DEPARTMENT OF STATE
FY 2024-25 JOINT BUDGET COMMITTEE HEARING AGENDA

Tuesday, December 5, 2023

1:30 pm – 2:30 pm

1:30-1:35 INTRODUCTIONS AND OPENING COMMENTS

Presenter: Jena Griswold, Secretary of State

1:35-1:40 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

Topics:

- Question 1: Page 3
- Question 2: Pages 3-4
- Question 3: Pages 4-5

1:40-1:50 SUPPORT DIVISIONS

Main Presenters:

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

Supporting Presenters:

- Rich Schliep, Chief Information Officer

Topics:

- IT Accessibility: Pages 5-6, Question 4 in the packet

1:50-2:30 PROGRAMMATIC DIVISIONS

Main Presenters:

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

Supporting Presenters:

- Hilary Rudy, Elections Division Deputy Director

Topics:

- Election Administration: Pages 6-8, Questions 5-6 in the packet
- Business Filings: Pages 8-10, Questions 7-8 in the packet

DEPARTMENT OF STATE

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COMMON QUESTIONS FOR DISCUSSION AT DEPARTMENT HEARINGS

1 Please describe one-time state and federal stimulus funds that have been allocated to the Department but are not expended as of September 30, 2023, by bill, budget action, executive action, or other source that allocated funds. The description should include but is not limited to funds that originate from one-time or term-limited General Fund or federal funds originating from the American Rescue Plan Act (ARPA)/State and Local Fiscal Recovery Funds/Revenue Loss Restoration Cash Fund. Please describe the Department's plan to obligate or expend all allocated funds that originate from ARPA by December 2024.

Please further describe any budget requests that replace one-time General Fund or ARPA funded programs with ongoing appropriations, including the following information:

a. Original fund source (General Fund, ARPA, other), amount, and FTE;
b. Original program time frame;
c. Original authorization (budget decision, legislation, other);
d. Requested ongoing fund source, amount, and FTE; and
e. Requested time frame (one-time extension or ongoing).

The Department of State (Department) does not have any one-time state or federal stimulus funds that were not expended by September 30, 2023. Similarly, none of the Department's FY 2024-25 budget requests replace one-time General Fund or ARPA funded programs.

2 Please provide a description, calculation, and the assumptions for the fiscal impact of implementing compensation provisions of the Partnership Agreement, as well as a qualitative description of any changes to paid annual, medical, holiday or family leave as a result of the Agreement. Please describe any compensation and leave changes for employees exempt from the Agreement if applicable.

The fiscal impact of the partnership agreement is driven by a wide range of salary and benefit enhancements for state employees. The Department has a blend of covered and non-covered employees. It has applied the requirements and benefits equally to covered and non-covered employees and intends to do so in the future.

In FY 2022-23, the Salary Survey (across-the-board (ATB) salary increase) and salary range adjustments were approximately $390,000. In FY 2023-24, driven by the higher percentage ATB increase, the impact is expected to be approximately $627,000. In FY 2024-25, based on the Total Compensation Template provided by DPA, which includes the proposed Step Plan impact, the Department expects an impact of approximately $670,000.

With respect to the Step Plan (part of the Salary Survey line item), DPA is still determining the details of the implementation in FY 2024-25, which will impact the cost implications. For now, the Department has included the projected costs in its FY 2024-25 Budget Request based upon the assumptions and calculations made by DPA in the annual Total Compensation Template, which project an impact of approximately $215,000 in FY 2024-25 (ongoing). The template and the Department assume that employees who are covered and not covered by the Partnership Agreement will be treated equally.

With regard to Annual Leave Accrual, the Partnership Agreement increased annual leave accrual maximums for state employees, but under the State's current leave policies, the financial impact of this change is only felt when employees leave state employment (or transfer to another state agency that will not allow the employee to carry forward accrued leave time) and annual leave is paid out. Further, this change only impacts the small number of employees whose annual leave balance was at or near the maximum accrual balance. As a result, the financial impact has been minimal to date.

With respect to Holiday Pay, the Partnership Agreement specifies that non-exempt employees may either request an alternate holiday, be paid premium pay of 1.5 times their normal rate or receive corresponding compensatory time for working on a State observed holiday. However, it is extremely rare that the Department's non-exempt employees are required to work on a holiday, although this has happened with critical staff working on elections-related responsibilities during election season.

Paid Family and Medical Leave (PFML) was increased from 80 to 160 hours under the Partnership Agreement. To date, this has not resulted in a financial cost to the Department because we have not had to hire additional staff to fill-in while an employee was out on PFML. We might hire additional staff to fill-in for an employee out on PFML in the future if it were appropriate for the employee's role and we had sufficient advance notice.

It is our understanding that the Department of Personnel Administration (DPA) will provide a centralized response on the fiscal impact of the Health, Life, and Dental (HLD) Insurance, Equity Office, Colorado State Employee Assistance Program (CSEAP), and Payroll Modernization related expenses.

3 Provide a prioritized list of budget reductions the Department would propose if 10.0 percent General Fund appropriation reductions were required of every Department.

In FY 2024-25, the Department has only two items (impacting multiple line items) in its budget request that have General Fund appropriations, which total $6,402,084. Both of these relate to statutory obligations that provide support to county governments.

- Annualization of HB 21-1071 – the appropriation in FY 2024-25 covers training and testing on using the Risk-Limiting Audit (RLA) system with Instant Runoff Voting (IRV) / Ranked Choice Voting (RCV) and development of the tabulation system for IRV/RCV contests.
- Annualization of SB 23-276 – this appropriation covers the local election reimbursement payments to counties under the new reimbursement formula in SB 23-276.

A ten percent cut in General Fund appropriations would be approximately $640,000 and would need to be replaced with an appropriation from another fund source in order to meet the Department's statutory obligations. If these funds came instead from the Department of State Cash Fund, the Department would need to further increase business filing fees beyond what is discussed in our response to question eight.

SUPPORT DIVISIONS

IT ACCESSIBILITY

4 *[Sen. Zenzinger]* What will R2 (Americans with Disabilities Act (ADA) IT accessibility) support that the Department is not already doing? What, specifically, is DOS trying to accomplish which is not already in place? Please explain any recent legislation that is driving this requirement and provide more granular detail on what is driving the request for the ADA compliance funding.

The Department of State's (Department) R2 is asking for the additional spending authority required to comply with HB 21-1110 and SB 23-244. Neither of these bills provided any spending authority to the Department. Further, the Department's Information Technology Division operates independently from the Governor's Office of Information Technology (OIT). Consequently, OIT's BA-01 IT Accessibility Testing and Remediation[1] during the last budget cycle did not provide any resources to the Department.

Specifically, the Department has more than thirty custom-developed, public-facing applications that require testing and assurance of accessibility compliance. These applications support critical functions of the Department, including business registration, voter registration, campaign finance disclosures, administrative rules, notaries public commissions, charity registrations and charitable solicitation disclosures, bingo and raffle licensing, lobbyist registration, durable medical equipment registration, uniform commercial code security filings, durable medical equipment registration, copyright royalty license disclosures, etc. The overwhelming majority of the Department's interactions with Coloradans take place online. The Department's website and these applications are the cornerstone of its service and support to the public. Under HB 21-1110 and SB 23-244, the Department must ensure that its online services and information are accessible and functional to people with disabilities.

The request for additional personnel involves just 1.0 IT Professional FTE that would be a permanent addition to the Department's IT staff and the addition of two part-time, short-term interns to assist in the initial manual testing of the broad swath of customer-facing applications. The permanent addition to the IT team would be devoted to ensuring accessibility compliance going forward for new development projects as well as the existing applications. This permanent addition is necessary because the Department does not currently have an IT Professional whose singular focus is assurance of accessibility compliance. Instead, the Department is currently using traditional software developers for this work, diverting those engineers from the software development projects that the Department has for its development priority schedule including a website redesign, 2024 election updates and cyber security efforts, content for 32 Web Applications, critical SCORE updates (Statewide Voter Registration System) and more. The Department is constantly developing new software tools and improvements, and every diversion of

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[1] https://leg.colorado.gov/sites/default/files/images/jtc_staff_memo_on_oit_ba-01_budget_amendment_for_fy_23-24.pdf

software development engineers away from the projects on the development priority list results in a delay in the roll-out of those new tools or improvements.

New staff will focus on accessibility testing which is a special discipline which includes assisting staff with accessibility questions, contractor coordination, along with updating content. Some specific items staff will focus on include:

- Training other staff and assisting with ADA compliance questions.
- Researching accessibility issues
- Updating some of over 20,000 documents plus web pages
- Manually testing of pages
- Monitoring and reporting with automated testing tools
- Staying current on accessibility standards

PROGRAMMATIC DIVISIONS

ELECTION ADMINISTRATION

5 *[Sen. Kirkmeyer]* How did the Department arrive at the election cost reimbursement figure of $9.9 million? This does not align with the estimate of $8.1 million underlying the bill. What is the source of the cost estimate for the total costs to counties for conducting these elections?

The Legislative Council Fiscal Note for SB 23-276 cites an incremental increase of $5.1 million in local election reimbursement payments to counties over and above the $3.2 million paid to counties under the prior formula-based county election reimbursement, for a total of $8.3 million. The Fiscal Note details the uncertainties inherent in this estimate. In addition, under SB 23-276, $3.2 million (the base appropriation for Local Election Reimbursement in FY 2023-24) is from the Department of State Cash Fund, $2.5 million is from the General Fund[2], and provides that the balance of $2.6 million shall either come from the General Fund or the Department of State Cash Fund.

Previously, the cost of county elections with a statewide ballot question had been subsidized using a formula-based approach based on the number of active registered voters per county.[3] The Department collected information from counties on the cost of those elections, but, as the cost data had no bearing on the amount of the payments to counties, it was not audited or scrutinized by the Department with the same rigor as is required for the expenditure of state funds.

There was a similar challenge in estimating election costs when Proposition 107 and SB 17-305 reinstated the Presidential Primary Election. The Legislative Council Fiscal Note for SB 17-305[4] estimated the cost at $5.7 million based upon information provided by counties. This estimate was revised based upon a June

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[2] § 1-5-505.5.(2) C.R.S. effective on July 1, 2024 (see Section 18 of SB 23-276)
[3] § 1-5-505.5. et seq C.R.S.
[4] https://leg.colorado.gov/sites/default/files/documents/2017A/bills/fn/2017a_sb305_f1.pdf

2018 survey of counties to $6.3 million, which is the amount the General Assembly appropriated in the 2019 Session Long Bill (SB 19-207). In the end, county costs for the March 2020 Presidential Primary Election were $7.36 million, requiring a $1.035 million emergency supplemental (approximately 16.4 percent greater than the June 2018 estimate).

Given the uncertainty of county election cost estimates as highlighted in the SB 23-276 Fiscal Note, the Department revised the estimated cost of the 2024 General Election County reimbursements for our FY 2024-25 budget request. We started with county-reported data from the 2022 General Election which showed approximately $15.5 million in reimbursable costs. We agree with Legislative Council that counties historically have not been financially incentivized to fully report election costs, so we added 10 percent as an allowance for underreporting/underestimating in our budget request. In addition, presidential elections are more expensive than other even-year elections by approximately 16 percent based on historical data. Finally, elections-related costs have been increasing rapidly, driven by high general inflation as well as vendor price increases due to the more contentious national environment around elections, so we have added 15 percent for two years between the 2022 and 2024 General Elections. This results in an estimate of $22.0 million for cumulative county reimbursable costs for the 2024 General Election. Forty-five percent of this amount is $9.9 million, which is the amount of our budget request, with $3.2 million coming from the Department of State Cash Fund and $6.7 million coming from the General Fund.[5] Calculations are shown in the table below.

2022 General Election Total County Elections Reimbursable Costs	$	15,520,405
+ Margin of Error / Adjustment for Prior Underreporting/Underestimating 10%	$	1,552,040
+ Presidential Effect 12%	$	2,048,693
+ Election Cost Inflation 15%	$	2,868,171
Projected 2024 General Election Reimbursable Costs	$	21,989,310
Rounded 2024 General Election Reimbursable Costs	*$*	*22,000,000*
CDOS Cash Fund Share 45%	**$**	**9,900,000**

Department staff reached out to counties in September to generate an updated estimate for the costs of the 2024 General Election. Although the data received was incomplete, it did align with the Department's expectations and confirmed the trend of increased costs that the Department has projected.

6 *[Sen. Kirkmeyer]* In early November, the Secretary of State's office placed automated calls to Coloradans which cost about $50,000. How does this activity fit into the responsibilities of the Department of State? Furthermore, how was this effort funded?

Among the many responsibilities this office is charged with, ensuring that voters have accurate election information is a key one. This outreach was a cost-effective way to share important information with millions of Coloradans about the 2023 Coordinated Election.

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[5] $302,142 of the General Fund amount – the amount of the Statewide Indirect Cost Allocation Plan (SWICAP) Common Policy -- has been requested as Reappropriated Funds as is the budget request convention and consistent with past guidance from the Department of Personnel Administration (DPA).

This communication was paid for from the Administration Division Operating Expenses appropriation, which is consistent with past departmental communications efforts regarding important election information. For example, the "U Choose" public awareness campaign under Secretary Wayne Williams was covered from this appropriation.

BUSINESS FILINGS

7 *[Sens. Kirkmeyer and Bridges]* Members recall the use of some ARPA funds to allow the Department reduce the fees for establishing an LLC to $1. That resulted in LLCs being created by people outside of the state and then selling them. What is the current status of the fraudulent business filing investigation process and the status of the problem, and what can the General Assembly/State do to help with this issue?

The Department of State did not receive any ARPA funds. HB 22-1001 provided a one-time transfer of $8.435 million from the General Fund to the Department of State Cash Fund to provide a fee credit to reduce the fees for new LLC filings and new trade name registrations to $1.00 from July 1, 2022, through late May 2023.

Current law does not prohibit the owners of a business entity from selling their LLC.

In May 2023, the Department's staff uncovered potential fraudulent registration of business entities that were formed using a residential address in Northglenn. This matter was referred to the Attorney General's office for further review, and the Attorney Geneal has now brought suit in both Denver and Adams Counties under the Colorado Consumer Protection Act: State v. Andrade, et al., Denver Dist. Ct. No. 2023CV32624, and State v. Guodi LLC, et al., Adams Dist. Ct. No. 2023CV31519. Both cases are pending.

The Secretary delivered to the General Assembly on February 10, 2023, the "Report of the Fraudulent Filing Working Group" which contained numerous recommendations from the study commission that was enacted by SB 22-034. Those recommendations propose various statutory changes to tighten the state's protections against fraudulent business that would mitigate fraudulent filings that the legislature may choose to consider during the 2024 Session.

We continue to promote the use of Secure Business Filings (SBF), seeing a nearly 40 percent year-over-year increase in this tool's use following an opt-in process effort where those registering receive real-time information about the program after completing the required online form.

Since SB 22-034 was passed into law, our office has received approximately 1,200 complaints (with approximately 400 more pending additional feedback from complainants) and is on pace to process close to 2,000 complaints in the first year of this legislation. To date, 141 (approximately 12 percent) of received complaints have been associated with entities (LLCs) formed during the active period of HB 22-1001.

There is currently a backlog in addressing these complaints and current staffing levels are insufficient to meet either the existing or projected needs. That's why are we requesting spending authority for 1.0 FTE in the Business & Licensing Division through our R5 decision item.

Without additional FTE, the tasks and activities that are at risk of falling behind include but are not limited to the scanning and verification of critical documents like international adoption records, birth certificates, and death records. Email turnaround time with customers would be impacted, the number of staff members on any given day that could be assigned to the front counter and/or telephone queues would be impacted. Essentially - any day that we assign staff members to work fraudulent complaints is a day (or days) that they don't process their regularly scheduled work.

Along with our office combatting fraudulent filings with afore-referenced complaint process, The Corporate Transparency Act (CTA), goes into effect at a federal level on January 1, 2024. This legislation requires our office to provide resources and first-line support for business owners seeking to understand their reporting requirements of Beneficial Ownership Information (BOI). This legislation will drive unbudgeted call volume to our office in addition to that already being realized from the fraudulent business filing complaint process. This anticipated continued growth along with our current operating model is not a sustainable approach and must be addressed. The additional customer service staff member is essential to enable the Department to properly process complaints, assist callers regarding their BOI obligations, and restore service levels in other work units.

8 *[Sen. Zenzinger and Rep. Taggart]* Do we have a clear indication of what the "substantial" fee increase would be? What are the fees now, what would they be if they had to increase? How do they compare to other agencies/states? Why does the entirety of the annualized expenditure need to come from General Fund, rather than the DOS Cash Fund? Please put the potential fee increases in context.

The Department's fee schedule, listing the broad variety of fees charged by the office, is available here: https://www.coloradosos.gov/pubs/info_center/feeSchedule.html. The single largest revenue-generating fee is the annual renewal fee, which has been $10 per year. The Department estimates that each one dollar increase in this annual renewal fee will generate approximately $750,000. Because the annual renewal fee is paid by entities during their renewal months, rather than on a uniform date for all businesses at the same time, the Department would realize the full amount of the revenue increase only after a full year of collection of the increase in the fee. Therefore, for a fee increase that begins July 1, 2024, to have generated sufficient revenue to pay for the election reimbursement costs to be reimbursed to counties for the November 5, 2024, general election, the Department estimates that it will need to increase the annual renewal fee by at least $10, to a total fee of $20 for renewing businesses.

For the elections in FY 2025-26, fees would likely need to be further increased, because there would be likely two covered elections which would require county reimbursement instead of one.

The Department is unable to address comprehensively how its fees compare to those of other agencies, which in many respects are not comparable to the business entity fees that are the primary source of revenue for the Department of State Cash Fund. Our office does however, conduct a regular review of other states' comparable filing fees, and that research for 2023 shows that other states' annual renewal fees ranged from $0 to $300, with the average falling at approximately $60.

The Secretary has consistently maintained that the full amount of the election cost reimbursements for counties should be borne by the General Fund, rather than by businesses through the business fees that fund the Department of State Cash Fund. This position is based both on the good public policy that elections should be funded by taxpayers rather than the subset of Colorado businesses that are formed in Colorado, as well as on the guidance provided by the Colorado Supreme Court in its decision in Griswold v. National Federation of Independent Businesses, 449 P.3d 373 (Colo. 2019). In that case, the Court made clear that if there had been evidence demonstrating an increase in the fee rate set by the Secretary had been used to fund election costs, such evidence would directly implicate the requirements of TABOR and the question of whether the Secretary's business fees are in actuality a tax rather than a fee for services rendered to the business community. The Secretary prevailed in the NFIB case precisely because there was no evidence linking a fee-rate increase to money spent on election costs. The newly mandated election-cost reimbursement formula enacted by the General Assembly in SB 23-276 means that if the Secretary is forced to increase the fee-rate of business fees in order to generate revenue to pay for the dramatic increase in election-cost reimbursements, the Court likely would reach a different conclusion than it did in NFIB.