESS CHANGES

11. *[Sen. Moreno]* What efficiencies or process changes did the Department adopt during the pandemic that they plan to continue, specifically related to licensing and registrations?

While this past year has been unprecedented, the Department has maintained an ongoing focus on the customer service experience, and existing plans had been well underway to increase use of technology to streamline and innovate processes and procedures. For example, The Division of Real Estate switched to online proctoring of licensing examinations and completion of continuing education through virtual learning options and prior to the pandemic, the division had a fully automated application system.

Additionally, before the pandemic and under its current authority, the Division of Professions and Occupations (DPO) was recognized as a leader in reducing regulatory barriers for licensed professionals. including having 100 percent of applications online.. To that effect, all occupational license applications are processed within an average of 30 days, with many less than that. The Department has also removed barriers to entry for veterans, active military, and their spouses, new Americans, and those seeking to work in Colorado and are in good-standing in other participating compact states.

To elaborate, prior to the pandemic included processing 100 percent of occupational license applications in 20 days or decreasing the timelines for healthcare mobility licensing for physicians, physician assistants, certified nurse aides, licensed practical nurses and registered nurses to 17 days.

Other efficiencies in advance of the pandemic include the Nurse Licensure Compact (NLC) which allows a registered nurse (RN) or licensed practical vocational nurse (PN) to possess a multistate license to practice across state lines in all participating states. The NLC increases access to care while maintaining public protection at the state level. Under the existing compact, nurses can provide care to patients in 38 states without having to obtain additional state specific licenses. Colorado holds similar compact agreements in a few other professions including medical, physical therapy and psychology.

During the pandemic, the healthcare workforce has faced historic challenges resulting in the need to provide a surge in licensed individuals. DPO rose to the challenge and responded expeditiously to implement Executive Orders by promulgating emergency rules, and leverage existing work to improve licensing timelines. The need to increase the frontline healthcare workforce quickly and safely became and remains a priority. For example, 7,086 temporary and 574 emergency health care licenses[1] were issued. Of the emergency licenses issued, 87 percent were Registered Nurses (RN) or Certified Nurse Assistants (CNA), and of the temporary licenses, 82 percent were CNA's. Another example is the temporary expansion of the scope of practice for multiple health care professionals so that they could be available to assist where critical needs arose in healthcare facilities. These examples continue to inform ongoing work to improve licensing timelines within DPO and ongoing business processes. These temporary and emergency actions allowed health care providers

[1] Temporary licensure refers to individuals who meet all requirements of licensure with the exception of the required test which must be completed prior to eligibility for full licensure. Emergency licensure refers to individuals who at one time held a license and are allowed to work in Colorado under emergency conditions.

to scale up their workforce at a critical time. Because of the need for quick action, DPO developed process improvements that enabled continued efficiencies in licensing timelines and emergency rulemaking.

Other efforts and process improvements will remain permanent such as the remote video inspections. Using innovative and unique approaches, the inspector team created a remote inspection program to conduct occupied residential electrical and plumbing inspections using virtual technology. This includes the ability to safely conduct inspections through remote means so that building codes are upheld while also preserving the safety of both the inspector and the client. This program successfully maintained inspections during the pandemic consistent with pre-pandemic numbers. As a result, DPO plans to continue using remote video inspections where practical.

Given all of the established burden-reducing efforts and the actions that occurred during the pandemic, the Department is focused on better communicating these actions to employers and those potentially seeking to relocate to Colorado.

Colorado Department of Regulatory Agencies Joint Budget Committee Hearing

December 9, 2021

COLORADO
Department of Regulatory Agencies

Overview

- About DORA
- Joint Budget Committee Responses
  - Common Questions
  - Increase Resources for EDO
  - Implementation of Primary Care and Maternal Health APMs
  - Other Topics
    - Prescription Drug Affordability Board
    - Cost Benefit Analyses in Rulemaking
    - PUC Vacancy Rates
    - Process Changes

CONSUMER PROTECTION IS OUR MISSION

We strive to preserve the integrity of the marketplace while promoting a fair and competitive business environment throughout Colorado.

About DORA

- 635.5 FTE
- $126,648,532 M Budget
- Over 40 Boards, Commissions and Advisory Committees
- 50 regulatory programs
- 907,000 individual licensees
- 65,000 regulated business and institutions

About DORA: Divisions and Offices

- Colorado Civil Rights Division
- Division of Banking
- Division of Conservation
- Division of Financial Services
- Division of Insurance
- Division of Professions and Occupations
- Division of Real Estate
- Division of Securities
- Utility Consumer Advocate
- Public Utilities Commission

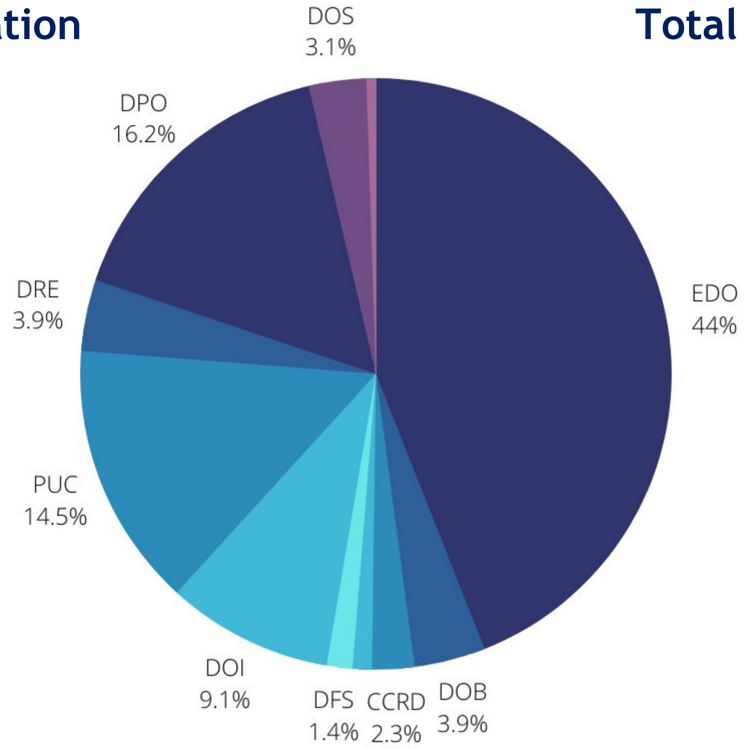
Within Executive Director's Office

- Colorado Office of Policy, Research and Regulatory Reform

About DORA: Funding

FY 2021-22 Total Appropriation

Total Funds: $126.6 million



Common Questions

Patty Salazar, Executive Director
Justin Lippard, Budget Director

Executive Director’s Office Resources

Patty Salazar, Executive Director
Justin Lippard, Budget Director

Boards and Commissions

- Over 40 Boards and Commissions
    - More than 330 volunteer members
    - Department Modernization Effort
        - Best practices for legislative and executive expectations

Executive Director’s Office Resources

Patty Salazar, Executive Director
Justin Lippard, Budget Director

Primary Care and Maternal Health APMs

Patty Salazar, Executive Director
Justin Lippard, Budget Director
Mike Conway, Insurance Commissioner and Director, Division of Insurance

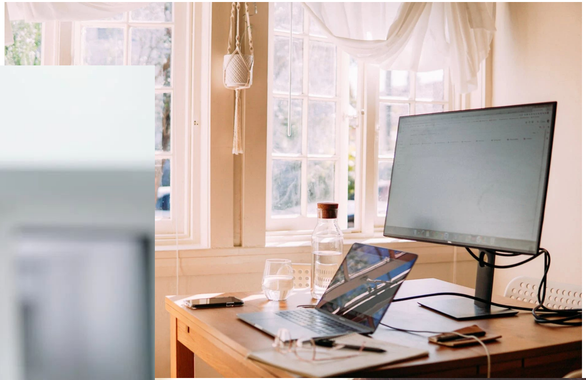
Other Topics

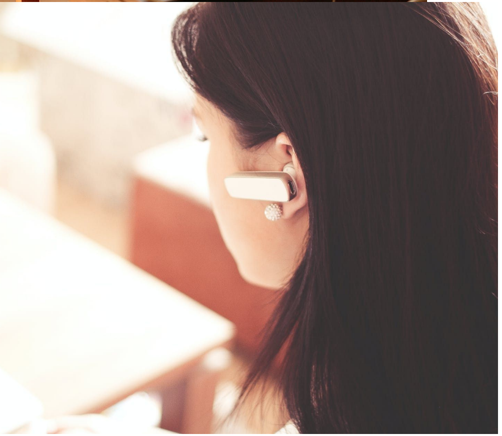
Patty Salazar, Executive Director
Justin Lippard, Budget Director

Supporting Presenters:
Mike Conway, Insurance Commissioner and Director, Division of Insurance
Brian Tobias, Director, Colorado Office of Policy, Research and Regulatory Reform
Doug Dean, Director, Public Utilities Commission
Ronne Hines, Director, Division of Professions and Occupations

Pandemic Response

- Maintain customer service experience
- Emergency and temporary licensure through Executive Orders
- Innovate remote and virtual alternatives





Questions?

COLORADO
Department of Regulatory Agencies

WRITTEN RESPONSES ONLY

COMMON QUESTIONS: PLEASE RETAIN THE NUMBERING IN ORDER TO MAINTAIN CONSISTENT LABELING FOR COMMON QUESTIONS ACROSS DEPARTMENTS.

1 Provide a list of any legislation with a fiscal impact that the Department has: (a) not implemented, (b) partially implemented, or (c) missed statutory deadlines. Explain why the Department has not implemented, has only partially implemented, or has missed deadlines for 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: At this time the Department does not have any legislation with a fiscal impact that has missed statutory deadlines. The Department has several pieces of prior year legislation that are still in process of being implemented, all of which are on track for full implementation based upon deadlines established in statute.

2 Does the Department have any HIGH PRIORITY OUTSTANDING recommendations with a fiscal impact identified in the Office of the State Auditor's "Annual Report: Status of Outstanding Audit Recommendations"? What is the Department doing to resolve these HIGH PRIORITY OUTSTANDING recommendations? Please indicate where in the Department's budget request actions taken towards resolving HIGH PRIORITY OUTSTANDING recommendations can be found.

Response: The Department *does not* have any high priority outstanding recommendations with a fiscal impact identified in the Office of the State Auditor's Annual Report. The 2021 report was published on December 6, 2021 and can be found (here).

3 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: Yes, 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 this program's activities each November 1st. The most recent full report can be accessed here, with a summary and additional metrics provided below:

At the end of FY20-21, the Fund had collected $136,035 in surcharges and interest, and spent

$125,985. Excluding required transfers to the General Fund, approximately 89 percent of the expenditures were for campaign development, social media marketing, and other large media marketing purposes. The remainder of costs were dedicated to funding educational materials, digital media production software for outreach purposes, and expenses related to stakeholder engagement and outreach. While not all costs associated with outreach conducted by the Department are funded by the Consumer Outreach Fund, it remains integral to the overall initiative and performance objectives of the Department.

Due to the budgetary opportunities created by the Consumer Outreach and Education Fund, the Department was able to further expand tools and services to allow outreach work via digital and virtual platforms. As such, in FY 20-21 DORA was able to conduct over 144 outreach initiatives and events that were aimed at building awareness of the Department and our consumer protection mission, as well as educating consumers on how to effectively engage with regulated professions. These efforts utilized digital marketing tools purchased through the Consumer Fund, but also relied on earned media to create attendance. Notably, the attendance numbers per outreach effort skyrocketed, with individual DORA-hosted virtual events garnering as many as 2,800 attendees at a time. Despite in-person outreach efforts remaining curtailed by the pandemic, DORA's educational efforts continue to have a dramatic reach and impact for consumers.

Additionally, consumer advisories issued by the department totaled 163, with important information ranging from COVID-related financial fraud to home heating tips and insurance claims related to wildfires.

Over the course of the year, the department's social media presence, particularly on Twitter, grew exponentially, with average profile views starting around 200 in July 2020 and ending around 2100 in June 2021. In total, 12,497 DORA profile visits occurred with 304,668 impressions over the course of the year. This is attributed to the increased presence of digital outreach content (specifically videos and infographics) and presentations that DORA's divisions crafted to better inform consumers and the professionals who serve them.

For paid media, in FY 20-21 Consumer Fund money also went toward the creation of public awareness building videos (an example of which can be seen here) that DORA and our divisions are currently building into FY 21-22's campaigns, outreach materials, and paid advertising. A number of these videos can already be viewed on DORA division sites.

Partnerships in FY 20-21 spanned local, state, and federal organizations, and included the Strategic Action Planning Group on Aging (SAPGA), Denver Better Business Bureau (BBB), the Colorado Housing and Finance Authority (CHFA), the Colorado Department of Public Health and Environment (CDPHE), the Federal Emergency Management Association (FEMA), and numerous professional associations and regulatory organizations.

4 Please identify how many rules you have promulgated in the past year (FY 2020-21). 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: For FY 2020-21 COPRRR had 110 filings, and eight CBA requests. The eight CBA requests included four related to the Public Utilities Commission. Topics ranged from motor vehicle rules, utility notices to customers' low income gas and electric programs, towing and fixed rail. Other issues where requests were made include subdivisions and timeshares, physical therapy and plumbing.

5 What are the major cost drivers impacting the Department? Is there a difference between the price inflation the Department is experiencing compared to the general CPI? Please describe any specific cost escalations, as well as cost impacts driven by COVID-19 and supply chain interruptions.

Response: The Department's budget tends to remain consistent. Budget management routinely involves looking internally for solutions rather than requesting budget increases whenever there is justification. However, external factors including population growth, increased regulatory scope, inflation, enforcement, caseload and shifts in economic conditions all have the potential to affect Department finances as described below:

Population Growth. Population growth does not automatically result in appropriations increases for DORA. While regulating approximately one million individuals and businesses relative to the entire population of approximately six million, it is certainly true that population growth affects workload. However, adding for instance 60,000 citizens (1% population growth) could only be expected to generate approximately 10,000 new licensees, across several major licensing Divisions. New appropriations are unlikely to be requested to cover this marginal increase, and fee revenue will be unchanged as fees are adjusted to generate sufficient revenue to cover appropriations.

Increased Regulatory Scope. The 2021 Legislative Session is a great example of how legislative decisions on regulatory scope can drive significant appropriations changes to the Department. Twenty-four separate special bills passed during 2021 appropriating over $5 million and approximately 30 FTE. Many of these bills were new requirements to existing programs, while others were new stand-alone programs. While these increases are significant on a one-time basis, generally speaking, most legislative sessions do not result in this level of resources.

Inflationary Increases. Economic inflationary increases do not tend to influence appropriations to DORA; however, salary increases for state employees are a primary driver of small, steady budget increases, as is the cost of centrally provided state services for instance the Office of Innovation and Technology.

The Cost of Enforcement. Disciplinary actions taken against licensees commonly result in the need for legal review, and potentially, litigation and other associated legal costs. As a result, legal services expenditures and the rate charged by the Department of Law have the potential to result in appropriations changes at DORA. In fact, DORA is the leading consumer statewide of central legal services provided by the Department of Law, comprising roughly 35% of all statewide legal hours annually. Even presuming the exact same hours spent, changes in the legal rate can result in hundreds of thousand dollars in appropriations change from year-to-year.

Caseload. While most Divisions are affected by various factors as discussed above, the Colorado Civil Rights Division is affected by caseload, specifically including the number of employments, housing, and public accommodation discrimination claims that are filed. In recent years this number has changed from roughly 800 per year to over 2,000 per year. Potentially this could impact the budget; however, the General Assembly increased General Fund appropriations in the Divisions via the FY 2021-22 Long Bill process for this purpose.

Shifts in Economic Conditions. Occasionally, shifts in economic conditions can affect the nature of regulation and/or the number of licensees (with corresponding effects on nominal fee levels). During the housing crisis of the mid-2000s, the number of new real estate broker applications dropped precipitously, from 6,000-7,000 annually to 2,000-3,000 annually, due to the churn in this profession which can be strongly linked to economic conditions. However, the broader renewal population (approximately 50,000) remained strong during this time, and while fee levels were affected, appropriations did not require change. Any shift in economic conditions has the potential to affect the number of regulated professionals and the conduct within regulated industries.

Certainly, economic impacts of COVID-19 have adverse impacts on regulated professions and the conduct within regulated industries. The Department continually monitors its use of resources (including enforcement and legal services) as well as potential revenue impacts associated with changes in the licensed population. The department retains the ability to ensure continuation of budget requests and fee planning activities and that they are informed by economic realities. However, at present the Department does not believe that any specific cost impacts or escalations to its total budget have been driven by either COVID-19 or supply chain issues.

6 How is the Department's caseload changing and how does it impact the Department's budget? Are there specific population changes, demographic changes, or service needs (e.g., aging population) that are different from general population growth?

Response: As regulators, we must remain agile and responsive to the emerging trends and changes in the marketplace; however as is the case in any year, the Colorado Civil Rights Division is the single division which can be budgetarily affected by "caseload" in the narrowest sense. This is because the number of employment, housing, and public accommodation discrimination claims that are filed correspond with the federal funding via a workshare agreement and the General Fund allocation.

In recent years, this number has changed from roughly 800 per year to almost 2,000 per year. The potential for this to impact the budget continues to exist; however, the General Assembly increased General Fund appropriations in the Divisions via the Long Bill process for this purpose. Additionally, it should also be noted that most Divisions in the Department are affected by small upward fluctuations in licensee volume, required examinations, investigations, and enforcement proceedings requiring the use of legal services. Typically, these fluctuations do not drive required increases in the Department's budget, and the Department leverages existing resources to implement programs. Beyond that, there are no specific population/demographic changes that differ from the general population.

7 In some cases, the roles and duties of existing FTE may have changed over time. Please list any positions that have been created in the Department since FY 2019-20 that were <u>not</u> the result of legislation or a decision item.

Response: The number of created positions and the change in FTE appropriations over the same period continue to be equivalent each year. As of November 30, there were 16 completed actions creating positions in the time since July 1, 2020 -- and 19 are in process since July 1, 2021. Over the same period, FTE appropriations increased by 34.7. In administering appropriations across 11 Divisions, many programs, and approximately 635 FTE, the Department routinely creates new positions in implementing statute and managing workload. The creation of a position is an administrative personnel transaction for business practices, as roles often change, new needs materialize, or duties shift, and these issues are not the same as creating new positions in response to additional resources provided by the legislature via special bills or decision items.

For all FY 2022-23 budget requests that include an increase in FTE:

a. Specify whether existing staff will be trained to assume these roles or these duties, and if not, why;
b. Specify why additional FTE are necessary; and
c. Describe the evaluation process you used to determine the number of FTE requested.

Response: As part of a continuing statewide effort to make JBC aware of legislative proposals that may have a fiscal impact this year, the Department submitted change requests to JBC for legislative items that were expected to have a fiscal impact; however, resources will actually be determined and provided via the fiscal note process.

Additionally, one request for 5.0 FTE (R-04, Increase EDO Resources) was submitted as a budget decision item in order to right-size the Executive Director's Office to address the expanding size and statutory role of the Department. As set forth in this request, FTE are necessary both due to administrative responsibilities associated with years of considerable FTE growth in the Department due to special legislation, as well as for more transformational efforts across the spectrum of businesses, processes, policy and legislative responsiveness, and important new realities with respect to labor management. Further, a request for 2.0 FTE (R-03 Align State Surprise Billing Law with Federal No Surprises Act) was also submitted.

For these requests, and depending on the outcome of the requests, existing staff may certainly assist in enabling completion of workload set forth in the request narratives. The evaluation process for budget requests includes research and data analysis, review, and drafting by division and department personnel, OSPB review, consideration, and approval of a draft request.

8 Please describe any ongoing or newly identified programmatic impacts for the Department resulting from cash fund transfers as part of the FY 2019-20 and FY 2020-21 balancing process.

Response: No programmatic impacts resulting from cash fund transfers have occurred as a part of the balancing process in FY 19-20 and FY 20-21. Cash fund transfers targeted fund balances that did not have an impact on program expenditures.

9 Please describe the Department's FY 2020-21 vacancy savings, as well as projected vacancy savings for FY 2021-22 and FY 2022-23. How has the Department utilized vacancy savings in recent years?

Response: Vacancy savings occurs based on staff turnoverin any organization - and with respect to the attrition that occurs in the workflow of replacing vacated positions with new employees, vacancy savings often fills the gap between prior and new salaries, necessary retirement payouts, temporary or contract labor or assistance with workload, and the incremental balancing that often occurs when higher-wage individuals are replaced with less experienced workers, less experienced workers are replaced with urgently needed levels of greater experience, job duties that may expand or contract, and any other issue that affects state employee salaries and pay ranges.

At the Department, being discreetly organized with dedicated personal services lines, 'vacancy savings' can best be understood as the amount of appropriations used or reverted in a given year. Philosophically, public entities should not spend resources just because they exist, and as such, 'vacancy savings' or reversions of cash fund spending authority are not viewed as inherently negative in and of themselves, nor are resource decisions unduly influenced by a need to either minimize or maximize such reversions.

With respect to how much vacancy savings is likely to occur, the answer varies based upon the specific entity involved -- some divisions have more employee churn than others, while other divisions have sharply increased FTE appropriations that will necessarily take time to bring to full utilization. Generally speaking, personal services line items in the Department can have reversions between 0% and 10% in a given fiscal year, and this would be expected to continue during FY 21-22, although this is not always consistent by Division from year-to-year.

10 State revenues are projected to exceed the TABOR limit in each of the next two fiscal years. Thus, increases in cash fund revenues that are subject to TABOR will require an equivalent amount of the General Fund for taxpayer refunds. Please:

a. List each source of non-tax revenue (e.g., fees, fines, parking revenue, etc.) collected by your department that is subject to TABOR and that exceeds $100,000 annually. Describe the nature of the revenue, what drives the amount collected each year, and the associated fund where these revenues are deposited.
b. For each source, list actual revenues collected in FY 2020-21, and projected revenue collections for FY 2021-22 and FY 2022-23.
c. List each decision item that your department has submitted that, if approved, would increase revenues subject to TABOR collected in FY 2022-23.

Response: The table below shows each source of non-tax revenue collected by the Department that is subject to TABOR, including actual FY 2020-21 and projected FY 2021-22 and FY 2022-23.

Non-Tax Revenues Collected by Department That Are Subject to TABOR (excluding sources that amount to less than $100,000/year)				
		Revenues Collected Annually		
Revenue Source	**Associated Cash Fund**	**FY 2020-21 Actual**	**FY 2021-22 Projection**	**FY 2022-23 Projection**
Business Registrations	Real Estate, Banking, Insurance	3,209,138	3,209,138	3,257,275
Certification and Inspection Fees	DPO, Banking	6,816,234	5,058,989	5,134,874
Conservation Easements	Conservation	221,750	150,000	675,000
Credit Card Fees - Nonexempt	Various	-1,835,952	-1,835,952	-1,863,491
Hazardous Materials and Waste	Hazardous Materials	92,075	0	0

Permits				
Miscellaneous Revenues - Operating Nonexempt	Various	268,294	140,080	142,181
Nuclear Material Permits and Fees	Nuclear Materials	15,800	0	0
Other Business Licenses and Permits	DPO, Securities, Banking, Consumer Outreach, Moving Outreach	1,125,618	1,125,618	1,142,503
Other Charges for Services	Telephone Users with Disabilities, Securities, High Cost, Banking, Financial Services, 911	11,272,583	11,209,846	11,377,994
Other Excise Tax	DPO	306,011	373,924	306,011
Other Fines	Real Estate	464,386	353,513	358,815
Professional and Occupational Licenses	DPO, Conservation, Real Estate, Securities, Insurance, PDMP	47,998,173	48,516,764	49,244,516
Public Utility Commission Annual Identification Stamps	Motor Carrier	331,475	331,475	336,447
Public Utility Commission Fixed Utility Fees	Fixed Utility, Telecommunications Fixed Utility	14,300,268	19,550,714	17,595,643
Public Utility Commission Motor Carrier Fees	Motor Carrier	2,372,504	1,972,221	2,001,804
TOTALS		**$86,958,357**	**$90,156,331**	**$89,709,572**

None of the Department's decision items are expected to increase TABOR revenue. Request R-04 includes an offset, and the requests for the Division of Insurance (DOI) will be supported via increased diversion of premium tax to the DOI Cash Fund as is normally the case for any changed spending authority from this fund.

11 Please describe one-time federal stimulus funds (such as the CARES Act, ARPA, and the Federal Infrastructure Investment and Jobs Act) that the Department has received or expects to receive.

Response: The Department has not received one-time federal funds from stimulus bills, and does not presently expect to receive such funding. We will continue to track current federal stimulus legislation to understand any future impacts on the Department.