

**DEPARTMENT OF LAW  
FY 2015-16 JOINT BUDGET COMMITTEE HEARING AGENDA**

**Wednesday, December 10, 2014  
10:30 am – 12:00 pm**

**10:30-10:40 INTRODUCTIONS AND OPENING COMMENTS**

**10:40-10:45 QUESTIONS COMMON TO ALL DEPARTMENTS**

1. Describe the department's experience with the implementation of the new CORE accounting system.
  - a. Was the training adequate?
  - b. Has the transition gone smoothly?
  - c. How has the implementation of CORE affected staff workload during the transition?
  - d. Do you anticipate that CORE will increase the staff workload on an ongoing basis? If so, describe the nature of the workload increase and indicate whether the department is requesting additional funding for FY 2015-16 to address it.

**Response:**

- a. Significant state employee time was invested in CORE training. State employees were identified to train their peers in the functional areas of CORE that best matched their expertise. The vendor provided additional support. However, the training environment was not a reflection of the actual configuration of the production environment. This led to a significant gap in skill set statewide from day one, as items discussed in training played out differently in the live environment.
- b. The transition to CORE continues to be problematic. While employees continue to receive paychecks because of a subsidiary system, all payroll related expenditures are not accurately reflected in the accounting system, to date. This has led to delays in federal grant award close outs, and an inability to provide current and accurate budgetary information for management decision making.

Additionally, financial reporting continues to experience significant deficiencies. Two hundred plus reports have been developed by the vendor. However, there appears to be a lack of quality control on report development, leading to inaccurate data presentation. Many reports appear to have been developed without end users' needs addressed, and are not of value to the users. A team of state employees is now analyzing developed reports with these issues in mind, but the timing of identifying and fixing reporting problems has had a tangible impact on day to day operations.

Other areas that continue to be problematic and frustrating relate to electronic fund transfers, duplicate payments, system stability, and communication throughout the project.

- c. There continues to be a steep learning curve with the functionality and processes within CORE by department staff. As system issues continue to be identified and resolved, state agencies are in a constant state of adaptation. Modifications continue to happen with regularity and continue to impact staff workload as processes may have to be unlearned and relearned.
- d. The department does anticipate an ongoing increase in workload and has already reallocated resources internally to accommodate. Processes in CORE are often times more complex and require a significant number of additional steps than were required under COFRS. For example, a simple payment document that took 20 keystrokes in COFRS takes 30+ in CORE. Additionally, transitioning to a paperless environment has resulted in increased review time per document for approvers. However, when CORE is fully implemented and fully functional, there will be more robust reporting at a statewide level, a minimization of paper use, and greater consistency in reporting across agencies.

2. SMART Government Act:

- a. Please describe how the SMART Government Act is being integrated into the department's existing processes (both in terms of service delivery and evaluating performance).
- b. How is the data that is gathered for the performance management system used?
- c. Please describe the value of the act in the department.

**Response:** Prior to the implementation of the SMART Government Act, the Department of Law (DOL) has consistently and annually tracked and reported to the Legislature performance goals and metrics.

For example, the largest function of the DOL is the representation of client agencies. Within this function, each attorney and legal assistant has established annual billing goals. It is this goal by which the DOL earns the needed revenue to cover budgeted expenses. Additionally, these sections annually survey the client agencies by attorney to benchmark the satisfaction level. These two components are critical pieces to the annual performance review for each billing attorney, thereby building the nexus for each individual's performance directly relating to the overall programmatic goal for client satisfaction. These measures were in place prior to the implementation of the SMART Act.

Additionally, the DOL has developed measures to demonstrate the impact of each program. However, in some cases within the DOL, these measures are marginally beneficial to the

management and administration of the organization. For example, the Consumer Protection Section generally investigates and prosecutes various and broad consumer fraud and consumer credit cases, and protects consumers and legitimate competitors from a whole range of anticompetitive conduct, including price fixing, conspiracies to suppress competition and mergers that will unreasonably restrain fair competition.

The number of completed cases annually, for example, is not of significant value to these units. The agency does not choose particular cases by the ease of resolution, but by a number of other factors that are determined to best serve justice. One piece of information factoring into this decision making is the number of complaints received against a particular company or industry.

With that being said, the policy goals of the SMART Act are intertwined in the decision making of the organization. The Department is currently switching over to a new attorney time management system for better ease of input, data retrieval, and data analysis for business decisions. Additionally, this new system eliminates many cumbersome steps and business processes with data pulls and analysis. Secondly, the Department of Law recently implemented KRONOS for leave tracking. This has minimized the need for paper processes, thereby eliminating the use of disposable resources and better maintaining data integrity. Lastly, the Department is currently developing system requirements for a new business licensing and complaint tracking system for the Consumer Credit Unit and Consumer Protection Unit. The department is anticipating better data analysis and response to business licenses, complaints, and revenue tracking.

3. Do you have infrastructure needs (roads, real property, information technology) beyond the current infrastructure request? If so, how do these needs fit in with the department's overall infrastructure priorities that have been submitted to the Capital Construction Committee or Joint Technology Committee? If infrastructure should be a higher priority for the department, how should the department's list of overall priorities be adjusted to account for it?

**Response:** For the most part, the DOL's infrastructure needs are adequately addressed within current resources. However, as mentioned in #2 the DOL is currently developing system requirements for a new business licensing and complaint tracking system for the Consumer Protection Section. Depending on that analysis, the DOL may need to make a budget request to implement a new software solution. Additionally, the DOL will be looking to seek bids for the Safe2Tell reporting software. This purchase may require a budget request, as well.

#### **10:45-10:50 APPELLATE UNIT/APPELLATE BACKLOG**

4. The Appellate Unit has reduced the backlog of appellate cases in recent years but has noted that the Unit's workload may increase again based on the addition of attorneys to the

Appellate Unit in the Office of the State Public Defender. Please discuss the sources of changes in the appellate workload. For example, does the Department keep records regarding the source of appeals (e.g., public defender, private counsel, prosecutors)?

**Response:** The Appellate Division expects an increase in its workload over the next several fiscal years for two reasons.

First, the Court of Appeals has discontinued both the expedited docket and the experimental docket. Under both of these programs, the Court of Appeals decided cases without full (or sometimes any) briefing by the AG's Office. In FY 2014, 145 cases were disposed of under these programs. The Court has now concluded that these were emergency measures adopted to address the backlog of pending appellate cases, and that the addition of new staff for both the AG and the PD made these programs unnecessary. Although the cases handled under both dockets were generally the less difficult cases in the Court's caseload, they will be added back into the Department's active caseload and will now require full briefing, which will take more attorney time.

Second, the Appellate Division of the Public Defender's Office was given eleven new appellate positions in the FY 2015 budget. Ten of those positions will directly impact the Department of Law's Appellate Division. It is our understanding that not all of those attorneys are on board as of today's date, but that they should be operational by the end of January. In addition, the PD's Appellate Division has lost several senior attorneys to retirement, and those attorneys have had to be replaced as well. With all of these new attorneys, there will be a learning curve and the need to devote senior attorney time to training and mentoring. However, it is expected that, once up to speed, these new public defenders will generate several hundred new cases per year for the Department of Law.

The Appellate Division does keep statistics on the sources of our incoming cases (PD, ADC, private counsel, pro se, federal PD), so it will be possible to monitor the impact of the new public defenders on incoming cases. In FY 2014, the breakdown of cases was as follows:

Public defender	410 (42%)
Pro se	233 (24%)
Private counsel	134 (14%)
ADC	205 (21%)
<u>Federal PD</u>	<u>0</u>
Total	982

The DOL anticipates the percentage of PD cases will be increasing as the new attorneys begin carrying full caseloads. We will be monitoring those percentages as the year progresses.

**10:50-11:10 REQUEST R1 - VIOLENT CRIME ASSISTANCE TEAM FTE**

[Background Information: The Department is requesting an increase of \$266,520 General Fund and 1.8 attorney FTE (annualizing to \$264,835 and 2.0 FTE in FY 2016-17 and beyond) to expand the Violent Crime Assistance Team (VCAT). Currently including 2.0 attorney FTE and 1.0 criminal investigator FTE, the VCAT assists local district attorneys with homicide prosecutions upon the request of the local district attorney and the approval of the Attorney General. The request responds to increasing workload for the VCAT.]

5. Please discuss the ongoing role of the VCAT, including the drivers of increasing workload, the appropriate support and expertise the Department of Law should provide local district attorneys, and whether legislation clarifying the General Assembly’s intent for the VCAT would be beneficial.

**Response:** VCAT is a two-attorney, one-investigator unit. VCAT (formerly known as the Capitol Crimes Unit and the Homicide Assistance Team) was created by the Legislature in fiscal year 1994-1995 to assist District Attorneys by providing additional investigative and prosecutorial resources in major violent crime matters, with an emphasis primarily being on homicide cases. These homicide investigations include complex homicides, cold-cases, and death-penalty-eligible homicides. VCAT is uniquely designed to assist all of the state’s district attorneys to effectively analyze and prosecute these significant cases.

The VCAT caseload has dramatically increased between 2005 – 2014:

CALENDAR YEAR	CASELOAD	JUDICIAL DISTRICTS
2005	10	3 (12 <sup>th</sup> , 17 <sup>th</sup> , 18 <sup>th</sup> )
2006	14	4 (4 <sup>th</sup> , 7 <sup>th</sup> , 12 <sup>th</sup> , 18 <sup>th</sup> )
2007	14	8 (4 <sup>th</sup> , 7 <sup>th</sup> , 9 <sup>th</sup> , 11 <sup>th</sup> , 12 <sup>th</sup> , 18 <sup>th</sup> )
2008	10	7 (4 <sup>th</sup> , 7 <sup>th</sup> , 8 <sup>th</sup> , 9 <sup>th</sup> , 11 <sup>th</sup> , 12 <sup>th</sup> , 18 <sup>th</sup> )
2009	10	4 (4 <sup>th</sup> , 8 <sup>th</sup> , 12 <sup>th</sup> , 18 <sup>th</sup> )
2010	13	5 (4 <sup>th</sup> , 7 <sup>th</sup> , 8 <sup>th</sup> , 12 <sup>th</sup> , 18 <sup>th</sup> )
2011	13	5 (4 <sup>th</sup> , 7 <sup>th</sup> , 8 <sup>th</sup> , 12 <sup>th</sup> , 18 <sup>th</sup> )
2012	18	7 (4 <sup>th</sup> , 7 <sup>th</sup> , 8 <sup>th</sup> , 12 <sup>th</sup> , 16 <sup>th</sup> , 18 <sup>th</sup> , 22 <sup>nd</sup> )
2013	17	9 (2 <sup>nd</sup> , 4 <sup>th</sup> , 7 <sup>th</sup> , 8 <sup>th</sup> , 12 <sup>th</sup> , 15 <sup>th</sup> , 16 <sup>th</sup> , 18 <sup>th</sup> , 22 <sup>nd</sup> )
2014	22	13 (2 <sup>nd</sup> , 3 <sup>rd</sup> , 4 <sup>th</sup> , 6 <sup>th</sup> , 7 <sup>th</sup> , 11 <sup>th</sup> , 12 <sup>th</sup> , 13 <sup>th</sup> , 16 <sup>th</sup> , 18 <sup>th</sup> , 21 <sup>st</sup> , 22 <sup>nd</sup> )

The increased caseload is primarily driven by the changing dynamics in rural district attorney’s offices. Term limits have had a significant impact on the level of experience amongst rural prosecutors. The impacts of term limits are further exacerbated by the lack of funding for local district attorney’s offices. With both of these factors, rural district attorneys face the daunting challenge of adequately staffing multiple offices in several counties in judicial districts that are larger in size than some small states. The combination

of these circumstances creates a significant deficit in both financial resources and in the experience, when compared to the public defenders and private defense bar in rural jurisdictions.

While VCAT's original mission remains in place, VCAT has modified its assistance to meet the needs created by the combination of term limits and lack of resources in rural jurisdictions. VCAT has moved from primarily being a consultation resource on cases that may be considered for the death penalty, to actively litigating motions and trying murder cases. Today, VCAT continues to be perfectly situated to provide much needed prosecutorial and investigative expertise in complicated violent crimes.

6. The Department's request notes that the VCAT provides lectures for attorneys and law enforcement (including 25 lectures in FY 2013-14). Please explain the need for this type of training from the VCAT and how that relates to other training programs offered or funded by the Department.

**Response:** VCAT's training efforts are directly related to its mission to provide investigative and prosecutorial resources to local, primarily rural, district attorney's offices. The trainings are primarily designed to supplement smaller jurisdictions with their comparative lack of resources and experience. The goal is equip smaller jurisdictions with the ability to effectively prosecute complex violent crimes using local resources. Beyond providing trainings to rural law enforcement, VCAT is recognized for their experience and expertise. Due to this recognition, VCAT is often asked to speak at statewide and national conferences and other meetings developed from professional contacts. These efforts are critical to establishing and maintaining the professional credential on behalf of VCAT and the Department of Law.

7. How many of the cases requiring VCAT assistance arise in state prisons, and in which judicial districts? Given that the State funds prosecutions of crimes occurring in state prisons, through the Department of Corrections budget, please discuss the need for VCAT assistance in these cases in addition to the state funding for prosecution.

**Response:** In 2014, only two of the cases involved murders in state prisons. One case, which resolved during jury selection after years of motions litigation, was a death penalty case. Another case could be considered for the death penalty. Due to the complexities of these cases, additional resources, beyond those financed by the Department of Corrections, were necessary to process, research, and litigate hundreds of motions, and prepare for months of trial.

YEARS	DOC HOMICIDES
2005 - 2007	3
2008 - 2011	1
2011 - 2014	2

8. Has the Department considered the possibility of charging counties supporting local district attorney offices for the expertise and assistance provided by the VCAT?

**Response:** The Department of Law has not considered charging counties supporting local district attorney offices for the expertise and assistance provided by the VCAT. VCAT provides a valuable resource to local, often rural/smaller district attorneys, who do not have the economic resources that are available to larger, more urban, offices. It is presumed that if these counties could afford more resources for law enforcement and prosecution of complex violent crimes, that they would allocate those resources on the local level. Traditionally, police agencies, local prosecutors, and state prosecutors work collegially to best ensure justice is served, within available resources: knowledge, people, and dollars.

#### Impact of District Attorney Term Limits

9. The Department has mentioned term limits affecting local district attorneys as one of the factors contributing to the increasing need for VCAT assistance. Please explain the impact of term limits.

**Response:** In 2004, term limits for local district attorneys were implemented and the effects of term limits have been gradual, but are quite visible now. First, rural jurisdictions have a smaller population of attorneys who live and practice in their communities. Logically, this limits the number of eligible candidates for the position of elected district attorney. Likewise, it also limits the pool of attorneys who may seek careers in prosecution. Some judicial districts have less than five attorneys total in their offices (i.e. – the 3<sup>rd</sup>, 15<sup>th</sup>, and 22<sup>nd</sup> Judicial Districts) and others have less than ten (i.e. – the 7<sup>th</sup>, 12<sup>th</sup>, and 14<sup>th</sup> Judicial Districts). Meanwhile, local district attorneys are responsible for all of the prosecution efforts in multiple counties that combined are larger than many small states (i.e. – 7<sup>th</sup> and 12<sup>th</sup> Judicial District each include six counties; the 13<sup>th</sup> Judicial District has seven counties).

Prior to term limits, an elected district attorney who was accountable through the electoral process, had the incentive to operate an effective office through consistent and experienced prosecutors. This steady leadership also allowed for stability in the budget process on a local level. Prior to term limits, the prosecution enjoyed the same benefits associated with consistency as the public defenders, the defense bar, and the judiciary.

However, with the advent of term limits, all or some of the prosecution experience in a rural district attorney's office may be turned over every four to eight years. Without long term stability it is difficult to find attorneys, who would otherwise be inclined to become prosecutors, to join district attorney's offices. In light of the lack of consistency, rural attorneys find it difficult to accept a much lower salary when compared to opportunities in

the private sector, including criminal defense. When those attorneys are found, it has been very common that they will obtain experience, only to seek more stable prosecution opportunities in larger metro offices. As rural district attorney's offices struggle to recruit and maintain experienced prosecutors at all levels in their organizations, the public defenders, private defense bar, and the judiciary, continue to add to their professional development every day.

10. Have any judicial districts either eliminated or extended the term limits for local district attorneys? If so, which judicial districts? Have any districts tried to do so and failed? Have any judicial districts proposed "debrucing" to allow for increased support to local district attorney offices?

**Response:** Denver (2<sup>nd</sup> Judicial District) and Boulder (20<sup>th</sup> Judicial District) have extended term limits to three terms. The electorate in Pueblo (10<sup>th</sup> Judicial District) chose to not have a term limit for their elected district attorney. Meanwhile, voters in the 1<sup>st</sup> Judicial District (Jefferson and Gilpin counties) and the 17<sup>th</sup> Judicial District (Adams and Broomfield counties) rejected the extension of term limits beyond two terms.

The Department of Law is unaware of any "debrucing" efforts on a local level.

Other entities like the Colorado District Attorneys Council may be able to respond with more specificity.

#### Local District Attorneys' Budgets and Funding

11. Please discuss the sources of funding for local district attorney offices, including the relationship to requests for services from the VCAT. For example, how are costs allocated between counties in judicial districts that span multiple counties? What disparities exist in terms of the funding of local district attorney offices?

**Response:** The Department of Law can only respond in general terms. Each district attorney receives funding for their offices from their county commissioners. Rural district attorneys must work with at least two, and as many as seven, Boards of County Commissioners (BCC). Each of these BCC's has a unique composition, constituencies, priorities, and funding issues. There is significant disparity in the amount of funding allocated to individual district attorney offices amongst rural judicial districts. The most significant disparity is between rural and metro/urban jurisdictions. There is no known relationship between the requests for VCAT assistance and the budgets set for district attorneys by county commissioners.

Other entities like the Colorado District Attorneys Council may be able to respond with more specificity.



12. Please discuss the transparency of local district attorney budgets. Does the Department have recommendations regarding what could be done to improve the transparency of district attorney budgets?

**Response:** The Department of Law can only respond in general terms, however, local district attorney budgets have the same open records and open meetings requirements as all other local agencies, departments, and budgets.

**11:10-11:20 REQUEST R2 - COLORADO OPEN RECORDS ACT ATTORNEY**

[Background Information: The Department is requesting an increase of \$109,631 General Fund and 0.9 attorney FTE in FY 2015-16 (annualizing to \$107,520 and 1.0 FTE in FY 2016-17 and beyond) to add expertise in response to an increasing workload associated with the Colorado Open Records Act (CORA) and the Open Meetings Law. The Request responds to an increasing CORA-related workload and seeks to improve the consistency and quality of CORA responses both within the Department of Law and in client agencies.]

13. Please discuss the Department's and the Attorney General's thoughts with respect to the legal and administrative issues surrounding CORA. Looking beyond the specifics of the Department's request, does the Attorney General have recommendations for changes to CORA or the CORA process?

**Response:** CORA has become a virtual constant legal challenge not just for the Department, but for all executive agencies as well as state and local bodies. Specific to the Department, coordinating consistent legal advice given the numerous ambiguities and innumerable fact scenarios now requires two attorneys to devote time to in-house CORA questions and each section must regularly advise clients on CORA requests directed to them. For example, for just the Department of Law, CORA requests grew from 73 in CY 2012 to 95 through early November of this year. Only two of the 95 CORA requests were election related. These requests have become increasingly broad and multi-faceted. CORA (and the Colorado Open Meetings Law) are in need of significant remediation which the Department has sought in the past by working with stakeholders. Those efforts to date have been unsuccessful. We continue to regularly litigate CORA cases including cases currently pending in the Courts of Appeals and recent cases from the Supreme Court.

14. The Department's request mentions that the Governor's Office has asked the Department of Law to spearhead efforts to improve the consistency of CORA responses. Please discuss the scope of the review that the Governor's Office has requested. Does the Department feel that a legislative task force investigating changes to the CORA statutes would be beneficial?

**Response:** Yes, a legislative task force could be beneficial.

The DOL worked closely with the Governor's office about a year ago in an effort to ensure all Executive Branch agencies had a CORA policy and it was publically available. As part of that

effort, the Department of Law revised significantly its own CORA policy that then became a template for revisions to other policies throughout the executive branch. Obviously, some policies continue to differ due largely to the unique aspects of agencies' public records, but we believe CORA policies have been made much more consistent and transparent across the government.

15. Please discuss the Department's role with respect to counties' compliance with CORA. What is the mechanism to enforce counties' compliance?

**Response:** The DOL does not represent counties and cannot comment on their compliance

#### **11:20-11:35 OTHER QUESTIONS**

16. With request R4, the Department is requesting \$55,114 reappropriated funds to support a half-time contract administrator. The request discusses the need to protect state information. Please discuss the risk to state information and provide additional justification for the request. For example, is this a cybersecurity issue?

**Response:** The DOL, due to its representation of state agency business and its' investigation and prosecution efforts in insurance, securities, criminal and Medicaid fraud and general consumer protection investigations and prosecutions, possesses, analyzes and retains various protected information. The DOL has legal responsibilities to safeguard the confidentiality of this information obtained and used in the course of its representation of State interests and instrumentalities and agencies of the State.

Many of the DOL's contracts have the potential for a particular vendor to view, process, manipulate, or store protected information and work product. State contracts and agreements which DOL has entered have become highly technical and time consuming as DOL must ensure its contractors maintain the security and confidentiality that our client data requires. Protected client information falls under regulations and guidelines issued by the Federal Bureau of Investigation (FBI), the U.S. Department of Homeland Security (U.S. DHS), the U.S. Department of Justice (U.S. DOJ), the Governor's Office of Homeland Security (DHS), the Colorado Bureau of Investigation (CBI), the Colorado Chief Information Security Officer (CISO), the Health Insurance Portability and Accountability Act (HIPPA), the Health Information Technology for Economic and Clinical Health Act (HITECH), the Family Educational Rights and Privacy Act (FERPA), and various other entities. Such contracts may address network security and backup, investigation or prosecution data management, or other data retention, such as the anonymous reporting that the Safe2Tell program manages.

Due to the increasing sophistication of the DOL's contracts based on this growing and ongoing need to protect state information, the DOL is spending increasing time on contract negotiations and vendor monitoring to ensure deliverables are being met within the terms of the contract, state data is protected through contract language and contractor

performance, and remedies in the event of a breach are addressed. In the event of a data breach, contract negotiations include the requirement that the contractor address the monetary impacts of that data breach by providing credit reporting or other remedies to those parties whose data may have been compromised. The data breach remedies have been the most significant negotiation point in contract negotiations, particularly the dollar value for which the vendor is potentially liable. The act of balancing DOL's contract needs with the vendor needs can only be accomplished by having a contract administrator.

A primary purpose of this position will be to ensure that DOL contracts with vendors who will be holding DOL data (much of which falls under regulatory security schemes such as HIPAA) and the agency wants to ensure that any vendor we engage with is contractually bound to those regulatory data security schemes. This is increasingly becoming more and more of an issue as whenever we engage vendors on questions of products or services there is increasingly a "cloud" offering that needs to be considered. The potential for external entities to be holding our data is becoming more likely as time goes on and as such it is vital that we have someone who understands contracting and can engage and negotiate with vendors to ensure that through contracting DOL digital resources are protected.

17. With request R5, the Department is requesting an increase of \$167,823 total funds (including \$64,547 General Fund) to support operating and litigation costs in the Consumer Protection and Antitrust Unit. The request indicates that the implementation of the State's new accounting system, CORE, is eliminating flexibility that the Department had previously used to cover these costs with centrally appropriated operating amounts. Please explain the impact of CORE and discuss whether the Department has pursued maintaining that flexibility in CORE.

**Response:** The implementation of CORE makes it easier for the State Controller's Office to maintain consistency across state agencies both in their use of the financial system as well as from a policy standpoint. The desire for statewide consistency includes practices surrounding the movement of centrally appropriated personal services and operating lines (aka POTS). As such, the policy from the State Controller Office is only personal service POTS can be moved to program or personal service line items.

Traditionally, the Department of Law has had the ability to move both personal services POTS, such as Health, Life, and Dental, and operating POTS, such as Vehicle Lease Payments, to an appropriate program line item, personal service line, item or operating line item. For example, in COFRS, the Department of Law could move a portion of the Health, Life, and Dental appropriation directly into a program line, such as Consumer Protection and Antitrust. Additionally, the Department was allowed to move operating POT, such as Vehicle Lease Payments, in a similar manner. Other state agencies were not operating under this flexibility in COFRS.

Although, the DOL cannot find documentation of this, it is our understanding that AG Norton, during one of the budget reduction years, offered a 10% GF reduction with the compromise that the agency could move operating POTS around. Since that time the DOL has enjoyed greater budgetary flexibility than the other state agencies. The DOL no longer has that flexibility due to the policy decisions surrounding the implementation of CORE.

The DOL did not aggressively pursue a one-off solution to maintain the budgetary flexibility, as the DOL wanted to help best meet the reporting consistencies that CORE allows and to minimize some of the work-arounds that developed over time due to limitations in COFRS. The DOL is looking to right size the Consumer Protection operating dollars, to maintain consistent use of the CORE system across state agencies and to ensure transparency of state resources within budgetary lines.

18. The Department's budget proposes moving \$46,935 cash funds and 0.4 FTE appropriated through S.B. 14-123 (POST Board Rule Authority Training Suspensions) to the Administration section and then changing the fund source for that position to reappropriated funds from indirect cost recoveries. Please explain the request. Why should this position, which was approved as part of a special bill focused on POST, move to Administration and be funded with another fund source?

**Response:** The Department of Law estimated additional accounting and contract oversight efforts were required by S.B. 14-123 and conveyed those estimates in correspondence with Legislative Council Staff. In a January 30, 2014, correspondence with Legislative Council on this bill, the Department initially estimated GF appropriation in the Administration section of the Long Bill in the first year and RF (Indirect Recoveries) in the out year addressing the Accountant workload. In verbal correspondence with Legislative Council Staff, the Department realized that GF would not be suggested for appropriation within SB 14-123 and that Indirect Recoveries are not typical funding included in fiscal notes. As such, the fiscal note suggested cash spending authority for the implementation of this bill.

The Department intended all along for this position to be housed in the Administration section of the organization along with all other FTE that serve financial and accounting functions and other related overhead efforts. The Department's financial, HR, IT, and other back office support is exclusively centralized in the Administration section of the department's Long Bill. This ½ Accountant FTE was combined with other dollars through a retirement to best meet the programmatic needs of the POST grant function and other department accounting needs.

Prior to this bill, the POST fund granted out roughly \$2M annually for POST training efforts. The contract and accounting support for these responsibilities were exclusively handled in the Administration section of the Long Bill and paid through indirect recoveries by the POST cash fund, all other department cash funds and Medicaid Fraud federal funds. This bill

expanded significantly the contracting efforts of the POST fund and the required contract support and oversight provided by Administration personnel. The Department would prefer to not split a portion of an FTE providing POST contract support housed in the POST line while other POST accounting and contract support associated with traditional contract and grant oversight being housed within Administration.

19. Please discuss the anticipated decrease in automobile theft prevention grant funding from the Department of Public Safety. Are prosecutions in these cases increasing? Why is the grant funding decreasing?

**Response:** The Colorado Auto Theft Prevention Authority (CATPA) is funded through 42-5-112, C.R.S. whereby CATPA collects a \$1 fee from insurance companies on most, but not all, insured vehicles in Colorado. These collections have averaged \$4.5 million per year, where the CATPA Board then solicits and awards these funds to qualified grant recipients. One of nine (9) grantees is the Attorney General's Office, which was awarded a FY15 grant in the amount of \$276,666 for prosecution of auto theft offenders.

Over the past four years, the CATPA Board has moved to balance the grant funds between available grant funding, and grant income and grant awards. This measure was formally announced during November of last year when CATPA met with all existing and interested applicants to announce and provide instructions on the FY15 CATPA Grant. During this training, CATPA announced the limitation of grant funds to the amount of the annual collections (\$4 million) with an additional \$500,000 in supplemental funds. Summarily, the CATPA Board awarded \$4.5 million in FY15.

As a brief background, in the early years of CATPA (2008-2010), the CATPA Board was faced with accumulation of funds. There were not sufficient applications to expend the entire annual income, complicated by the fact that some grantees were awarded funds but did not expend the money.

Since 2010, CATPA has received application requests that are above the annual funding level. Recognizing the accumulation of revenues was beyond the annual collection level, the CATPA Board began funding qualified grant programs at a higher level (supplemental funding). In doing so, the CATPA Board has provided caution to the grantees that the funding level would eventually be lowered as the excess funds were drained. This stewardship endeavor effectively reduced our supplemental grant funds, although the amount of income has remained constant from year to year.

In simple terms, annual collections haven't changed, but the accumulation of previous year's funding has reduced.

This month, CATPA announced to all grantees that the supplemental funds have been exhausted and FY16 grant awards would be at \$4 million, with minimal, if any supplemental

funds being returned from the FY15 awards. In essence, FY15 will be a balance year for CATPA awards equaling the income. With this budget balance, available grant funds will be reduced by 14% from FY15 (\$500,000 reduction in FY16).

The FY16 funding may impact the DOL by a 14 percent reduction but any reduction is dependent upon the funding determinations made by the CATPA Board. The CATPA grant program is a competitive process, but the CATPA Board has been supportive of DOL in previous years.

Prosecutions, for the most part, have remained steady over the last few years. Below are some of the workload measures provided in the Department’s budget request for the Auto Theft program.

Workload Measures	Actual FY13	FY 14 Actual
<b>Measure 1.1</b> Criminal Investigations Opened (Individuals)	3	3
<b>Measure 1.2.</b> Criminal Cases Filed (Individuals)	9	7
Measure 1.3 Jury trials	1	1
<b>Measure 1.4</b> Convictions Obtained	8	9

**11:35-12:00 PENDING LEGAL CASES INVOLVING OR AFFECTING THE STATE**

20. Please discuss the status of the following cases, as well as any other legal matters that the Attorney General believes warrant the Committee’s attention.

**Response:** The cases listed below should be discussed in Executive Session.

- a. *Dwyer v. the State of Colorado*
- b. *American Family Insurance, et al. v. State of Colorado, et al.*

21. With respect to the Lower North Fork Fire, please discuss the statutory language related to governmental immunity. Does the Department believe that the current language is too broad?

**Response:** When burning was conducted in the Lower North Fork in late March 2012, the CGIA contained no waiver of governmental immunity for claims of injuries resulting from prescribed burning activities. The lone exception was in cases where willful and wanton

conduct was alleged. After the Lower North Fork wildfire, the General Assembly acted to provide a remedy to residents and property owners who had been harmed by retroactively waiving the State's immunity from such claims. To achieve this result, the General Assembly created section 24-10-106.1 of the CGIA, a wholly separate section from all other waivers of governmental immunity. In creating section 106.1, the General Assembly intended to waive immunity only for the State, and to leave intact immunity enjoyed by all others, including the immunity of local governments and of public employees. The narrow scope of section 106.1 is evident from the plain language of § 24-10-118(2), which excepts from public employees' immunity the "circumstances specified in section 24-10-106(1)." Notably, section 118(2) contains no reference to the new waiver of the State's immunity contained in section 106.1, meaning the immunity of public employees, including public employees engaged in prescribed burning activities, is not affected by the waiver of the State's immunity in connection with prescribed burning.

The actual waiver of the State's immunity under §24-10-106.1 is limited to negligently conducted prescribed fires. The CGIA defines the term "Prescribed Fire" as "the application of fire in accordance with a written prescription for vegetative fuels and excludes a controlled agricultural burn." §24-10-103(3.5), C.R.S. (2014). As written, this definition includes within the waiver of immunity only negligence in connection with planned burning of excess fuels for the purpose of wildfire prevention. The definition does not waive immunity for backfires set as a fire-fighting technique intended to stop a wildfire's advance, nor does it waive immunity for other uses of fire in emergency situations. It likewise does not create a waiver for fires set as an exercise of government's police power.

However, because setting backfires as a fire-fighting technique or in an emergency may be the subject of a written order in a given situation, there is potential ambiguity in the definition of "Prescribed Fire" which could lead to an unintended waiver of the State's immunity. For this reason, we recommend that the waiver language be amended to eliminate such potential ambiguity by expressly excluding the application of fire in backfires for the purpose of fire-fighting and controlling the spread of an existing wildfire and other emergencies. Other than this ambiguity, the department does not believe the waiver of immunity in §24-10-106.1 is too broad.

When victims of the Lower North Fork wildfire were being compensated for losses, the statutory language of the CGIA unfortunately created two classes of compensation for those affected: During the 2012 legislative session immediately following the fire, in order to promote reasonable settlement of claims and speedier compensation to claimants, the General Assembly amended §24-10-114(5) to provide a route to compensation through the State Claims Board. Under 114(5), the Claims Board could recommend to the General Assembly that it pay compensation to a victim in excess of the CGIA's liability cap, but only if the recommendation did not include compensation for non-economic injuries. §24-10-114(5)(b), C.R.S. Many of the Lower North Fork property owners and residents applied to the Claims Board for compensation in excess of damages caps under the new provision. The

Board recommended that compensation be made to many of the victims, and at the close of the 2013 legislative session, the General Assembly authorized payment in accordance with the Claims Board's recommendations. The General Assembly's bills avoided the constitutional infirmity known as "special legislation," which occurs when the General Assembly passes legislation to benefit one or a few particular people.

Other property owners in the Lower North Fork lawsuit proceeded to litigate damages before Special Masters appointed by the court and received "judgments" for their damages, including non-economic damages and interest. The Claims Board reviewed these "judgments" and made recommendations for payment of compensation in excess of the damages cap, but, consistent with its earlier recommendations, it did not recommend payment of non-economic damages and interest. Nevertheless, at the end of the 2014 legislative session, the General Assembly passed SB 14-223 that directed the State Controller to make payments to remaining property owners and residents, by name, in amounts awarded by Special Masters. Since then, certain of the Lower North Fork property owners who received compensation in settlements worked out through the Claims Board have threatened legal challenges to the uneven compensation awarded in SB 14-223. We believe that the awards of compensation made under SB 14-223 are vulnerable to constitutional challenges because they appear to be special legislation and possibly also on equal protection grounds. For this reason, we recommend that §24-10-114(5) be amended to eliminate a direct appeal to the General Assembly under §114(5)(a) and instead allow only Claims Board recommendations for compensation in excess of damages caps under §114(5)(b).

22. The *Agilent Technologies* case involves income taxes paid to the Department of Revenue. The case has already had an administrative hearing and been appealed to Denver District Court. Does the Department of Revenue have a threshold dollar amount above which it does not conduct administrative hearings?

**Response:** There is no dollar threshold for administrative tax hearings. The Executive Director has delegated her authority to conduct these hearings to the Department's Hearings Division. If the Department is unsuccessful after the administrative hearing, the hearing officer's decision is final and there is no right to appeal. But, a taxpayer may appeal the hearing officer's decision in a *de novo* appeal to district court upon paying the disputed amount to the Department or filing a bond for twice that amount.

#### Tobacco Master Settlement Agreement

23. When does the Department expect to begin arbitration on the 2004 payments under the Master Settlement Agreement?

**Response:** The 2004 NPM Adjustment Arbitration should begin in mid to late 2015.



24. The Department is requesting \$80,389 cash funds and 1.0 FTE to hire a legal assistant for the Tobacco Master Settlement Agreement. Please further explain the need for 1.0 FTE in FY 2015-16 when the timing of arbitration proceedings and the associated workload is uncertain.

**Response:** This position is not being requested to support the Department's work for the calendar year 2004 arbitration proceeding; rather it is to support and enhance the present day-to-day enforcement of the MSA, Tobacco Escrow Funds Act, and the Colorado Certified Brands Directory. Any support work for the arbitration is a secondary function for this position.

25. Is there an end date to the Master Settlement Agreement or is it in effect in perpetuity?

**Response:** Pursuant to MSA Section IX(c)(1), the MSA and its payments remain in effect in perpetuity.

**ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

1. Provide a list of any legislation that the Department has: (a) not implemented or (b) partially implemented. Explain why the Department has not implement or has partially implemented the legislation on this list.

**Response:** The Department of Law is not aware of any compliance issues with legislation or other statutory requirements. Three specific 2014 bills that impact the Department of Law significantly are:

- SB 14-123 increases the vehicle registration fee dedicated for P.O.S.T training from \$0.60 per registration to \$1.00 per registration. Additionally, this bill expanded the rule making authority of the P.O.S.T. Board. This bill increases revenues to the fund by roughly \$1.6M and appropriated 1.0 FTE to the program and a part-time employee to the Department's Administration section. The additional revenues will be primarily used to expand the training needs of the program. All personnel have been hired that were appropriated in this bill and contracts are developing to address the new training dollars.
- SB 14-215 creates the Marijuana Cash Fund to be used for the collection of marijuana retail related taxes. In relation to the P.O.S.T board this bill appropriates roughly \$1.2M to the Board to fund 1.0 FTE and to further expand the training needs of Colorado law enforcement associated with the new law enforcement issues associated with retail marijuana. Additionally, the bill appropriates \$456K to the Special Prosecution Line Item to provide general legal and policy guidance to various state jurisdictions. All personnel have been hired that were appropriated in this bill and contracts are developing to address the new training dollars.

- SB 14-002 moved the Safe 2 Tell nonprofit efforts into the Department of Law. This program provides for the anonymous reporting of dangerous and criminal activities in schools, All personnel have been hired that were appropriated in this bill and successfully working toward programmatic objectives.

2. What is the turnover rate for staff in the department? Please provide a breakdown by office and/or division, and program.

**Response:** The Department of Law was appropriated 446.5 FTE through the Long Bill and special bills for FY 2013-14. During this time period, the Department utilized 450 positions, some of which were part-time state employees. The Department had turnover in 43 out of the 450 positions, which is a 9.6% turnover rate for the Department for FY 2013-14. Four of the primary reasons provided for leaving the Department of Law were: “Retirement” (11); “Transfer to Another State Agency” (9), “Personal Reasons” (9), and “Accepted a Job Outside the State System” (5).

Turnover breakdown by Line Item:

Office of Attorney General and Administration: 6

Legal Services to State Agencies: 29

Special Prosecutions Unit: 3

Appellate Unit: 1

Medicaid Fraud Control Unit: 1

Consumer Protection and Antitrust: 1

Consumer Credit Unit: 2

3. Please identify the following:

- a. The department’s most effective program;
- b. The department’s least effective program (in the context of management and budget);
- c. Please provide recommendations on what will make this program (2.b.) more effective based on the department’s performance measures.

**Response:** While it is very difficult to choose from among all the work we do, the Department would suggest the most effective programs are:

- Criminal Investigation, Prosecution, and Enforcement
- Consumer Protection
- Federal & Interstate Water Unit
- Representation of Client Agencies

Criminal Investigation, Prosecution, and Enforcement: The Attorney General’s criminal

justice efforts are focused in multiple areas: 1) Workers' Compensation Fraud, 2) Medicaid Fraud, 3) Environmental Crimes, 4) Gang Prosecutions, 5) Foreign Prosecutions, 6) Financial Fraud, including Insurance Fraud and Securities Fraud, 7) Complex Crimes, and 8) the Violent Crimes Assistance Team (VCAT). The Criminal Justice Section is also involved in several outreach programs associated with mitigating gang activity, preventing school violence, and responding to child abductions. Although the caseload potential for this Section vastly exceeds the current resources, the success of this Section is extremely impressive.

**Consumer Protection:** Given the fact that the AG's Consumer Protection Section is small but has very broad jurisdiction (Consumer Protection Act, Antitrust Act, Charitable Solicitation Act and more than a dozen other statutes) the section is successful in selecting appropriate cases for investigation and enforcement. This program also regulates consumer lending, debt collection, and debt settlement companies and engages in extensive enforcement against licensed entities. In addition, this program conducts important consumer outreach through partnerships with various non-profit organizations and through publication and dissemination of consumer alerts, educational brochures, a stand-alone consumer protection website ([stopfraudcolorado.gov](http://stopfraudcolorado.gov)) and a quarterly newsletter.

**Federal & Interstate Water Unit:** This Unit protects the State's interests in the waters of interstate rivers, with respect to both interstate water allocation and federal environmental requirements. The Unit also works with state water users to protect the state's interests in the timely and reasonable resolution of federal claims for water rights, including reserved water rights and claims for in-stream flows.

**Representation of Client Agencies:** The Attorney General by statute is the legal counsel and advisor of each department, division, board, bureau and agency of state government other than the legislative branch (§ 24-31-101 C.R.S.). The Department represents the various clients efficiently and effectively. The key to this success is retaining quality employees by providing competitive attorney compensation and benefits package and a dynamic work environment.

One area where this office could become more effective is with the regulation of non-profit activities and charitable trusts. The AG has both statutory and common law authority over non-profit organizations and charitable trusts. However, the office does not have any dedicated resources to handle complaints and concerns. With the exception of the conversion of non-profit hospitals, most of this work, by default, is absorbed by the Consumer Protection Unit.

The typical complaint, within this area, involves the: management of a nonprofit or charitable asset or the change in the charitable purpose of the organization. Neither of these issues are truly a consumer protection issue. These issues are neither fraudulent nor deceptive, which is where the Consumer Protection Unit directs its time.

To better regulate these entities this office would need additional resources and possibly statutory clarifications on authorities and purpose.

4. How much capital outlay was expended using either operating funds or capital funds in FY 2013-14? Please break it down between the amount expended from operating and the amount expended from capital.

**Response:** The DOL utilized \$60,170 during FY 14 on IT capitalized outlays. \$56,883 of this amount was for server purchases. These costs were primarily accommodated through the DOL's Information Management Asset Maintenance budget, with \$12,457 coming from the Litigation Management and Technology Line Item.

5. Does the Department have any outstanding high priority recommendations as identified in the "Annual Report of Audit Recommendations Not Fully Implemented" that was published by the State Auditor's Office on June 30, 2014? What is the Department doing to resolve the outstanding high priority recommendations?

[http://www.leg.state.co.us/OSA/coauditor1.nsf/All/1FE335CE3162803F87257D7E00550568/\\$FILE/1422S%20-%20ANNUAL%20REPORT%20OF%20AUDIT%20RECOMMENDATIONS%20NOT%20FULLY%20IMPLEMENTED%20AS%20OF%20JUNE%2030,%202014.pdf](http://www.leg.state.co.us/OSA/coauditor1.nsf/All/1FE335CE3162803F87257D7E00550568/$FILE/1422S%20-%20ANNUAL%20REPORT%20OF%20AUDIT%20RECOMMENDATIONS%20NOT%20FULLY%20IMPLEMENTED%20AS%20OF%20JUNE%2030,%202014.pdf)

**Response:** The Department of Law does not have any outstanding high priority recommendations identified in the Annual State Auditor's Report.

**DEPARTMENT OF LAW  
FY 2015-16 JOINT BUDGET COMMITTEE HEARING AGENDA**

**Wednesday, December 10, 2014  
10:30 am – 12:00 pm**

**10:30-10:40 INTRODUCTIONS AND OPENING COMMENTS**

**10:40-10:45 QUESTIONS COMMON TO ALL DEPARTMENTS**

1. Describe the department's experience with the implementation of the new CORE accounting system.
  - a. Was the training adequate?
  - b. Has the transition gone smoothly?
  - c. How has the implementation of CORE affected staff workload during the transition?
  - d. Do you anticipate that CORE will increase the staff workload on an ongoing basis? If so, describe the nature of the workload increase and indicate whether the department is requesting additional funding for FY 2015-16 to address it.
  
2. SMART Government Act:
  - a. Please describe how the SMART Government Act is being integrated into the department's existing processes (both in terms of service delivery and evaluating performance).
  - b. How is the data that is gathered for the performance management system used?
  - c. Please describe the value of the act in the department.
  
3. Do you have infrastructure needs (roads, real property, information technology) beyond the current infrastructure request? If so, how do these needs fit in with the department's overall infrastructure priorities that have been submitted to the Capital Construction Committee or Joint Technology Committee? If infrastructure should be a higher priority for the department, how should the department's list of overall priorities be adjusted to account for it?

**10:45-10:50 APPELLATE UNIT/APPELLATE BACKLOG**

4. The Appellate Unit has reduced the backlog of appellate cases in recent years but has noted that the Unit's workload may increase again based on the addition of attorneys to the Appellate Unit in the Office of the State Public Defender. Please discuss the sources of changes in the appellate workload. For example, does the Department keep records regarding the source of appeals (e.g., public defender, private counsel, prosecutors)?

### **10:50-11:10 REQUEST R1 - VIOLENT CRIME ASSISTANCE TEAM FTE**

[Background Information: The Department is requesting an increase of \$266,520 General Fund and 1.8 attorney FTE (annualizing to \$264,835 and 2.0 FTE in FY 2016-17 and beyond) to expand the Violent Crime Assistance Team (VCAT). Currently including 2.0 attorney FTE and 1.0 criminal investigator FTE, the VCAT assists local district attorneys with homicide prosecutions upon the request of the local district attorney and the approval of the Attorney General. The request responds to increasing workload for the VCAT.]

5. Please discuss the ongoing role of the VCAT, including the drivers of increasing workload, the appropriate support and expertise the Department of Law should provide local district attorneys, and whether legislation clarifying the General Assembly's intent for the VCAT would be beneficial.
6. The Department's request notes that the VCAT provides lectures for attorneys and law enforcement (including 25 lectures in FY 2013-14). Please explain the need for this type of training from the VCAT and how that relates to other training programs offered or funded by the Department.
7. How many of the cases requiring VCAT assistance arise in state prisons, and in which judicial districts? Given that the State funds prosecutions of crimes occurring in state prisons, through the Department of Corrections budget, please discuss the need for VCAT assistance in these cases in addition to the state funding for prosecution.
8. Has the Department considered the possibility of charging counties supporting local district attorney offices for the expertise and assistance provided by the VCAT?

#### Impact of District Attorney Term Limits

9. The Department has mentioned term limits affecting local district attorneys as one of the factors contributing to the increasing need for VCAT assistance. Please explain the impact of term limits.
10. Have any judicial districts either eliminated or extended the term limits for local district attorneys? If so, which judicial districts? Have any districts tried to do so and failed? Have any districts tried to do so and failed? Have any judicial districts proposed "debrucing" to allow for increased support to local district attorney offices?

#### Local District Attorneys' Budgets and Funding

11. Please discuss the sources of funding for local district attorney offices, including the relationship to requests for services from the VCAT. For example, how are costs allocated between counties in judicial districts that span multiple counties? What disparities exist in terms of the funding of local district attorney offices?

12. Please discuss the transparency of local district attorney budgets. Does the Department have recommendations regarding what could be done to improve the transparency of district attorney budgets?

**11:10-11:20 REQUEST R2 - COLORADO OPEN RECORDS ACT ATTORNEY**

[Background Information: The Department is requesting an increase of \$109,631 General Fund and 0.9 attorney FTE in FY 2015-16 (annualizing to \$107,520 and 1.0 FTE in FY 2016-17 and beyond) to add expertise in response to an increasing workload associated with the Colorado Open Records Act (CORA) and the Open Meetings Law. The Request responds to an increasing CORA-related workload and seeks to improve the consistency and quality of CORA responses both within the Department of Law and in client agencies.]

13. Please discuss the Department's and the Attorney General's thoughts with respect to the legal and administrative issues surrounding CORA. Looking beyond the specifics of the Department's request, does the Attorney General have recommendations for changes to CORA or the CORA process?
14. The Department's request mentions that the Governor's Office has asked the Department of Law to spearhead efforts to improve the consistency of CORA responses. Please discuss the scope of the review that the Governor's Office has requested. Does the Department feel that a legislative task force investigating changes to the CORA statutes would be beneficial?
15. Please discuss the Department's role with respect to counties' compliance with CORA. What is the mechanism to enforce counties' compliance?

**11:20-11:35 OTHER QUESTIONS**

16. With request R4, the Department is requesting \$55,114 reappropriated funds to support a half-time contract administrator. The request discusses the need to protect state information. Please discuss the risk to state information and provide additional justification for the request. For example, is this a cybersecurity issue?
17. With request R5, the Department is requesting an increase of \$167,823 total funds (including \$64,547 General Fund) to support operating and litigation costs in the Consumer Protection and Antitrust Unit. The request indicates that the implementation of the State's new accounting system, CORE, is eliminating flexibility that the Department had previously used to cover these costs with centrally appropriated operating amounts. Please explain the impact of CORE and discuss whether the Department has pursued maintaining that flexibility in CORE.
18. The Department's budget proposes moving \$46,935 cash funds and 0.4 FTE appropriated through S.B. 14-123 (POST Board Rule Authority Training Suspensions) to the

Administration section and then changing the fund source for that position to reappropriated funds from indirect cost recoveries. Please explain the request. Why should this position, which was approved as part of a special bill focused on POST, move to Administration and be funded with another fund source?

19. Please discuss the anticipated decrease in automobile theft prevention grant funding from the Department of Public Safety. Are prosecutions in these cases increasing? Why is the grant funding decreasing?

**11:35-12:00 PENDING LEGAL CASES INVOLVING OR AFFECTING THE STATE**

20. Please discuss the status of the following cases, as well as any other legal matters that the Attorney General believes warrant the Committee's attention.

- a. *Dwyer v. the State of Colorado*
- b. *American Family Insurance, et al. v. State of Colorado, et al.*

21. With respect to the Lower North Fork Fire, please discuss the statutory language related to governmental immunity. Does the Department believe that the current language is too broad?

22. The *Agilent Technologies* case involves income taxes paid to the Department of Revenue. The case has already had an administrative hearing and been appealed to Denver District Court. Does the Department of Revenue have a threshold dollar amount above which it does not conduct administrative hearings?

*Tobacco Master Settlement Agreement*

23. When does the Department expect to begin arbitration on the 2004 payments under the Master Settlement Agreement?

24. The Department is requesting \$80,389 cash funds and 1.0 FTE to hire a legal assistant for the Tobacco Master Settlement Agreement. Please further explain the need for 1.0 FTE in FY 2015-16 when the timing of arbitration proceedings and the associated workload is uncertain.

25. Is there an end date to the Master Settlement Agreement or is it in effect in perpetuity?

**ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

1. Provide a list of any legislation that the Department has: (a) not implemented or (b) partially implemented. Explain why the Department has not implement or has partially implemented the legislation on this list.



2. What is the turnover rate for staff in the department? Please provide a breakdown by office and/or division, and program.
3. Please identify the following:
  - a. The department's most effective program;
  - b. The department's least effective program (in the context of management and budget);
  - c. Please provide recommendations on what will make this program (2.b.) more effective based on the department's performance measures.
4. How much capital outlay was expended using either operating funds or capital funds in FY 2013-14? Please break it down between the amount expended from operating and the amount expended from capital.
5. Does the Department have any outstanding high priority recommendations as identified in the "Annual Report of Audit Recommendations Not Fully Implemented" that was published by the State Auditor's Office on June 30, 2014? What is the Department doing to resolve the outstanding high priority recommendations?  
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