DEPARTMENT OF STATE
FY 2023-24 JOINT BUDGET COMMITTEE HEARING AGENDA

Tuesday, November 29th, 2022
2:30 pm – 3:00 pm

2:30-2:35 INTRODUCTIONS AND OPENING COMMENTS

Presenter: Jena Griswold, Secretary of State

2:35-2:40 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

Topics:
- Common Question 1: Page 1, Questions 1 in the packet
- Common Question 2: Pages 1-2, Questions 2 in the packet

2:40-2:50 DEPARTMENT HIRING PROCESSES AND VACANCY RATES

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

Topics:
- Statewide Compensation Policies: Pages 2-3, Questions 3-4 in the packet
- FTE Requests and Vacancy Savings: Pages 3-4, Questions 5-7 in the packet

2:50-2:55 DEPARTMENT OF STATE CASH FUND AND ONE-TIME FUNDING

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

Topics:

- DOS Cash Fund: Page 5, Questions 8-9 in the packet
- One-Time Funding: Page 6, Question 10 in the packet

2:55-3:00 FOR VERBAL RESPONSE*

*These questions were provided to the Department of State on November 22nd

1. **[Sen. Rankin] For how many temporary FTE has the department been appropriated funding in each of the following fiscal years: FY 2019-20, FY 2020-21, FY 2021-22, and FY 2022-23? For how many of the temporary FTE was the appropriation made in the Long Bill? In other legislation? Please indicate the amount of funding that was appropriated. What is the department's strategy related to ensuring the short term nature of these positions? Does the department intend to make the positions permanent in the future?**
2. **[Sen. Zenzinger] Please provide a description, calculation, and the assumptions for the fiscal impact of implementing the provisions of the Partnership Agreement, including but not limited to changes in annual leave accrual, holiday pay, and paid family and medical leave. If your department includes employees who are exempt from the Partnership Agreement, please indicate whether or not you intend to implement similar benefit changes as those required for covered employees. Please provide a breakdown of the fiscal impact of implementing the provisions of the Partnership Agreement for: a) employees who are subject to the Agreement, and b) employees who are exempt from the Agreement.**

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COMMON QUESTIONS FOR DISCUSSION AT DEPARTMENT HEARINGS

1. **Please describe the implementation plan for new programs added to the Department from one-time stimulus funds (such as the CARES Act, ARPA, and one-time General Fund), as well as any challenges or delays to program implementation.**

   No new programs were added to the Department using one-time stimulus funds. The Department received supplemental Help America Vote Act (HAVA) funding through the CARES Act, but this money was restricted to the 2020 calendar year federal election cycle and the associated grant was closed in FY 2020-21.

2. **Please identify how many rules you have promulgated in the past year (FY 2021-22). 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 2021-22).**

   The Department adopted multiple new or amended permanent rules between July 1, 2021, and June 30, 2022, as show in Table 1 below. The table does not include the two temporary rules adopted during this time frame that are otherwise encompassed in permanent rulemakings listed below.

Tracking Number	CCR Number	CCR Title	Adopted Date	Effective Date
2021-00399	8 CCR 1505-1	ELECTIONS	8/26/2021	10/15/2021
2021-00431	8 CCR 1505-2	BINGO AND RAFFLES GAMES	9/7/2021	11/1/2021
2021-00756	8 CCR 1505-11	NOTARY PROGRAM RULES	1/14/2022	3/17/2022
2022-00197	8 CCR 1505-1	ELECTIONS	7/1/2022	8/30/2022

***Table 1** The table provides new or amended permanent rules adopted during Fiscal Year 2021-22.*

   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?**

   Yes, the Department received a cost-benefit analysis request for the 2021 Elections rulemaking proceeding (SOS Tracking Number 2021-00399). The Department submitted the cost-benefit analysis to the Department of Regulatory Agencies (DORA) on July 20, 2021, and it can be viewed on the Department's website.[1] The Department's cost-benefit analysis concluded that there were

[1] https://www.coloradosos.gov/pubs/rule_making/files/2021/20210720CostBenefitAnalysisElectionsRules.pdf

minimal to no economic costs and no anticipated adverse effects associated with these rule changes.

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 various rules as a whole.

DEPARTMENT HIRING PROCESSES AND VACANCY RATES

STATEWIDE COMPENSATION POLICIES

3. [Sen. Bridges] Can the Department speak to the limitations of statewide compensation and hiring policies and their impact on the Department's vacancy rate?

The salary ranges established for state positions make it difficult to compete with other job openings available to job seekers. It is common for the Department to submit a job offer and for an applicant to decline the offer due to a higher salary being available to them at another position. It is also common for only a small number of applicants to apply for positions, especially when other private sector job openings advertise a much higher salary. The Department frequently reposts positions due to a low applicant pool or because the selected candidate declined the offer. This is most frequent for positions in our Information Technology Division, Business Analyst positions in any division, and procurement or financial positions in the Administration Division. While improvements have been made to statewide hiring requirements, the procedures still involve significant time and effort to get to a point where the top six candidates are identified and interviewed. When the position remains vacant, the same staff is left to repeat the hiring process and pick up the additional workload of the vacant position until it is filled.

The criteria used to establish higher rates of pay for higher level positions within the classified system is also a significant challenge for the Department. In most situations, positions are classified at a higher level, and with a higher salary range available, only when the position supervises two or more employees. While this may not be a significant challenge for other agencies, this requirement is very limiting to smaller departments like the Department of State. In many cases a program includes only a handful of employees, and the Department is unable to establish a competitive salary even when the job duties are complex and critical to the functions of the Department, simply because the position does not include supervision. Additionally, some supervisors only oversee one employee due to the program size and are then unable to progress upward in salary and classification within the state system. When hiring for these types of positions, the Department is left with small applicant pools and is unable to compete with other state agencies that are able to pay more for the same position or a similar position that has fewer responsibilities but supervises a greater number of employees.

The Department also greatly needs additional flexibility in terms of non-classified staff in order to provide flexibility for certain high-level roles that assist with the executive leadership functions of the office. Other offices held by statewide constitutional officers have many non-classified positions to enable these unique offices to perform; however, the Department only has 7 appointed positions which puts up additional barriers.

4. **[Sen. Bridges] Problems with candidates meeting job requirements but not having necessary degree requirements – what is the source of these requirements? How can this be addressed?**

   The Department of Personnel and Administration determines the minimum qualifications for each classification type. Minimum qualifications consist of a degree requirement and an experience substitution. These requirements may not be amended by agencies and may result in disqualifying candidates that exhibit the competencies needed for the job, but do not have the duration of relevant work experience required to substitute for a degree. For example, in situations where a bachelor's degree is required, a candidate must document four years of work experience in an occupational field related to the work assignment. Human Resources staff must disqualify candidates that do not meet the minimum qualification requirements, even if a candidate is only a few months short of meeting the substitution requirement or can otherwise demonstrate they have the skills, competencies, and abilities to be successful in the position. Given ongoing hiring difficulties and small applicant pools, additional flexibility is needed when it comes to minimum qualification requirements to allow the Department to hire qualified candidates that don't meet the exact requirements required of that position by DPA.

FTE REQUESTS AND VACANCY SAVINGS

5. **[Sen. Rankin] How is the Department currently using their vacancy savings? Are they using existing funding for bonus pay or higher salaries for existing staff?**

   The overwhelming majority (approximately 90 percent) of the Department's vacancy savings in FY 2021-22 simply reverted to the DOS Cash Fund, boosting the fund balance and contributing to the Department being able to maintain low fees for customers, even as other costs have increased. Motivated by the desire to improve staff retention, incentivize performance, and develop in-house staff talent, the Department used a modest amount of its vacancy savings to fund performance bonuses and competency-based increases for staff.

   Given the unique nature of the Department and its need for a highly specialized and skilled workforce (e.g. elections professionals, IT professionals, etc.), the Department urges increased flexibly for it to increase staff salaries.

6. **[Sen. Zenzinger] What is the rationale for such a large FTE expansion for the Department in a single year?**

   The additional FTE requested in the Department's budget request are not concentrated in a specific program area, but instead are discrete FTE plus-ups across the four divisions and within numerous distinct program areas. The FTE presented within this budget request's prioritized decision items include additional capacity ranging from IT development, to finance/accounting, to charities investigations, to elections data management, to administrative support. By division, the FTE requests are: 1.8 FTE for the Business and Licensing Division (currently 40.1 FTE); 2.7 FTE in the Administrative Division (exclusive of Executive Team, staff is currently 13.1 FTE); 2.7 FTE in the Executive Team (currently 8.0 FTE), 2.8 FTE in the Elections Division (currently 40.0 FTE); and 3.7 FTE in the IT Division (currently 46.0 FTE).

   Within each of the work units with requested FTE plus-ups, each has been faced with growing workloads and greater complexity of that work in recent years with essentially no staffing increases to offset it. For the Business and Licensing Division, in the past 20 years, the charities register has expanded from approximately 2,000 charities to more than 15,000 today – yet the charities program has not increased the investigator staffing in 15 years. The IT Division's recent modest personnel increases have mainly focused on security operations, operations support, and higher-level strategic positions, yet the IT Division is understaffed as it sets out to modernize technical systems and make functional improvements.

The Elections Division has seen a significant surge in recent years in attention to the details of elections, in demand for elections data, and in complaints to the office of violations of election law, campaign finance law, and lobbyist regulations. For example, the Campaign Finance staff received 42 campaign finance complaints in FY 2020-21. That number ballooned to 101 in FY 2021-22 and has remained high through the current fiscal year with a total of 81 received in just the first 4.5 months of the fiscal year. If this pace of complaints received holds, the Elections Division would be seeing a 113 percent increase in complaints this fiscal year over the previous fiscal year. In addition, the Elections Division is seeing a surge in the team's workload as a result of the tumultuous environment around elections since the 2020 Election. This environment has resulted in more work for the Department stemming from a number of challenging circumstances, such as the security breaches in Mesa County and Elbert County, responding to a torrent of disinformation about elections, and increased lawsuits based on conspiracies directed at the Department, just to name a few. These events have simply put the Department into overdrive for the past three years.

The Administration Division has had to oversee the implementation of complex policy changes, such as the Equal Pay for Equal Work Act and collective bargaining, which has added significant complexity to its work. In addition, the Administration Division has been adversely affected by vacancy rates, spending more time to fill positions at the agency. And the Finance Unit has seen since FY 2016-17 a 25.8 percent increase in revenue documents and a 120.8 percent increase in contract documents, to provide just two examples of the additional workload on an already small team.

In addition to the increased demand on and complexity of the Department's various work units, legislation has had a significant impact on the Department's workload. While the fiscal note process usually accounts for impacts on workload, it does not appropriate funds for FTE impacts of less than 0.1 FTE and these workload impacts are reported as absorbable. Many bills may have such absorbable impacts across multiple positions, for instance a bill that has web development, customer support, and complaint intake/review impacts that are the responsibility of employees in different job classes and divisions. While the impact of any one such bill is absorbable, the cumulative impact of many bills over many years is significant and are not captured through the fiscal note process. The specifics of how prospective legislation will be implemented are also often unknown. All of this leads to an imbalance over time between the workload and Department staffing levels. The Department's requests are intended to right-size the Department's FTE levels with its current workload.

7. **[Sen. Zenzinger] How does the Department plan to hire these additional 15 FTE in a single year in light of increasing vacancy rates and reported difficulties with hiring?**

The Department has requested two additional human resources positions to assist with the current workload and ongoing recruiting needs. The addition of these positions will allow for expedited hiring processes and improved capacity of the team to fill critical positions.

DEPARTMENT OF STATE CASH FUND AND ONE-TIME FUNDING

DOS CASH FUND

8. **[Sen. Zenzinger] What would be the impact of approving this spending authority on the DOS Cash Fund?**

   Should the JBC approve all six of the Department's prioritized decision items and all else is unchanged (i.e., there are no other major legislative changes impacting the DOS Cash Fund or providing new or additional General Fund revenues, and the revenue and expense projections for FY 2022-23 and FY 2023-24 are accurate), then the fund would have negative cash flow of approximately $2.4 million in FY 2023-24. While the fund still projects to have uncommitted reserves of approximately $2.5 million at the end of FY 2023-24, the Department would need to ensure sufficient cash flow to cover periods of the fiscal year in which expenses significantly outpace revenues.

   The Department would like to engage the JBC and legislature in a conversation about shoring up additional fiscal capacity in the CDOS Cash Fund by transitioning the statutory election reimbursement (C.R.S. § 1-5-505.5) that the Department is required to pay the counties every November election in which there is a statewide ballot question from the CDOS Cash Fund to the General Fund (or another fund). If the statutory election reimbursement were to shift out of the Department of State's cash fund, the Department would not need to seek additional revenue sources.

9. **[Sen. Rankin] Describe the size of the business licensing fee increase that would be required to cover the additional requested spending authority?**

   If the assumptions outlined in the Department's response to the previous question hold true, then the Department projects to be approximately $1.8 million under its internal target minimum uncommitted reserves (1.5 multiplied by an average month's expenses).[2]

   The Department would like to engage the JBC and legislature in a conversation about shoring up additional fiscal capacity in the CDOS Cash Fund which would cover the additional requested spending authority in the Department's budget request. This would be accomplished by transitioning the statutory election reimbursement (C.R.S. § 1-5-505.5) that the Department is required to pay the counties every November election in which there is a statewide ballot question from the CDOS Cash Fund to the General Fund (or another fund). In reality, this obligation for county reimbursements occurs annually for every November election given the historical consistency of statewide ballot measures on every November election ballot. In recent years, this reimbursement has totaled $3,141,411 in FY21-22 for the November 2021 Coordinated Election, $3,067,234 in FY20-21 for the November 2020 General Election, and $2,840,287 in FY19-20 for the November 2019 Coordinated Election. When the Presidential Primary was established in Colorado, the legislature opted to reimburse counties for direct costs for that election from the General Fund. As statewide ballot measures are driven largely by activity of statewide concern from the General Assembly and petition process, the Department would like to engage the JBC in conversation about similarly having the General Fund be the source of the ongoing reimbursement for this.

[2] §24-21-104(4) C.R.S.

LOCAL ELECTION SECURITY GRANT PROGRAM

10. **[Sen. Bridges] Can the Department provide an update on the grant program local election security in S.B. 22-153 (Internal Election Security Measures]?**

    The Colorado Election Security Act (CESA), S.B. 22-153, provides $1 million from the General Fund in FY 2022-23 for grants to counties to assist them in complying with the bill's requirements. All counties are eligible to receive a grant under the CESA grant program. The Department provided counties with application materials in September 2022 with initial applications due by December 31, 2022. Initially, the maximum amount of grant funds counties are eligible to receive is based upon population as outlined in Table 2 below.

County Population Size	Initial Grant Maximum Amount
Under 25,000	$12,500
25,000 – 74,999	$18,000
75,000 and greater	$24,500

Table 2 *The table shows the maximum grant amount each county is eligible for based upon population size under the S.B. 22-153 (CESA) Grant Program.*

If there are any remaining funds after the initial round of purchases, the Department plans to provide a second round of grant funding to counties that need to make additional purchases in order to comply with the bill. Counties are expected to use the grant proceeds to meet the costs for key card access systems, video surveillance, and storage of that video surveillance for areas with sensitive election equipment.

To date, the Department has finalized the grant agreements for sixteen counties. The grant agreements for an additional five counties have been approved and the agreements are in process. The Department expects that almost all counties will receive grant funds under the program.