

DEPARTMENT OF STATE
FY 2022-23 JOINT BUDGET COMMITTEE HEARING AGENDA

Tuesday, December 14, 2021
9:30 am – 10:00 am

9:30-9:35 INTRODUCTIONS AND OPENING COMMENTS

Presenter: Jena Griswold, Secretary of State

9:35-9:40 COMMON QUESTIONS

Main Presenters:

- Jena Griswold, Secretary of State
- Chris Beall, Deputy Secretary of State
- Brad Lang, Controller & Budget Director

Supporting Presenters:

- Kathryn Mikeworth, Administration Division Director
- Trevor Timmons, Chief Information Officer
- Mike Hardin, Business & Licensing Division Director
- Judd Choate, Elections Division Director
- Hilary Rudy, Elections Division Deputy Director
- Caleb Thornton, Legal, Policy, & Rulemaking Manager, Elections Division

Topics:

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

9:40-9:45 FY 2022-23 DEPARTMENT OF STATE BUDGET

Main Presenters:

- Jena Griswold, Secretary of State
- Chris Beall, Deputy Secretary of State
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- Mike Hardin, Business & Licensing Division Director
- Judd Choate, Elections Division Director
- Hilary Rudy, Elections Division Deputy Director
- Caleb Thornton, Legal, Policy, & Rulemaking Manager, Elections Division

Topics:

Fee Relief and the DOS Cash Fund: Page 2, Question 3 in the packet

Annualization of HB 21-1071: Page 3, Question 4 in the packet
Local Election Reimbursement: Pages 3-4, Question 5 in the packet

9:45-10:00 BUDGET REQUESTS

Main Presenters:

- Jena Griswold, Secretary of State
- Chris Beall, Deputy Secretary of State
- Brad Lang, Controller & Budget Director

Supporting Presenters:

- Judd Choate, Elections Division Director
- Hilary Rudy, Elections Division Deputy Director
- Caleb Thornton, Legal, Policy, & Rulemaking Manager, Elections Division
- Trevor Timmons, Chief Information Officer

Topics:

- R-01 Security Services: Pages 4-7, Questions 6-9 in the packet
- R-03 Money-in-Politics System: Pages 7-9, Questions 10-13 in the packet

DEPARTMENT OF STATE
FY 2022-23 JOINT BUDGET COMMITTEE HEARING AGENDA

Tuesday, December 14, 2021

9:30 am – 10:00 am

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.

In 2020, the Department transitioned all staff to remote work arrangements in response to the COVID-19 pandemic. In 2021, the Department adopted a policy where vaccinated staff can choose to work from the office. At this time, almost all staff are working primarily at their remote work location, with approximately ten to fifteen staff members coming to the worksite on a regular basis to complete tasks in-person. Staff will return to the office at a future date, utilizing a hybrid work model, where they are able to split time between remote work and in-person work at the office.

The utilization of flexible work arrangements improves efficiencies for the Department, allowing staff to complete some focused and independent work at home, while prioritizing collaboration and group activities in the office space. Staff are also able to prioritize personal appointments and other activities while taking less time off work because of the reduced commute time. The Department currently has its office space under lease and because of a hybrid work model, will have sufficient space for its needs at this time. The Department utilized space planning options to improve efficiency of the space, which enables physical distancing in areas of high traffic or collaborative space.

The Department currently has three permanently assigned State Fleet Vehicles. While employees continue to work remotely, the Department's leased vehicles are utilized on a regular basis to visit counties, conduct training, and for other business reasons. As travel becomes safer, we anticipate that activities and outreach across the state will revert to pre-pandemic levels.

- 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 received supplemental Help America Vote Act (HAVA) funding in the Coronavirus Aid, Relief, and Economic Security (CARES) Act that had to be used during the 2020 federal election cycle (FY 2019-20 and FY 2020-21). Using the supplemental funding provided by the CARES Act, the Department expended approximately \$7.4 million (\$6.2 million from the grant and \$1.2 million from the required state matching funds) towards pandemic-related expenses during the 2020 federal election cycle

(FY 2019-20 and FY 2020-21). The grant created by the CARES Act that provided these supplemental HAVA funds had to be related to the 2020 election cycle and is now closed. The Department has not received any additional funding from other recent federal legislation.

The Department used the supplemental HAVA money to provide critical support at the state and county level to facilitate the safe and accurate conduct of the State Primary and General Election in calendar year 2020.¹ For example, the Department provided sub-grants to counties to support supplemental pay for election judges, election safety improvements (e.g., purchasing personal protective equipment (PPE), rent for larger Voter Service and Polling Centers (VSPCs), VSPC cleaning, etc.), and establishment of additional secure ballot drop boxes. In addition, the Department purchased software to improve the ability of both the Department and counties to securely conduct remote training for elections workers and conducted a public awareness initiative to inform voters on how to safely cast their ballots during the pandemic. The Department also awarded a total of 166 CARES Act grants to counties. The Department funded almost every county request received, with exception of six requests where a county failed to return the required signed grant agreement by the December 31st, 2020 deadline.

These expenditures enabled the Department and Colorado's counties to conduct a successful election in the midst of a global pandemic. In fact, Colorado's 2020 General Election turnout among active registered voters was 86.5%, the highest percentage in state history.

FY 2022-23 DEPARTMENT OF STATE BUDGET

FEE RELIEF AND THE DOS CASH FUND

- 3 *[Sen. Moreno]* The Governor has proposed fee reductions as part of his budget proposal. How would this proposal for various types of fee relief affect revenues to the DOS Cash Fund and the budget requests that would be supported by that fund?

In coordination with Governor Polis, the Department plans to reduce five fees to \$1.00 during FY 2022-23. The five fees were selected to have the maximum impact for small businesses throughout the state. The fees impacted would be: new business filings, annual business reports (renewals), statements of trade names, renewals of trade names, and statements of changes to existing business information. The Governor's Office envisions this fee waiver as a one-time transfer of approximately \$16.7 million from the General Fund to the Department of the State Cash Fund (DOS Cash Fund) to cover the forgone revenue as a result of the fee reduction. The Department plans for the fee reduction to be effective for approximately the fiscal year so that all businesses renewing their registration and/or trade names have an opportunity to benefit equally from the reductions.

¹ The project period for the grant began on March 28, 2020, after the Presidential Primary Election.

ANNUALIZATION OF HB 21-1071

- 4 [Sen. Hansen] Can we have some clarity on the annualization of H.B. 21-1071? Since we pay for election items out of cash funds, costs associated with ranked choice voting should also be covered by cash funds. This was a point of discussion during debate of this bill last year. Can the Department discuss why they are requesting General Fund for the ongoing costs of this bill?

H.B. 21-1071, Ranked Choice Voting in Nonpartisan Elections, as enacted explicitly provided for a General Fund appropriation to the Department of State for the cost of implementing the bill. Specifically, §24-21-104.5(3) C.R.S.² states:

“The general assembly shall annually appropriate money from the general fund to the department of state as necessary to pay for the costs of implementing the provisions of House Bill 21-1071, enacted in 2021.”

As detailed in the Legislative Council final fiscal note for H.B. 21-1071, the \$609,000 annualization in the Department’s FY 2022-23 budget request covers the estimated cost of required software development on the risk-limiting audit system and the secure electronic ballot delivery system used by military, overseas, emergency, and disabled voters.³ The appropriation is in the Information Technology (IT) Division’s Personal Services line item which is used to pay contractor software development costs.

LOCAL ELECTION REIMBURSEMENT

- 5 [Sen. Moreno] The County Clerks Association has indicated that local election reimbursements are not sufficient contacted. Can the Department Provide information concerning the adequacy of this line item appropriation?

For November elections, the Department reimburses counties according to §1-5-505.5 C.R.S. In most instances in which there is a state ballot issue or state ballot question on the ballot of a particular county, the reimbursement is calculated using the statutory formula. Specifically, counties with 10,000 or fewer active registered electors receive 90 cents per active registered elector and counties with greater than 10,000 active registered voters receive 80 cents per active registered elector. The exception is that for an odd-year election in which the statewide ballot question or issue is the only item on a particular county’s ballot, the Department reimburses the county for all actual direct costs attributable to conducting the election. Funding for the local election reimbursement payments to counties for November elections is appropriated from the DOS Cash Fund in accordance with subpart 4 of the statute.

In practice, the Department makes a local election reimbursement payment to counties in most years. Including the current fiscal year (FY 2021-22), the Department will have made local election reimbursements to counties in nine of the ten most recent fiscal years. The Department anticipates that statewide ballot questions will continue to appear on November ballots for the foreseeable future, thus triggering the statutory reimbursement to counties. The Department anticipates that the reimbursements to counties for the 2022 General Election will total approximately \$3.2 million in FY 2022-23.

² Effective July 1, 2022

³ Legislative Council. Final Fiscal Note: H.B. 21-1071.
https://leg.colorado.gov/sites/default/files/documents/2021A/bills/fn/2021a_hb1071_f1.pdf

The reimbursement rate was last adjusted in the 2012 legislative session. The reimbursement rate is intended to defray costs at the county level and does not completely offset the costs of administering an election at the county level.

The Department does receive information on election costs from the counties. By statute, only certain costs shall be reimbursed to the counties. Costs that are directly attributable to conducting the election are considered reimbursable (e.g., ballot printing costs, VSPC rental costs). However, the usual costs of maintaining the clerk's office (e.g., overhead, permanent employee costs, annualized maintenance or licensing costs) are not.

So far as those election costs reported by the counties are concerned, the Department's statutory reimbursements to counties accounted for 25.39% of reimbursable costs for the 2020 General Election, and 65.44% of reimbursable costs for the 2019 Coordinated Election. However, the Department does not have all the information necessary to answer holistically on the adequacy of the reimbursement because some key information in determining reimbursement is held by the counties. Notably, counties bill coordinating entities for their participation in elections, but this information is not reported to the Department. As such, the Department has limited visibility into the number of coordinating entities and the formulas used to determine the reimbursement between the counties and those coordinating entities.

BUDGET REQUESTS

R-01 SECURITY SERVICES

- 6 *[Sen. Hansen]* Would it make sense to add resources or to combine existing efforts on threat monitoring, like with CIAC rather than contracting with a third-party vendor?

The Department seeks to bolster its internal threat monitoring to better assess threats that are specific to our office, which may threaten or hamper the effective administration of elections. With the saturation of content across social media, particularly regarding Colorado's elections, the Department believes that this environment requires a specific and concerted effort to sift through a broad and evolving range of search terms and topics to adequately analyze threats that may exist to Colorado elections. While Department staff understand that threat monitoring does take place elsewhere in state government, the information flow is currently one-directional, with the Department sending content that our processes capture up to other agencies. The one-directional flow of information poses additional concerns since the Department is best positioned to analyze potential threats to critical election infrastructure. The Department views this external vendor as an additional tool to sufficiently monitor and respond to threats to elections. With that in mind, the Department is willing and interested in participating in any conversations regarding an all-of-government approach in tracking and responding to threats – but the Department strongly holds that immediate resources are necessary to address the immediate need to monitor threats to our office and election infrastructure.

- 7 *[Sen. Hansen]* I am worried that it appears that Department is already spending money and plans to subsequently request a mid-year adjustment to cover these costs. This is not an appropriate process for seeking additional resources. Can the Department clarify that it has already spent money for this purpose, and whether the Department plans to submit a related supplemental request?

As detailed in our budget request, there have been ongoing, frequent threats directed at election infrastructure and the life and safety of Department leadership. The Department, after discussions with law enforcement, the Governor's Office, and the JBC, determined it was necessary to act immediately to mitigate the risk. Specifically, the Department has engaged a vendor to track threats that are expressed towards election infrastructure and Department personnel on major social media platform. In addition, the Department has hired a private security firm to provide security for a limited number of public events when State Patrol and other public law enforcement resources were either unavailable or could not commit to being available. All of this work has been completed within the Department's existing legal spending authority in the current fiscal year.

- 8 *[Rep. Ransom]* If someone is going to be a true danger, they may not be posting on social media. I'm worried that social media will become too much of a focus, neglecting other potential threats. I'm also worried about providing one office with resources and special treatment when this issue is affecting all elected officials and judges. What is the plan to address all threats, and how would the Department respond to the issue of special treatment?

The Department's experience has shown that monitoring threats provides valuable insight into the organizing efforts of malicious actors who say they intend to harm the state's democratic systems and leadership. Election infrastructure was designated the Federal Government as part of the nation's critical infrastructure in January 2017. As such, the protection of election infrastructure is foundational to the mission of the Secretary of State's office. The Department requires a concerted approach to monitoring threats against our elections system and people. Because the Department is just one of the 20 principal departments of the state government, it has crafted this R1 decision item with the core mission of safeguarding elections and election administration in mind. The Department is of course willing and interested in participating in any conversations regarding an all-of-government approach in tracking and responding to threats.

Nevertheless, it is also true that certainly not all threats will be expressed online. That is why the Department also seeks to engage private security services as needed for key public events in which Department personnel are present.

And, while it is true that many elected officials and judges receive threats, there has been a significantly increased level of alert and threats directed toward election officials as evidenced by the concurrent creation of a US Department of Justice (DOJ) task force into threats against election workers and US Department of Homeland Security (DHS) public safety advisories on extremist activity that pose a threat to election officials and government institutions.⁴ The DOJ has confirmed at least two active investigations of threats against the Secretary, and the national reporting on this topic makes clear that

⁴ Monaco, Lisa O. (June 25, 2021). Guidance Regarding Threats Against Election Workers. US Department of Justice. <https://www.justice.gov/dag/page/file/1406286/download>

this is an emerging and urgent concern.⁵ The Department believes our elections, the serving Secretary of State, and Department itself will be at risk without securing more resources to track for potential threats against our office and our election systems.

- 9 [Sen. Moreno] The Department has indicated that the State Patrol has not been able to provide security in part due to lack of resources. How does this request relate to the Department of Public Safety's R2 (Capitol Complex Security Plus-Up) request?

The Department understands that the Department of Public Safety's (CDPS) decision item R2 relating to Capitol Complex security will not address the need for security protection that the Department requests here. Among other things, the CDPS R2 decision item is aimed at bolstering Colorado State Patrol (CSP) surge capacity for dignitaries, which the Department understands to include out-of-state government official, but not the Colorado Secretary of State. Further, it would not add FTE specifically for the purpose of creating dedicated protection detail for any person that is not specifically identified in statute, which excludes the Secretary of State.

The Department believes the CDPS R2 will not provide the security resources needed to ensure the safety of Department leadership. CDPS has informed CDOS that its availability to provide protection to Department leadership is contingent on CDPS's determination of a serious and imminent threat of physical violence to Department personnel as well as available capacity at CSP to provide the officers needed. This threshold of imminence and particularity as a triggering requirement for the assignment of protection resources places the Department in a position of being uncertain when services will be rendered and for how long.

The Department understands that CDPS' R2 also expands resources on the Critical Response Team within Colorado State Patrol to look into threats against elected officials. However, the Department's view is that threat monitoring that happens within CDPS and the CIAC is not adequate to accomplish the Department of State's charter of safeguarding Colorado's election administration nor does it result in an information flow back to the Department. In fact, so far as the Department is aware, threat information has been exclusively provided to CIAC from the Department itself, and the Department has on only very rare occasions, and not once since the 2020 election, received any alerts from CIAC on information that CIAC has generated independently or that the Department did not gather itself from its own monitoring.

Further, in what CDPS describes as a "saturation environment" where there are so many threats that no one threat can be investigated adequately, which CIAC leaders have indicated makes it very difficult to reliably gather targeted analysis of threats aimed at the Department and its leadership, the Department seeks a monitoring function that is more finely tuned and is particularized to the occurrence of threats against the Secretary of State as well as a group of Department personnel who are receiving threats due to their performance of their official duties to administer our elections.

⁵ So, Linda & Jason Szep (September 8, 2021). U.S. election workers get little help from law enforcement as terror threats mount. Reuters. <https://www.reuters.com/investigates/special-report/usa-election-threats-law-enforcement/>.

Hamburger, Tom, et al (August 11, 2021). 'We are in harm's way': Election officials fear for their personal safety amid torrent of false claims about voting. Washington Post. https://www.washingtonpost.com/politics/electionofficials-threats/2021/08/11/bb2cf002-f9ed-11eb-9c0e-97e29906a970_story.html.

So, Linda (June 11, 2021). Trump-inspired death threats are terrorizing election workers. Reuters. <https://www.reuters.com/investigates/special-report/usa-trump-georgia-threats/>.

Lastly, we understand the threat monitoring that goes on elsewhere in state government to have a particular focus on responding to imminent threats of physical violence. While this is of critical importance, the Department also feels obligated to monitor for threats to our elections and elections infrastructure. As such, the Department seeks resources to monitor a broader purview of threats that may not rise to an actionable threat of imminent physical violence, but nonetheless are critical threats to identify and assess to safeguard our democracy. As such, we view the CDPS and CDOS decision items as complementary, not duplicative.

R-03 MONEY-IN-POLITICS SYSTEM

- 10 *[Sen. Moreno]* How were TRACER and Lobby initially funded when they were developed? Was it General Fund?

The Lobby system (released in 2002) and TRACER (released in 2010) were funded from the DOS Cash Fund. However, the Department was in a completely different financial situation and operating environment at the time those systems were developed. In both FY 2001-02 and FY 2009-10, the DOS Cash Fund was among the ten cash funds with the largest excess reserves in the state.⁶ As a result, the additional expenditures to develop these systems could be borne by the DOS Cash Fund in an effort to comply with the statutory maximum reserve.

- 11 *[Sen. Rankin]* Why is the Department requesting General Fund?

Many small businesses have struggled and continue to struggle during the pandemic, and it is unfair to put the cost of this system on their backs. Yet, the existing Lobby and TRACER systems require replacement as they rely on antiquated architecture and coding language, are cumbersome to improve and modify, and are more difficult to use than platforms on more modern system architecture. In particular, both systems were designed and deployed prior to the “mobile device revolution” and, as such, did not anticipate that the majority of users would access them from smartphones, tablets, and other mobile devices.

Now, it is tempting to suggest that lobbyist fees and campaign finance penalties should be used to cover the costs of the new system, but this approach has its own challenges. To pay for the Combined Money in Politics Disclosure System by increasing annual registration fees would require a 4,900 percent increase on Lobbyist fees. Campaign Finance penalties are set in the constitution or statute and, as a result are not easily changed. Furthermore, they are an inconsistent and unreliable revenue stream as they are dependent upon the number, type, and duration of violations, which can be exceedingly difficult to predict. Therefore, the Department would be forced to rely on the approximately 750 registered lobbyists to cover the cost of the new system. Based on the assumptions that the system will be implemented in 12-18 months and cost \$1.5 million in implementation costs, this would require increasing the annual Lobbyist registration fee from \$40 per year per lobbyist to \$2,000 per year per lobbyist, a 4,900 percent increase.

⁶ Office of the State Auditor. Cash Funds Uncommitted Reserves Report for the Fiscal Year Ended June 30, 2002. https://leg.colorado.gov/sites/default/files/documents/audits/1486_cash_funds_fin_fy03.pdf (see Table 1 on page 4).

Office of the State Auditor. Cash Funds Uncommitted Reserves Report, Statewide Audit: Financial Audit November 2010. <https://leg.colorado.gov/sites/default/files/documents/audits/2050-10cashfundsuncommittedreservesfinswnov2010.pdf> (see Table 1 on page 8). What is now the DOS Cash Fund is referred to as the Secretary of State Fees Fund in both of the reports cited.

Consequently, the Department seeks General Fund support for the new Combined Money in Politics System. There is a clear public interest in ensuring and increasing transparency into how money affects politics and government in the state. Therefore, it is reasonable that the General Fund should bear the cost of the new system rather than imposing these costs on small business owners.

- 12 *[Sen. Moreno]* What are the goals of this proposed combined system? What are the proposed outcomes of linking the two systems?

The overall goal of this combined system is to foster greater functionality and usability for both lobby and campaign finance disclosures, which will be facilitated through new system architecture and enhanced user interfaces. The current systems are lacking in modern functionality, particularly for those working on mobile devices and tablets. The Department believes that a system that is combined, easier to navigate, and easier to extract data from will yield better transparency for all Coloradans seeking to explore financial disclosures in electoral politics and in lobbying. Connecting these systems into a single combined platform will allow users to better examine the spending on both elections and lobbying at the same time. Currently, these disclosures live in separate systems and take a great deal of effort to explore the connection between spending on elections and lobbying activities. The Department envisions this combined system will enable users to, for example, track the spending of a given organization on elections and then examine the funds that organization deploys to lobby legislators on its policy priorities all in one modern platform. Lastly, the Department also anticipates efficiencies from being able to administer and manage one platform as opposed to two separate platforms created with different technology and structures. As these systems age, it will become more difficult to find personnel familiar with the older technologies to update them as needed to comply with changes to the system or new disclosure requirements.

- 13 *[Sen. Rankin]* I would like the Department outline a few processes and systems:

A) The audits that occurred around elections

Following the 2021 coordinated election, as with every statewide election since the 2017 coordinated election, a bipartisan risk-limiting audit (RLA) was completed in every county that used a voting system to scan and tabulate ballots. These bi-partisan post-election audits are designed to ensure the accuracy of the election and the audit is conducted by bipartisan election judges before election results are officially certified.

After election day the Department of State selects at least one statewide race to audit and at least one race in each county to audit. A variety of contests are selected to ensure the audit reaches a sufficient number of races and ballots, with input from Republican and Democratic county clerks. The Department of State then convenes a public meeting to set a random seed (series of 20 numbers determined by dice roll), which ultimately determines the specific ballots that each county must audit. Department of State career staff then identifies the statewide and county target contests in the RLA system, inputs the random 20-digit seed, and launches the audit. This system is open and available for anyone's review.

The audit is conducted by a bipartisan team of election judges in each county, known as the audit board. First, the county audit board downloads the list of specific ballots randomly selected for the audit in their county. The audit board then locates and retrieves those specific ballots from their sealed storage containers. In performing this task, the audit board must verify that the randomly selected ballots' chain of custody is correctly documented and intact. Then, the audit board reviews each audited ballot and enters the votes they observe into the RLA system. After the audit board finishes auditing

all the selected ballots, the judges record of the voters' choices from the paper ballot is compared to the tabulation as reflected in the county's cast vote record. If there are discrepancies in this process, the audit board will be required to examine additional randomly selected ballots in further audit rounds until the risk limit is satisfied for all contests. If the risk limit is never satisfied, a full hand count would be conducted. This has never occurred and every audit has confirmed the outcome of the election since Colorado adopted risk limiting audits in 2017.

B) Voting machine certifications

Colorado elections are among the most secure in the nation, and our certification process for our voting systems is a significant part of that security. Voting system certification is a five-phase process that involves Department staff, the voting system vendor, and a voting system test lab accredited by the federal Election Assistance Commission. The process includes an application, review of technical data package by Department staff, drafting of a test plan, testing at a federally accredited lab, and test report and compliance review by Department civil servants. Within 30 days after certification, all documentation not determined to be proprietary or security related is posted online. This process is followed for every certification application submitted by a voting system provider, including system upgrades.

C) The actions the Department has taken to increase transparency and make these processes visible to the public

The Department is continually looking for ways to increase transparency and help the public understand elections processes, particularly those around voting systems. For example, Department staff created and posted on the Department's website a one-page document outlining the voting systems certification process⁷ and a document outlining the trusted build procedures.⁸ Staff also continue to enhance the RLA reports for readability by the public.

Finally, when Department staff publish the final report for the 2021 audit, the staff work to write the report in non-technical terms so that the reader can understand the findings regardless of their technical background.

D) Recommendations the Department has in improving any of these systems and processes or the access to related information for the public

Department staff continually evaluate processes and the information available on the website to try to improve processes, and improve the readability of the website and process documentation. The Department seeks feedback from the counties, community advocates, and the general public in evaluating processes and documentation. Department staff work closely with the accessibility community to get feedback on the usability of voting systems and other systems developed for accessible use. Department staff also respond to questions and concerns from the public to address questions, concerns, and misunderstanding of the process or law.

⁷ Colorado Department of State. Voting System Certification Roadmap.
<https://www.coloradosos.gov/pubs/elections/VotingSystems/files/certificationRoadmap.pdf>

⁸ Colorado Department of State. Voting Systems Trusted Build Procedures.
<https://www.coloradosos.gov/pubs/elections/VotingSystems/files/trustedBuildProcedures.pdf>

DEPARTMENT OF STATE

FY 2022-23 JOINT BUDGET COMMITTEE HEARING

WRITTEN RESPONSES ONLY

R-02 HARDWARE AND SOFTWARE MAINTENANCE COST INCREASES

[Ransom] R2: Is the Department requesting funding every other year? Would it be complicated to track an appropriation that changes every other year?

Yes, the Department of State's (Department) hardware and software maintenance costs vary on a two-year election cycle due to restrictions on its use of federal grant funds exclusively for election-related expenses in years in which there are elections for candidates for federal office. Therefore, the Department requests an additional \$171,075 in spending authority in FY 2022-23 and all future odd-fiscal years, and an additional \$318,075 in FY 2023-24 and all future even-fiscal years. The Department proposes that this change in amounts between odd- and even-fiscal years would be handled as a base adjustment in its annual budget request.

The reason for this every other fiscal year funding change is driven by the requirements of our federal funding. The Department is able to use federal funds from its Help America Vote Act (HAVA) Election Security grant to cover some IT costs in fiscal years in which there are federal contests on the statewide ballot, as occurs in all odd-fiscal years.¹ These IT costs are ongoing expenses for essential software and services. However, the federal funds cannot be used to cover these when there are no federal contests on the statewide ballot, as occurs in most even-fiscal years. Therefore, the Department requires additional state spending authority in even-fiscal years to meet these ongoing costs.

For many years, the Department's Election Divisions Initiative and Referendum appropriation had a similar every other year change in amount. For example, between FY 2010-11 and FY 2016-17, the Initiative and Referendum appropriation alternated between \$150,000 and \$250,000 each year with the adjustments being recorded as a base adjustment in the annual budget request. From the Department's perspective, this change was easy and straightforward to track and manage each year.

¹ Odd-fiscal years cover even-calendar year general elections. For example, the November 2022 General Election will take place in FY 2022-23. Even-fiscal years cover primary and coordinated elections.

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.**

- a. Not Implemented

H.B. 21-1071, Ranked Choice Voting in Nonpartisan Elections – this legislation requires the Department to enhance a number of technological systems to facilitate instant runoff voting elections for nonpartisan municipal races starting in 2023. While passed during the 2021 legislative session, this legislation is not implemented as it has an effective date of July 1, 2022 and has a fiscal impact starting in FY 2022-23. The legislation also includes number of implementation deadlines in the following years.

- b. Partially Implemented

The Department is currently engaged in the implementation of four pieces of legislation with a fiscal impact as outlined below.

S.B. 21-250, the Colorado Votes Act – The legislation required enhancement of the state’s online voter registration application. The Department is on track to deliver the required changes to online voter registration by the March 1st, 2022 deadline included in the legislation. The Department is also currently developing the statewide voter list to add information to registration records designating if they were received from registration processes with the Department of Revenue. This development is anticipated to be completed in March 2022. The Department is also developing the statewide voter registration database to allow for data to designate which voters have been automatically registered to vote. While this development carried no specific deadline in the legislation, the Department is on track to have this completed in the spring. The Department is also on track to implement the changes required to the ballot access database to allow for some counties to report precinct-level data in Presidential Primary elections starting in 2024.

H.B. 21-1011, Ballot Access for Colorado Voters – The legislation requires the Department to facilitate the inclusion of foreign languages in the Ballot Access application starting in the 2022 General Election. The legislation also requires the Department to implement a voter hotline to provide translation of ballot content for certain languages as determined by recent Census data starting with the 2022 General Election. The Department is on track to fully implement this legislation by 2022 General Election as is required by the legislation.

H.B. 21-1230, User-Friendly State Internet Rules Portal – This legislation requires the Department to provide rule-making information housed within the Department to the Governor’s Office of Information Technology (OIT) for their development and administration of a centralized online rulemaking portal. While there are no specific statutory deadlines on the Department, OIT is required to make the portal available for use by June 30th, 2022 and the

Department is engaged in its responsibilities within the legislation to provide OIT with the data necessary to meet its statutory requirements.

S.B.19-235, Automatic Voter Registration (AVR) – S.B. 21-205² appropriated \$271,360 from the General Fund appropriation to the Department through FY 2022-23 for the implementation of S.B. 19-235. Specifically, this appropriation is to work with the Department of Health Care Policy and Financing (HCPF) to automatically register and update voter registrations based on Medicaid records. While the Department is closely working with HCPF to envision how this process will work, current interpretations of federal regulations are a barrier to the use of Medicaid records for purposes beyond determining eligibility for that program. As such, the Department awaits changes in federal regulatory interpretations before developing this enhancement to automatic voter registration in close collaboration with HCPF.

c. Missed Statutory Deadlines

The Department has not missed any statutory deadlines.

- 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**

The Department does not have any outstanding audit recommendations.

- 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?**

The Department is not currently running paid public awareness initiatives to counter disinformation or for other purposes. In addition, since late summer the Department has spent roughly \$25,000 on Google ads to help searches for election information connect to a trusted source of information. The spending on Google ads will end at the end of December 2021.

² See S.B. 21-205 footnote 101 for additional details.

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.

A. Please identify how many rules you have promulgated in the past year (FY 2020-21).

The Department adopted multiple new or amended permanent rules between July 1, 2020 and June 30, 2021 as show in Table 1 below. The table does not include the nine temporary rules adopted during this time frame.

Tracking Number	CCR Number	CCR Title	Adopted Date	Effective Date
2020-00354	8 CCR 1505-1	ELECTIONS	7/8/2020	8/30/2020
2020-00429	8 CCR 1505-6	RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE	8/10/2020	9/30/2020
2020-00819	8 CCR 1505-11	NOTARY PROGRAM RULES	12/1/2020	1/30/2021
2021-00066	8 CCR 1505-10	RULES CONCERNING THE ELECTRONIC RECORDING TECHNOLOGY GRANT PROGRAM [Repealed eff. 04/30/2021]	3/2/2021	4/30/2021
2021-00151	8 CCR 1505-8	RULES CONCERNING LOBBYIST REGULATION	5/28/2021	7/30/2021

Table 1 The table provides new or amended permanent rules adopted during Fiscal Year 2020-21.

B. 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?

No, the Department did not receive a cost-benefit or regulatory analysis requests for any of the above rulemaking proceedings in FY 2020-21.

C. Have you conducted a cost-benefit analysis of the Department’s rules as a whole? If so, please provide an overview of each analysis.

No, the Department has not conducted a cost-benefit analysis of the Department’s rules as a whole.

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.**

The Department’s expenses are primarily in five funds. Table 2 below outlines the key expense drivers for each fund.

Fund	Key Expense Drivers
Department of State Cash Fund ³ (CDOS Cash Fund)	<ul style="list-style-type: none"> • Personal Services Costs (employees and contractors) – roughly 60 percent of total expenses • Statutory Local Election Reimbursement payments to counties⁴ accounted for approximately 11.1 percent of the Department’s FY 2020-21 cash fund expenses • Office rent – approximately 3.6 percent of FY 2020-21 expenses • State matching funds for federal grants,⁵ approximately 4.4 percent of FY 2020-21 expenses
Federal Elections Assistance Fund ⁶	<ul style="list-style-type: none"> • Expenses for the purpose of improving the administration of federal elections, including security training, software development, secure ballot drop boxes, anti-mis- and dis-information activities, IT and physical security improvement grants to counties, etc. • Expenses restricted by grant requirements

³ §24-21-104(3)(b) C.R.S.

⁴ §1-5-505.5 C.R.S.

⁵ In FY 2020-21, these matching expenses were associated with the supplemental HAVA grant the Department received in the Coronavirus Aid, Relief, and Economic Security (CARES) Act. In FY 2021-22 through FY 2024-25, the Department will have expenditures to meet the matching funds requirement on the 2020 installment of its HAVA Election Security Grant.

⁶ §1-1.5-106(1)(a) C.R.S.

Fund	Key Expense Drivers
Electronic Recording Technology Fund ⁷	<ul style="list-style-type: none"> • Grants approved by the Electronic Recording Technology Board (ERTB): <ul style="list-style-type: none"> ○ Grants to counties to establish, maintain, and improve electronic recording systems ○ Grants to counties to digitize, index, and secure aged documents ○ Grants to counties to improve the security of county's general information technology systems, if the improvement is needed to improve security of the county's electronic filing system⁸
General Fund ⁹	<ul style="list-style-type: none"> • IT Contractor costs for implementation of SB 19-235 • If January 2nd Supplemental request approved, for Department security expenses • Implementation costs associated with HB 21-1071 • If decision items R-1 and R-3 in the Department's FY 2022-23 Budget Request, security costs and development and implementation costs associated with the new Combined Money in Politics Disclosure system
Identity Theft Financial Fraud Fund ¹⁰	<ul style="list-style-type: none"> • The number of Uniform Commercial Code (UCC) filings, a surcharge on which is transferred to the Department of Public Safety pursuant to statute (§24-33.5-1707(2)(a)(I)(A) C.R.S.)

Table 2 *The table shows major cost drivers for the Department by fund.*

Elections-related services are often complex, demanding a higher level of professional experience and expertise. This factor, coupled with ongoing mis- and dis-information and security threats in the wake of 2020 General Election, are driving vendor cost increases in elections-related services that are outpacing inflation. The Department expects that the same pressures it is experiencing are also impacting counties and, looking ahead to FY 2023-24, will impact the cost of the reimbursements to counties for the 2024 Presidential Primary Election.

As detailed in the Department's R2, software costs continue to increase. This is driven both by the high demand for, and rising salaries of, information technology (IT) workers, as well as, structural changes in the industry. For example, many vendors have transitioned from perpetual licenses to a software as a service model with ongoing monthly or annual payments. At the same time, both the number of online services offered by the Department and the number of the Department's customers have increased, leading to increases in the cost of IT services linked to the volume of network traffic.

⁷ §24-21-404(1)(a) C.R.S.

⁸ This additional grant-making authority was added by HB 21-1225

⁹ §24-75-201(1) C.R.S.

¹⁰ §24-33.5-1707(1)(a) C.R.S.

The Department expects increasing personal services costs, particularly for highly competitive, highly skilled positions including those in IT, elections, and finance. The Department of Personnel Administration (DPA) is responsible for an annual analysis of state employee wages vis-à-vis the market and this analysis contains greater depth on wages for individual professional classifications.

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?

Caseload changes have impacted the Department in three divisions, Elections, Business and Licensing, and Administration, as outlined below.

Elections

Colorado is a leader both in the percentage of eligible population registered to vote and voter turnout. These numbers have increased over time, as Colorado has continued to improve its election model. At 86.5 percent, Colorado active voter turnout for the 2020 General Election was the second-highest in the nation and the highest in the state’s history. Pursuant to §1-5-505.5(3) C.R.S., the Department reimburses counties on a per active registered voter basis for each election in which there is a state ballot issue or question. As the number of active registered voters increases, so too does the cost of these reimbursement payments. These voting rate increases have downstream consequences on the Department’s personnel as well. Counties are dedicating additional resources to conducting elections, which means more contacts with Department elections staff as well as a heightened use of Department provided technology.

Increasing voter turnout has driven a commensurate increase in county election expenses related to ballots mailed, processed, and tabulated, as well as increased need for judges at voter service and polling centers. The Department of State has observed an increased need for county oversight. The Department has seen increased time and resources needed to review the county election plans in light of the additional requirements in H.B. 19-1278. Further, the growing interest in elections led to an extraordinary increase in pre and post-election public contact. For instance, in the weeks following the 2020 General Election, the Department received thousands of phone calls and emails inquiring about the state’s auditing and system certification processes. The Department anticipates that the increase in interest will continue beyond the 2020 cycle.

The evolving threat landscape has increased the need for focused attention by our technical and cybersecurity staff and means that our office spends substantially more time compared to a decade ago on reviewing and addressing threat alerts. For the 2020 General Election, the Department also worked to counter foreign mis- and dis-information and to direct voters to reliable sources of election-related information. The Department strongly supports providing training, security briefings, and cybersecurity support and expertise to local election officials to reinforce the need for a culture of cybersecurity awareness and planning for incidents, cyber or otherwise.

Business and Licensing

Business filings and charitable solicitation registrations continue to increase. To provide two examples, over 1 million business filings are processed in a year and registered businesses in good standing have increased from 480,230 at the end of the first calendar quarter of 2012 to nearly 842,000 at the end of the third calendar quarter of 2021. Using a digital service model has reduced the resource impact for processing documents but at the same time has altered the required skill sets of Business and Licensing

Division personnel. These skillsets have migrated from analog, paper-based skills to digital, knowledge skills, which tend to be more expensive on a per-employee basis. The digital service model is highly dependent upon IT resources to provide a good customer experience. IT resources are also harder to hire and more expensive to retain.

There has been a general increase in customers using a broader array of electronic devices and browsers to interact with the Department, which in turn has required the division to adjust online services to accommodate. For example, the Department now tests for usability across five of the most popular internet browsers and is transitioning to responsive web pages. Demands for improved user experience online has greatly accelerated the pace of change in the division.

The addition of new programs, such as Durable Medical Equipment and Performing Rights Societies, has also contributed to an increase in the Business and Licensing Division's caseload in recent years. These programs require business analysis, IT development, and ongoing program management. Program expansion has also contributed to caseload growth such as the Notary Program (Revised Uniform Law on Notarial Acts (RULONA) Codified and Revised Uniform Law on Notarial Acts (§24-21-501 C.R.S.)), requiring IT development, customer support, and investigation resource increases.

In addition, the Business and Licensing Division has experienced an increasing number of requests for data from other state agencies and stakeholders. Recent examples include, MyBizColorado, a demographic information request from OEDIT, and transaction information requests for business fraud investigations from the Colorado Bureau of Investigations (CBI) and the Department of Homeland Security (DHS). These data requests typically involve IT resources, program managers, and business analysts. In addition, such data requests often require ongoing resources for maintenance and updating.

Administration

The growth in legal services costs charged to the Department is a result of substantial increases in litigation, primarily growing out of the Department's responsibilities under the Fair Campaign Practices Act (§ 1-45-111.7, C.R.S.) to litigate and decide campaign finance cases, in addition to other litigation in 2019 and 2020 related to the protection of Colorado's elections processes. The Department's legal services are provided by the Department of Law. Those costs are set through the Department of Law's reappropriation process using its three-year-average look-back at the Department's historical utilization of legal services. This approach means that the Department will be paying for legal services in this FY 2022-23 budget based on the utilization experience that was recorded by the Department of Law in FY 2020-21, FY 2019-20, and FY 2018-19. The amount for legal services in this budget request is \$879,286. Three years ago, for FY 2019-20, the Department paid \$191,154. The amount three years ago was based then on the utilization experience in FY 2017-18, FY 2016-17, and FY 2015-16. While the three-year-average look-back process means that efforts today to control or avoid legal expenses will not materialize into budget savings until several years later, the process does ensure that the Department avoids unanticipated budgetary disruptions.

- 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 not the result of legislation or a decision item.**

When vacancies occur or new needs are identified, the Department utilizes existing FTE to fill these gaps by modifying the position description. The following positions have been added by the Department in this manner since FY 2019-20:

- Administrative Assistant
- Deputy Director of Government & Public Affairs
- Part-time Procurement
- Policy Advisor

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.**

The Department has not requested an increase in FTE in its FY 2022-23 budget 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.**

The cash fund transfers as part of the FY 2019-20 and FY 2020-21 balancing process did not impact the Department.

- 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?**

In FY 2020-21, the Department had a cumulative total of approximately \$200,000 in vacancy savings. The Department currently projects to have a slightly greater amount of vacancy savings in FY 2021-22. FY 2022-23 is more difficult to predict. Although national trends have leaned towards resignations, the Department has not experienced this phenomenon. If the Department is able to fill its current vacancies and turnover levels maintain a historical average, minimal vacancy savings will be realized in FY 2022-23.

All of the Department's employees are currently paid from the CDOS Cash Fund. Any vacancy savings in recent years have boosted the cash fund balance and contributed to the Department being able to keep its fees low for customers even as costs have increased elsewhere.

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 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.

Revenue collected in the Department of State Cash Fund¹¹ is primarily driven by business filing volume in a particular business year. Filing volume from other fees, such as Notary fees, Bingo-Raffle licensing, Charities and Paid Solicitor fees, Durable Medical Equipment (DME) suppliers, etc. contribute to total revenue, but are small relative to business filing fees. Please see Table 3 below for a list of revenue sources and their associated fund.

- b. For each source, list actual revenues collected in FY 2020-21, and projected revenue collections for 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)				
Revenue Source	Associated Cash Fund	Revenues Collected Annually		
		FY 2020-21 Actual	FY 2021-22 Projection	FY 2022-23 Projection
Business Registrations	Department of State Cash Fund	\$ 25,975,382	\$ 26,158,665	\$ 13,057,821
Other Business Licenses & Permits	Department of State Cash Fund	\$ 170,450	\$ 171,653	\$ 178,330
Professional & Occupational Licenses	Department of State Cash Fund	\$ 131,382	\$ 132,309	\$ 137,456
Service Charges from External Sources	Department of State Cash Fund	\$ 961,567	\$ 968,352	\$ 1,006,021
Other Taxes	Department of State Cash Fund	\$ 507,276	\$ 510,856	\$ 530,728
Credit Card Fees - Nonexempt	Department of State Cash Fund	\$ (657,197)	\$ (661,834)	\$ (351,068)
Other Charges for Service	Identity Theft Financial Fraud Fund	\$ 498,694	\$ 505,000	\$ 520,000
TOTALS		\$ 27,587,554	\$ 27,785,000	\$ 15,079,287

Table 3 *The table shows for each revenue source subject to TABOR over \$100,000 per year actual revenue for FY 2020-21 and projected revenue for FY 2021-22 and FY 2022-23. All fees impacted by the fee waivers that the Department has jointly proposed with the Governor's Office are included in Business Registrations. Revenue in Other Licenses and Permits is from DME supplier licenses. The Bingo-Raffle Program is the primary source of revenue in Professional & Occupational Licenses and also Other Taxes. Service Charges from External Sources is the broadest revenue category and includes UCC filings, Charities Program revenues, Lobbyist fees and fines, Campaign and Political Finance Penalties, etc. The State accounts for credit card processing fees as a debit to revenue, which is why these amounts are shown as a negative amount in the table above. Lastly, Other Charges for Service in the Identity Theft Financial Fraud Fund covers surcharge revenue collected pursuant to §24-33.5-1707(2)(a)(I)(A) C.R.S.*

¹¹ §24-21-104(3)(b) C.R.S.

- c. List each decision item that your department has submitted that, if approved, would increase revenues subject to TABOR collected in FY 2022-23.

The Department's decision items will not have an impact on revenue subject to TABOR in FY 2022-23.

- 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 this fiscal year.

The Department received a supplemental Help America Vote Act (HAVA) grant through the CARES Act in FY 2019-20. Grant expenditures were strictly limited to the calendar year 2020 federal election cycle. This grant was closed in FY 2020-21. Expenditures from this grant and the required state matching funds are shown in Table 4 below.

Fiscal Year/Funding Source	FY 2019-20	FY 2020-21	Total
CARES HAVA Grant	\$172,510.60	\$6,007,492.51	\$6,180,003.11
CARES HAVA State Match ¹²	\$24,598.42	\$1,211,402.20	\$1,236,000.62
Total	\$197,109.02	\$7,218,894.71	\$7,416,003.73

Table 4 The table provides final expenditure details by fiscal year for the supplemental HAVA grant provided in the CARES Act and the required state matching funds.

The Department has not received any federal stimulus funds through the ARPA or the Infrastructure Investment and Jobs Act.

¹² The required state match for the supplemental HAVA grant provided by the CARES Act came from the Department of State Cash Fund.