COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE

FY 2013-14 STAFF BUDGET BRIEFING

DEPARTMENT OF TREASURY

JBC Working Document - Subject to Change
Staff Recommendation Does Not Represent Committee Decision

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DEPARTMENT OF TREASURY

Department Overview

Primary Functions

- Ensures the safekeeping and management of public funds by depositing and investing all funds received by state agencies.
- Ensures sufficient funds are maintained in cash accounts to pay outstanding warrants.
- Administers the Unclaimed Property Program.

School Districts and Charter Schools

- Provides short-term financing to school districts by issuing tax and revenue anticipation notes.
- Assists charter schools with long-term financing by making direct bond payments.

Other Distributions and Loans

- Distributes Highway Users Tax Fund revenues to counties and municipalities.
- Distributes federal *mineral leasing funds* received for the State's share of sales, bonuses, royalties, and rentals of public lands within Colorado.
- Disburses reimbursements to local governments for the Senior Citizen and Disabled Veteran Property Tax Exemption.
- Makes loans to elderly individuals and military personnel through the Property Tax Deferral Program.
- Transfers moneys to the Fire and Police Pension Association for local *old hire* plans.
- Transmits moneys from the Unclaimed Property Trust Fund to CoverColorado.

The State Treasurer provides banking and investment services for all funds deposited with the State Treasury. While maintaining sufficient funds in cash accounts to meet the State's daily cash needs, deposits are invested in statutorily authorized investments. The income earned on investments augments the State's revenues from taxes and fees to decrease the tax burden on Colorado citizens. The Treasury Department consists of three sections: (1) Administration; (2) the Unclaimed Property Division; and (3) a Special Purpose unit.

In addition to overall management of the Department, the Administration section is responsible for accounting, cash management, and investments. The Investments section manages all the State's investment portfolios, including: The Treasurer's Pooled Funds; the Public School Permanent Fund; the Major Medical Insurance Fund; Colorado State Education Fund; the Unclaimed Property Trust Fund; and the Unclaimed Property Tourism Promotion Trust Fund.

The Unclaimed Property Division is established to take custody of dormant or abandoned property and return the property to the rightful owners or heirs. Administration of the program is funded through the Unclaimed Property Trust Fund, while the property returned comes from either the Unclaimed Property Trust Fund or the Unclaimed Property Tourism Fund. In FY

2011-12, the Unclaimed Property Division returned $29.5 million to 17,000 claimants, and since the program's inception, it has returned nearly $250 million.

The Special Purpose Division transfers or disburses moneys to local governments and other authorized recipients of state funds for the following programs:

- The Senior Citizen and Disabled Veterans Property Tax Exemption from the General Fund;
- CoverColorado from the Unclaimed Property Trust Fund;
- State payments to the Fire and Police Pension Association, *Old Hire* plans from the General Fund (Exempt); and
- Disbursements of Highway Users Tax Fund proceeds to the counties and municipalities in the State.

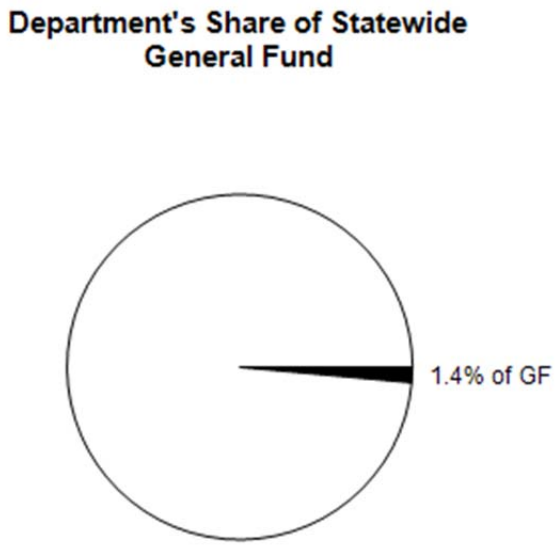
These programs, which are created in the State Constitution or statutes, are appropriated in the Department of the Treasury Section of the Long Bill, but are *pass-through* programs in which the Treasury disburses or transfers moneys, but does not administer the programs. The programs are described in the General Factors Driving the Budget section.

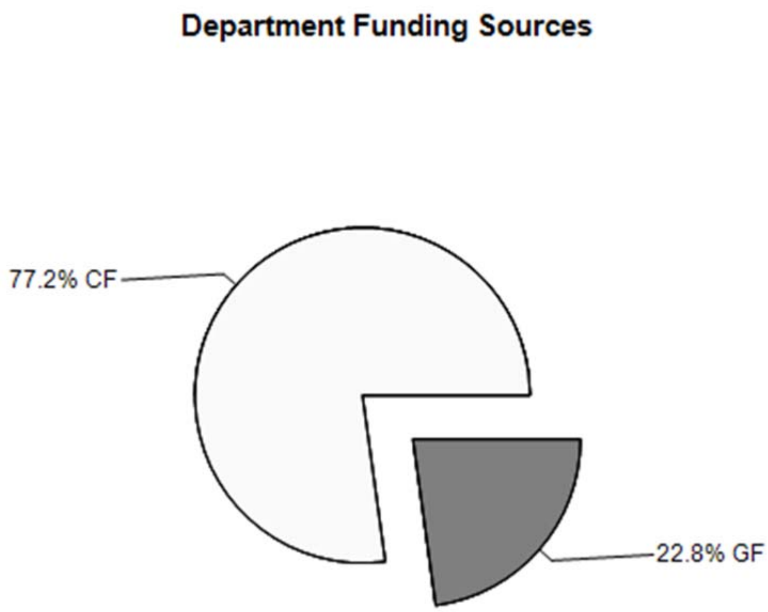
Department Budget: Recent Appropriations

Funding Source	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14 *
General Fund	$2,362,955	$7,903,000	$109,332,502	$128,883,609
Cash Funds	354,602,533	358,523,119	369,576,443	366,526,705
Total Funds	**$356,965,488**	**$366,426,119**	**$478,908,945**	**$495,410,314**
Full Time Equiv. Staff	31.5	31.5	31.5	31.9

*Requested appropriation.

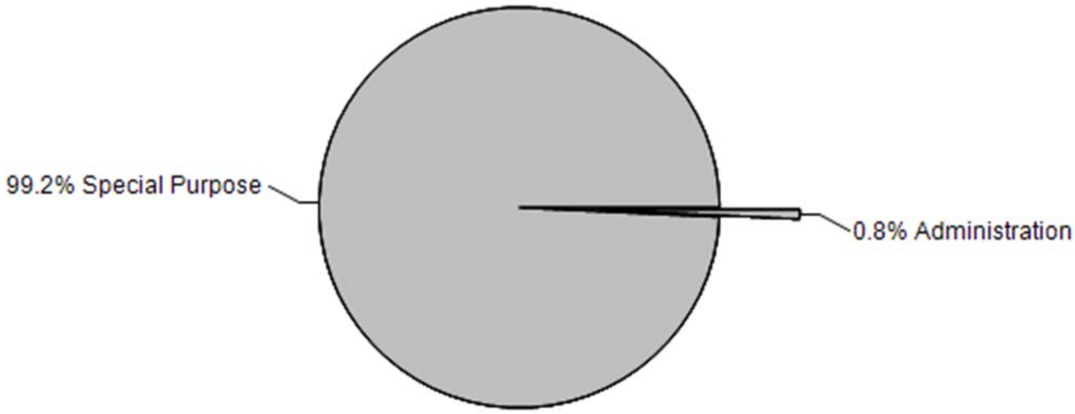
Department Budget: Graphic Overview



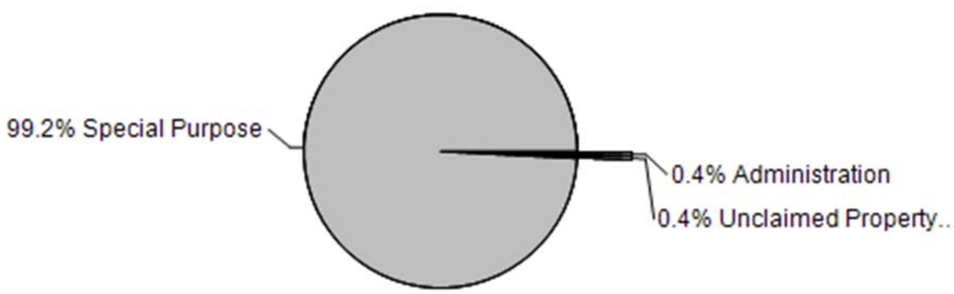


All charts are based on FY 2012-13 appropriation.

Distribution of General Fund by Division



Distribution of Total Funds by Division



All charts are based on FY 2012-13 appropriation.

General Factors Driving the Budget

The Department's FY 2013-14 budget request consists of 26.0 percent General Fund, and 74.0 percent cash funds. Some of the major factors driving the Department's budget are discussed below.

Senior Citizen and Disabled Veteran Property Tax Exemption

Section 3.5 of Article X of the Colorado Constitution, approved by voters in November 2000 and implemented by Sections 39-3-201 to 208, C.R.S., grants a property tax exemption to qualifying senior citizens and disabled veterans. This provision exempts 50 percent of the first $200,000 of actual home value. The State Treasurer is required to reimburse local governments for the resulting lost property tax revenues. The exemption applies if (a) the property owner-occupier is sixty-five years of age or older (as of the assessment date) and has occupied the property as a primary residence for the past ten years; or (b) the owner-occupier is the spouse or surviving spouse of an owner-occupier who previously qualified for the exemption. Pursuant to the passage of Referendum E, beginning in tax year 2007, the exemption also applies if the property owner-occupier is a disabled veteran, 100 percent permanent service-connected disability as determined by the U.S. Department of Veteran Affairs, as of the assessment date.

Senior Citizen and Disabled Veteran Homestead Property Tax Exemption

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Projected
Number of Exemptions Granted					
Senior Citizens /a	161,668	N/A	167,714	168,892	N/A
Disabled Veterans	2,022	3,122	3,012	3,362	N/A
Total	163,690	3,122	170,726	172,254	N/A
Exempted Actual Value					
Senior Citizens /a	$ 13,524,666,674	$ 0	$ 0	$ 0	N/A
Disabled Veterans	168,440,714	211,183,290	249,884,832	269,347,199	N/A
Total	13,693,107,388	211,183,290	249,884,832	269,347,199	N/A
Property Taxes Exempted					
Senior Citizens /a	82,932,319	0	0	0	96,600,000
Disabled Veterans	1,032,867	1,335,704	1,578,459	1,756,475	1,900,000
Total	83,965,186	1,335,704	1,578,459	1,756,475	98,500,000
Average Value of Exemption	$ 513	$ 428	$ 524	$ 522	N/A

/a The Senior Citizen Exemption was not available for FY 2009-10 through FY 2011-12. The numbers reported for exemptions granted refer to the number that county assessors had approved. County assessors continued taking applications for the exemption throughout the period where the exemption was set at $0.

The constitution grants the General Assembly the power to raise or lower the maximum amount of residence value that is exempt from taxation. For tax year 2002, the first year this exemption was made available, the exemption was limited to the first $200,000 of actual residence value. The General Assembly lowered this amount to $0 for tax years 2003, 2004, and 2005, and again for tax years 2009 (S.B. 09-276), 2010, and 2011 (S.B. 10-190), thereby eliminating the associated state expenditures for fiscal years 2003-04, 2004-05, 2005-06, 2009-10, 2010-11, and 2011-12.

These payments are subject to the TABOR limitation on fiscal year spending[1], but are not subject to the statutory limit on General Fund appropriations. The costs associated with the exemption are treated outside of the statutory limit and are not built into the funding base used to calculate the limit for subsequent fiscal years. Estimated General Fund expenditures are included in the Department of Treasury's budget for informational purposes.

CoverColorado

Colorado does not require insurance companies that offer individual health coverage to accept everyone who applies, regardless of their health status. The General Assembly created a program in 1990, now called CoverColorado, to offer health insurance to *high risk* individuals who are unable to obtain health insurance or at prohibitive rates or with restrictive exclusions.

Until May 1, 2008, the program was funded from premiums, special fees assessed against insurers, gifts, grants, and donations, and with transfers from the Unclaimed Property Fund. In the 2008 session, the General Assembly passed House Bills 08-1309 and 08-1390 to address the deficits for CoverColorado. H.B. 08-1309 extended the state's authority to impose assessments against insurance carriers to help fund the program, which had been subject to sunset. H.B. 08-1390 changed the funding structure of the program to: 25 percent from the Unclaimed Property Fund; up to 25 percent from special fees assessed against insurers; and 50 percent from premiums, grants, donations, and other available funds. Prior to the passage of H.B. 08-1390, it was estimated that the increasing needs of the program would have depleted the Unclaimed Property Fund within five years. In addition, the bills created a task force to develop a plan to fund CoverColorado for at least ten years. The task force submitted its plan to the General Assembly on March 31, 2009. In the 2010 session, the General Assembly passed S.B. 10-020, which allowed the CoverColorado Board of Directors to establish a fee schedule for covered services, with fees set to exceed the reimbursements generally paid by Medicare.

In addition, the federal health care legislation (Patient Protection and Affordable Care Act) enacted in 2010 established a high-risk pool similar to CoverColorado and provided federal funds to implement and subsidize the program. The legislation included some important caveats, the most important of which are that the State must maintain its existing efforts for high-risk

[1] The provision specified that voter approval of the measure constituted a voter-approved revenue change, thereby allowing the TABOR limit for FY 2001-02 to increase by $44.1 million. The provision further specified that such an amount should be included for the purpose of calculating subsequent fiscal year spending limits. However, by the time the State was required to pay the first year reimbursement in April 2003, state revenues no longer exceeded the TABOR limit. Thus, this measure never increased the State's TABOR limit.

individuals and that the new program is only available to those who have been without health insurance for six months. Existing members of CoverColorado would have to drop out of the program for six months to be eligible for the new high-risk program. With the implementation of federal health care reform which includes coverage for high-risk individuals, CoverColorado is in the process of winding down and closing the program. Discussion of the wind-down process is the subject of a briefing issue later in this document.

State Contributions for Local Fire and Police Pension Plans

Section 31-30.5-307 C.R.S., requires the State to pay part of the unfunded liability of retirement plans that cover police and firefighters who were hired before 1978 (*old hire* pension plans). The Department annually transfers the required amount from the General Fund to the Fire and Police Pension Association (FPPA), which administers these plans. Since 1980, the State has contributed almost $540 million to the FPPA to eliminate the unfunded liability of the *old-hire* pension plans. Since FY 2005-06, this appropriation is reflected as coming from the General Fund Exempt Account. The annual General Fund transfer is included in the Long Bill for informational purposes; this appropriation is not subject to the statutory limit on General Fund appropriations. Senate Bill 09-227 suspended the contributions for FY 2008-09 through FY 2010-11, and extended state payments by three years until FY 2014-15, with a final payment scheduled to be made in April 2015. Senate Bill 11-221 reduced the payments scheduled for April 2012 (by $20.0 million) and April 2013 (by $15.3 million), and extended the repayment deadline to April 2019. The following table shows the new schedule of payments pursuant to S.B. 11-221.

Fire and Police Pension Association – State-Assisted "Old Hire" Pension Plans

Contribution Schedule per S.B. 11-221 (General Fund Exempt)

Payment Date	Amount
April 2012 (FY 11-12)	$5,321,079
April 2013 (FY 12-13)	10,000,000
April 2014 (FY 13-14)	25,321,079
April 2015 (FY 14-15)	25,321,079
April 2016 (FY 15-16)	25,321,079
April 2017 (FY 16-17)	25,321,079
April 2018 (FY 17-18)	25,321,079
April 2019 (FY 18-19)	49,443,768

Highway Users Tax Fund Disbursements

The Department of Treasury distributes revenues from the Highway Users Tax Fund (HUTF) to counties and municipalities for use on local transportation projects pursuant to statutory formulas in Sections 43-4-207 and 208, C.R.S. The amounts anticipated to be distributed to counties and municipalities are reflected as cash fund appropriations within the Treasury section of the Long Bill for informational purposes. The following table details recent distributions of HUTF revenues as well as projected distributions for FY 2011-12 and FY 2012-13.

Highway Users Tax Fund (HUTF) Revenues and Distributions
($ millions)

	FY 08-09 Actual	FY09-10 Actual	FY 10-11 Actual	FY 11-12 Actual	FY 2012-13 Estimated	FY 2013-14 Estimated
Total Revenues	$774.7	$919.9	$936.9	$941.1	$960.5	$970.2
Annual Percent Change	-3.6%	18.7%	1.8%	0.4%	2.1%	1.0%
Treasury Distributions						
Counties	$155.4	$182.9	$185.4	$187.1	$190.0	$192.9
Municipalities	101.1	125.0	127.3	127.4	130.5	131.4

Revenue estimate source: Legislative Council Staff Economic Forecast dated September 2012

Summary: FY 2012-13 Appropriation & FY 2013-14 Request

Department of the Treasury	Total Funds	General Fund	Cash Funds	FTE
FY 2012-13 Appropriation:				
HB 12-1335 (Long Bill)	478,908,151	109,331,708	369,576,443	31.5
HB 12-1246	794	794	0	0.0
TOTAL	**$478,908,945**	**$109,332,502**	**$369,576,443**	**31.5**
FY 2013-14 Requested Appropriation:				
FY 2012-13 Appropriation	$478,908,945	$109,332,502	$369,576,443	31.5
Non-Prioritized Requests				
NPI-1: Capitol Complex Building Upgrade, Repair, and Replacement	4,028	4,028	0	0.0
NPI-2: Employee Engagement Survey Adjustment	31	31	0	0.0
Special Purpose Adjustments				
Fire & Police Pension Association - Old Hire Plans - SB 11-221 Annualization	15,321,079	15,321,079	0	0.0
Senior Citizen & Disabled Veteran Property Tax Exemption Adjustment	4,100,000	4,100,000	0	0.0
Highway Users Tax Fund Adjustment	3,886,256	0	3,886,256	0.0
CoverColorado Projection Adjustment	(7,000,000)	0	(7,000,000)	0.0
Common Policy and Annualizations				
Compensation-related Common Policy Adjustments	129,559	67,286	62,273	0.0
OIT Common Policy Adjustments	48,258	48,258	0	0.0
Operating Common Policy Adjustments	9,625	9,625	0	0.0
Prior Year Annualizations	2,533	800	1,733	0.4
TOTAL	**$495,410,314**	**128,883,609**	**$366,526,705**	**31.9**
Increase/(Decrease)	$16,501,369	$19,551,107	($3,049,738)	0.4
Percentage Change	3.4%	17.9%	(0.8%)	1.3%

Description of Requested Changes

NPI-1: Capitol Complex Building Upgrades: The request includes a $4,028 increase in General Fund to support the Department's share of building maintenance and upgrades for the State's Capitol Complex. *This request item was addressed in a separate staff briefing for the Department of Personnel on December 10, 2012.*

NPI-2: Employee Engagement Survey Adjustment: The request includes a $31 increase in General Fund to support the Department's share of a survey to gauge state employees' attitudes toward their work and their work environment, their overall satisfaction, and trends developing within the workforce. *This request item was addressed in a separate staff briefing for the Department of Personnel on December 10, 2012.*

Fire & Police Pension Association - Old Hire Plans - SB 11-221 Annualization: The request includes a $15.3 million increase in General Fund for payment to the FPPA – Old Hire Plans, pursuant to S.B. 11-221.

Senior Citizen & Disabled Veteran Property Tax Exemption Adjustment per Legislative Council Sept 2012 Forecast: The request includes a $4.1 million increase in General Fund for reimbursement to local governments for lost property tax revenues based on the Legislative Council September 2012 forecast.

Highway Users Tax Fund Adjustment per Legislative Council Sept 2012 Forecast: The request shows for informational purposes a $3.9 million increase in cash funds for distribution to counties and municipalities of HUTF revenues based on the Legislative Council September 2012 forecast.

CoverColorado Projection Adjustment: The request includes a $7 million decrease in cash funds for CoverColorado.

Compensation-related Common Policy Adjustments: The request includes adjustments to centrally appropriated line items for compensation including the following: salary survey and merit pay; health, life, and dental; short-term disability; and supplemental state contributions to the Public Employees' Retirement Association (PERA) pension fund. *This request item was addressed in a separate staff briefing on Salary and Personnel Benefits on November 16, 2012.*

OIT Common Policy Adjustments: The request includes adjustments to centrally appropriated line items for the following: purchase of services from the computer center; multiuse network payments; management and administration of the Governor's Office of Information Technology (OIT); and communication services payments. *This request item was addressed in a separate staff briefing for the Governor's Office of Information Technology on December 10, 2012.*

Operating Common Policy Adjustments: The request includes adjustments to centrally appropriated line items for the following: workers' compensation and payment to risk management and property; legal services; administrative law judge services; and capitol complex leased space. *This request item was addressed in a separate staff briefing for the Department of Personnel on December 10, 2012.*

Prior Year Annualizations: The request includes an increase of $2,533 total funds to reflect the FY 2013-14 impact of prior year budget actions.

Issue: CoverColorado Program Conclusion and Repeal

With federal health care reform requiring insurance companies in Colorado to provide health coverage regardless of an individual's health status beginning in 2014, the purpose for CoverColorado is eliminated.

SUMMARY:

- CoverColorado will cease to offer health insurance by April 1, 2014. The program expects operations, including payment of remaining member claims, to conclude by the end of calendar year 2014.
- The General Assembly appropriated $46.0 million to the Department of Treasury for a transfer payment from the Unclaimed Property Trust Fund to CoverColorado in FY 2012-13, and the Department has requested an appropriation of $39.0 million for FY 2013-14.
- Should legislation pass repealing the CoverColorado program and requiring the program to end operations by March 31, 2015, no appropriations or funding from existing sources are expected to be necessary for FY 2014-15.

RECOMMENDATION:

Staff recommends that the Committee sponsor legislation to repeal the CoverColorado program by March 31, 2015, as suggested by the CoverColoardo Board, and define requirements for the plan's orderly wind down and conclusion of operations including the disposition of remaining funds.

DISCUSSION:

CoverColorado Program Conclusion

Under federal health care reform legislation, the "Patient Protection and Affordable Care Act" (PPACA) enacted in 2010, beginning in 2014, insurance companies in Colorado will no longer be able to deny health coverage, regardless of an individual's health status. This reform eliminates the purpose and need for CoverColorado, and the CoverColorado Board of Directors have prepared a plan for winding down and concluding operations for the program.

The Colorado Health Benefit Exchange (Exchange) begins enrolling members in October 2013, and CoverColorado expects to begin helping its members transition to the Exchange. CoverColorado will cease to offer health insurance by April 1, 2014. The program expects operations, including completing remaining claim payments, to end by the end of calendar year 2014. Should legislation pass repealing the CoverColorado program requiring the program to end operations by March 31, 2015, no appropriations or funding from existing sources are expected to be necessary for FY 2014-15.

<u>Program Purpose and History</u>

Prior to the federal health care reform legislation, insurance companies in Colorado were not required to offer individual health coverage to everyone who applied, regardless of their health status. Like many other states that do not require *guaranteed issue*, Colorado created a risk pool to offer subsidized health insurance coverage to those *high-risk* individuals who are unable to obtain health insurance except at prohibitive rates or with restrictive exclusions.

House Bill 90-1305 created the Colorado Uninsurable Health Insurance Plan, now known as the "Colorado High Risk Health Insurance Act", and the *CoverColorado* program, in Part 5 of Article 8 of Title 10, C.R.S. CoverColorado is a nonprofit public entity that is governed by a seven-member board of directors, who are appointed by the governor. The board includes four insurance carrier representatives, two individuals who are insured or have been insured under CoverColorado, and one medical professional who specializes in chronic disease. For purposes of TABOR, CoverColorado is a *special purpose authority* as defined in Section 24-77-102 (15) (b) (XII), C.R.S., and therefore is neither an agency of the State nor subject to administrative direction by any department or agency of the State. CoverColorado is not considered to be part of the State for the purposes of any spending limitations.

CoverColorado enrollees pay relatively high rates, which, by statute (Section 10-8-512 (3) (a), C.R.S.), must be between 100 and 150 percent of the standard risk rate charged by the five largest carriers in Colorado with similar health benefit plans. Initially rates were set at 150 percent and lowered gradually in the late 1990s. Certain individuals are not eligible to enroll in CoverColorado such as prison inmates, residents of public institutions, and individuals eligible for Medicaid. Those who are eligible for CoverColorado fall into one of two eligibility categories defined as *medically eligible* and *federally eligible*.

Medically eligible members representing 70 percent of CoverColorado participants have:

- Applied for health insurance and been rejected because of a medical or health condition;
- Applied for and been offered health insurance, but the premium rate exceeds the rate available through CoverColorado or the coverage includes a reduction or exclusion for a preexisting medical or health condition for a period exceeding six months;
- Had a health benefit plan involuntarily terminated by a Colorado insurance carrier for any reason other than nonpayment of premiums; or
- A medical or health condition that presumptively makes them eligible (e.g., diabetes, leukemia, lupus, multiple sclerosis, Parkinson's).

The remaining 30 percent of current CoverColorado participants are considered *federally eligible* due to requirements of the federal "Health Insurance Portability and Accountability Act of 1996" (HIPAA) and the federal "Trade Adjustment Assistance Reform Act of 2002" (the Trade Act). The HIPAA group includes individuals who have lost group health insurance coverage and do not have coverage under another employer-sponsored program or through a spouse. The Trade Act group includes individuals participating in the Trade Adjustment Assistance Program, as well as individuals ages 55 to 64 who receive pension benefits from the federal Pension Benefit Guarantee Corporation.

Program Funding

During the 2008 session, the General Assembly passed House Bills 08-1309 and 08-1390 to address funding needs for CoverColorado. H.B. 08-1309 extended the state's authority to impose assessments against insurance carriers to help fund the program, which authority had been subject to sunset. H.B. 08-1390 changed the funding structure of the program to 25 percent from the Unclaimed Property Trust Fund (UPTF), up to 25 percent from special fees assessed against insurers; and 50 percent from premiums and gifts, grants, donations, and other available funds.

Section 10-8-530 (1) (a), C.R.S., sets forth the following sources of income for the program:

- Moneys transferred from the UPTF;
- Premiums charged program enrollees;
- Special fees assessed against insurers; and
- Gifts, grants, and donations (which include contributions received pursuant to the premium tax credit allocation provisions), and interest.

Prior to the passage of H.B. 08-1390, it was estimated that the increasing needs of the program would have depleted the Unclaimed Property Fund within five years. In addition, the legislation created a task force to develop a plan to fund CoverColorado for at least ten years. Based on recommendation from the task force, the General Assembly passed S.B. 10-020, which allowed the CoverColorado Board of Directors to establish a fee schedule for covered services, with fees set lower than private market rates but higher than Medicare reimbursement rates. The following table provides a summary of CoverColorado costs, premiums, and other sources of revenue.

CoverColorado: Projected Claims, Administrative Expenses, and Revenues

Calendar Year	2010	2011	2012	2013
Membership	12,715	13,859	13,872	13,992
Growth Rate in Membership	21.8%	9.0%	0.1%	0.9%
Claims and Admin. Expenses	$ 113,701,970	$ 135,759,151	$ 127,607,139	$ 141,494,032
Revenue and Funding				
Member Premiums	53,830,295	65,854,692	74,321,742	74,925,596
Transfers from the UPTF	29,142,431	34,694,251	40,000,000	36,511,694
Fees Assessed to Insurers	28,794,604	34,694,251	40,000,000	0
Other Sources	8,707,439	7,885,164	7,184,101	5,872,417
Total Revenue and Funding	120,474,769	143,128,358	161,505,843	117,309,707
Net Change in Fund Balance	$ 6,772,799	$ 7,369,207	$ 33,898,704	($ 24,184,325)

An unexpected decline in membership growth in 2012 that is projected to continue into 2013, along with lower than anticipated claims costs due to the fee schedule implemented in 2011, are expected to generate a surplus in 2012. In order to address the fund balance, the CoverColorado Board has chosen to waive the 2013 insurance carrier assessment that is passed on to all Colorado health insurance policyholders to support CoverColorado. The calendar year 2013 funding sources in the table above, including appropriations made in the FY 2013-14 budget, are expected to fund the program to its conclusion at the end of calendar year 2014. The following table outlines the fund balance projection for the UPTF.

Fund Balance Projection for Unclaimed Property Trust Fund
($ Millions)

	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Beginning Balance	$ 105.7	$ 107.7	$ 107.7	$ 94.7	$ 89.0
Net Revenue (Collections less claims)	32.9	37.6	34.0	34.0	34.0
Interest Income	2.3	1.5	1.0	1.3	2.0
Unclaimed Property Program Operating Expenses	(1.3)	(1.8)	(2.0)	(2.0)	(2.0)
Transfers to CoverColorado	(31.9)	(37.3)	(46.0)	(39.0)	0
End Balance	107.7	107.7	94.7	89.0	123.0
Required Reserve	(69.7)	(73.2)	(76.8)	(80.7)	(103.6)
Available Balance	$ 38.0	$ 34.5	$ 17.9	$ 8.3	$ 19.4

<u>Staff Recommendation</u>
Staff recommends that the Committee sponsor legislation to repeal the CoverColorado program by March 31, 2015, as suggested by the CoverColoardo Board, and define requirements for the plan's orderly wind down and conclusion of operations including the disposition of remaining funds.

RELEVANCE OF BRIEFING ISSUE TO THE DEPARTMENT'S STRATEGIC PLAN:

This briefing issue does not address any of the Department of Treasury's goals, objectives, or performance measures in a way that promotes or increases the Department's effectiveness related to its strategic plan. The CoverColorado program is an independent program not administered by the Department. The Department simply provides a transfer of funds from the Unclaimed Property Trust Fund to the program.

Issue: The Unclaimed Property Program and Gift Cards

The Unclaimed Property Program in the Department of Treasury currently collects the unredeemed value of gift cards from businesses and merchants based on a 2005 Attorney General's Opinion. The opinion states that the Treasurer has the authority and responsibility to collect the value of unredeemed gift cards because statute does not provide an exception for gift cards.

SUMMARY:

- The Unclaimed Property Program has collected just under $12.0 million in unredeemed gift card value from businesses in Colorado since FY 2008-09.

- The Attorney General's opinion states that *intangible property* as defined and treated in the Unclaimed Property Act, requires that property exclusions from the Act must be explicitly exempted. Since gift cards and stored value cards are not explicitly excluded, they are included as intangible property pursuant to the Act.

- The Treasurer's request for the opinion characterized gift cards as different from gift certificates in that transactions include owner-identifying information like a credit card or bank account. Pursuant to Section 38-13-108.4, C.R.S., gift certificates issued for food, products, goods, or services have been excluded from collection pursuant to the Unclaimed Property Act since 1993.

- The Attorney General's opinion did not address the statutory criteria that require unclaimed property to have either an *apparent owner*, the person who appears on the records as entitled to the property, or an established last known address of the person entitled to the property before the State may take custody of unclaimed property pursuant to Section 38-13-104, C.R.S.

RECOMMENDATION:

Staff recommends that the Committee discuss this issue with the appropriate committees of reference for the purpose of pursuing legislation clarifying policy regarding gift cards in the Unclaimed Property Act. Staff suggests the following options:

A. Exempt gift cards from collection within the gift certificate exclusion.
   OR
B. Provide for the collection of the value of unredeemed gift cards, including:
   - A provision allowing the collection of property for an anonymous transaction; and
   - Providing for the collection of 100 percent or another defined percentage of the unredeemed value of gift cards, with a matching provision for the return of an identifiable owner's property at the lower percentage if necessary.

Additionally, staff recommends that the Committee ask the Department to address its program approach to the collection of gift cards, and to offer its options and recommendations for clarifying statute regarding the collection of gift cards at its hearing.

DISCUSSION:

Overview

Pursuant to the Unclaimed Property Act, Article 13 of Title 38, C.R.S., the Unclaimed Property Program (Program) in the Department of Treasury is established to take custody of dormant or abandoned property and return the property to the rightful owners or heirs. Within the context of the Program's treatment of gift cards or stored value cards, the Department uses the principle that "unclaimed property should be used for the general good rather than for chance enrichment of a holder", and that "the holder may have possession of property but has no moral or legal entitlement to the property." The Program currently collects the value of unredeemed gift cards from merchants under this principle, based on a 2005 Attorney General's Opinion (see Appendix F). The Program reports that it has collected just under $12.0 million in unredeemed gift card value over the last five fiscal years.

The Department states that merchants with less than $500,000 in revenue are exempted in statute, and therefore any change to the statute regarding the treatment of gift cards would not be of additional assistance to small merchants and only large retailers would gain any benefit. However, Section 38-13-110 (4) (e) (I), C.R.S., defines this exemption as an exemption for *reporting* to the Program, and not as an absolute exemption from the provisions of the Act. Additionally, the exemption applies for business associations with less than $500,000 in revenue **and** property acquired during the immediately preceding five-year period of an aggregate value under $3,500. By this standard, it appears that any business that generates an average of $58.34 per month in additional customer gift card credit balance over a five-year period, is required to report to the Program.

Attorney General Opinion

In April 2005, Attorney General Suthers issued an opinion upon the request of State Treasurer Coffman, regarding the status of stored value cards, including gift cards, under Colorado's Unclaimed Property Act. The opinion states that *intangible property* as defined and treated in the Act, requires that property exclusions from the Act must be explicit. Since gift cards and stored value cards are not explicitly excluded in statute, they are included as intangible property pursuant to the Act. Therefore, the unused monetary value of cards held by issuers is subject to the Act, and subject to collection by the Program.

The opinion states that unclaimed property laws are designed to transfer property presumed to have been abandoned or lost by its owner from the holder of the property to the State, so that the State may attempt to *reunite* the abandoned property with its owner, rather than becoming a windfall to private holders. Additionally, the opinion states in its introduction that despite a superficial similarity to a gift certificate, explicitly addressed in Section 38-13-108.4, C.R.S., the Treasurer's request indicated that gift cards have characteristics that distinguish them from traditional gift certificates. The request stated that gift cards and stored value cards "are recorded and tracked by the issuer more like the way credit card or bank accounts are memorialized, with the issuer frequently maintaining a record of the method of payment, the name and address of the purchaser (or even of the recipient if it is to be used as a gift)."

Gift Certificates and Other Exceptions in Statute

House Bill 92-1152 added Section 38-13-108.4, C.R.S., regarding gift certificates and credit memos defining them as abandoned property after five years. However H.B. 93-1336 amended statute to say that the section only applies to "any gift certificate redeemable in cash" and "not to any gift certificates issued for food, products, goods, or services." Since July 1, 1993, gift certificates, as commonly understood in practice as being issued for goods or services and not for cash, have been explicitly exempted from the Unclaimed Property Act. An exception was made for property held by racetracks by H.B. 92-1152 and an exception was made for gaming chips or tokens and gaming award points by S.B. 04-108.

Other States

Based on recent data from the National Conference of State Legislatures, it appears that there are seven states, including Arizona, Arkansas, Connecticut, Indiana, Maryland, Rhode Island, and Utah, that explicitly exempt gift cards or gift certificates from consideration as abandoned property for the purposes of their states' unclaimed property laws. Maryland and Rhode Island include gift cards in their definitions of gift certificates. Alabama appears to provide a gift card and gift certificate exclusion from unclaimed property laws for "businesses primarily engaged in selling tangible personal property at retail." It appears that there are three states in addition to Colorado, including California, Florida, and Ohio, that exclude gift certificates, but possibly not gift cards, from unclaimed property laws. It also appears that there are nine states that do not specifically include any statutory provisions addressing gift cards or gift certificates.

The remaining states provide explicit statutory guidance regarding the treatment of gift cards or gift certificates as unclaimed property. The Department states that ten states, including Alabama, Maine, Missouri, Montana, Nevada, New Jersey, New Mexico, North Carolina, Tennessee, and West Virginia, and the U.S. Virgin Islands, require holders of gift cards to report and remit 60 percent of the card value. These states allow gift card issuers to retain 40 percent of the card's value as recognition of the gross profit the card issuer would have earned had the gift cards been redeemed. Nevada and West Virginia pay owners of unredeemed gift cards the 60 percent remitted rather than 100 percent of the face value.

Staff's Concerns

Anonymous Transactions

Staff is concerned about the characterization of gift cards that was made in the Treasurer's request to the Attorney General in stating that gift cards "are recorded and tracked by the issuer more like the way credit card or bank accounts are memorialized, with the issuer frequently maintaining a record of the method of payment, the name and address of the purchaser (or even of the recipient if it is to be used as a gift)."

In practice, gift cards and stored value cards are almost entirely anonymous transactions with no record of identity, to an extent even greater than that for gift certificates. Unless a gift card issuer explicitly records the gift card buyer's information in an internal record keeping system, there is no identifying information that attaches an owner's identity to a gift card. Gift cards are essentially the equivalent of cash to the merchant. A merchant does not ask for identification in processing the value of a gift card for a transaction. It is assumed that the possessor is the owner of the value on the gift card in the same way it is assumed that the customer's cash payment belongs to the customer. While there may be credit card receipt information attached to a purchase, staff is unaware of gift card merchant programs that attach identifying customer information to a gift card from a credit card. In fact such programs might be a violation of credit card identity security at least in principle if not by law.

On the basis that an owner of a gift card can be identified, the Attorney General's opinion and the Unclaimed Property Act appear to require that unredeemed gift cards be collected from gift card issuers. However, it appears that the Attorney General's opinion does not address the statutory criteria that must be met before the State may take custody of unclaimed property. in Section 38-13-104, C.R.S. Those provisions appear to require unclaimed property to have either an *apparent owner*, the person who appears on the records as entitled to the property, or an established last known address of the person entitled to the property. The only provision that addresses an anonymous transaction appears to relate to a holder of property who is not in the State for a transaction that occurred in the State.

Since the request submitted to the Attorney General characterized gift cards as being like credit cards or bank accounts for owner identity purposes, it appears possible that the Attorney General's opinion accepted the characterization as stated and unintentionally remained silent on the provisions requiring that owner identity be established for gift cards or any property collected under the Act.

Unclaimed Property?

As stated in the Attorney General's opinion:

> *Unclaimed property laws are designed to transfer property that is presumed to have been abandoned or lost by its owner from the private entity in possession of the property ("the holder") to the custody of the State, so that the State may attempt to reunite the abandoned property with its owner, and so that the property may be used for the benefit of the public until it is claimed by its owner, rather than becoming a windfall to private holders.* [Emphasis added.]

In the case of the anonymous purchase of a gift card, it is not possible to identify an owner. This perhaps calls into question the policy objective of collecting property under the authority of unclaimed property laws, without an identifiable owner to which the State might return such property.

Other states have made explicit policy choices in statute to recognize gift cards as either included or excluded for the purposes of unclaimed property laws. In the case of the ten states that allow *holders* – gift card issuers – to retain 40 percent of the value of unredeemed gift cards collected by these states, there is a tacit or implied acknowledgment that the *holder* in this case might also be considered a partial owner of the property being collected. In these cases, the 60 percent of the value of unredeemed gift cards collected by these states accrues directly to those states. In Colorado 100 percent of collections accrue to state coffers based on the current policy.

In those cases in which owners of gift cards retrieve their *property* – the unredeemed value from a gift card – from the State, it is clear that the unclaimed property provision has delivered in its policy goal as suggested by its reason for being. In those cases in which owners of gift cards never retrieve their property, and for all intents and purposes, cannot be identified other than by presenting an actual magnetic strip card – which could, in fact, be stolen – does the property collected from *holders* simply amount to a tax on unredeemed gift cards? The following examples suggest that in such cases of unidentifiable owners as a consequence of anonymous transactions, the State claims ownership.

Texas' statutes providing for the treatment of gift cards states the following:

> *If the person who sells or issues a stored value card in this state does not obtain the name and address of the apparent owner of the card and maintain a record of the owner's name and address and the identification number of the card, the address of the apparent owner is considered to be the Austin, Texas, address of the comptroller.*

Similary, Nevada's statutes include the following:

> *If a gift certificate is issued or sold in this state and the seller or issuer does not obtain and maintain in his records the name and address of the owner of the gift certificate, the address of the owner of the gift certificate shall be deemed to be the address of the office of the state treasurer in Carson City.*

Both Texas and Nevada make it clear that anonymous gift card transactions – even those that are then *gifted* to a recipient who becomes the rightful owner – revert to the ownership of the State, making it clear that their policies, in the case of anonymous gift cards, are not strictly about reuniting abandoned or lost property with its rightful owner.

Recommendation

Staff recommends that the Committee discuss this issue with the appropriate committees of reference for the purpose of pursuing legislation clarifying policy regarding gift cards in the Unclaimed Property Act. Staff recommends the following options:

A. Exempt gift cards from collection within the gift certificate exclusion.
   OR
B. Explicitly provide for the collection of the value of unredeemed gift cards, including:
   - A provision allowing the collection of property for an anonymous transaction; and
   - Providing for the collection of 100 percent or another defined percentage of the unredeemed value of gift cards, with a matching provision for the return of an identifiable owner's property at the lower percentage if necessary.

Additionally, staff recommends that the Committee ask the Department to address its program approach to the collection of gift cards, and to offer its options and recommendations for clarifying statute regarding the collection of gift cards at its hearing.

RELEVANCE OF BRIEFING ISSUE TO THE DEPARTMENT'S STRATEGIC PLAN:

This briefing issue does not address any of the Department of Treasury's goals, objectives, or performance measures in a way that promotes or increases the Department's effectiveness related to its strategic plan. The Department's strategic plan, as it relates to the Unclaimed Property Program seeks to automate paper processes to increase efficiencies within the office. This issue addresses policy concerns related to the treatment of gift cards within the Unclaimed Property Act and how the Unclaimed Property Program administers the program related to gift cards.

Appendix A: Number Pages

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	Request vs. Appropriation

DEPARTMENT OF THE TREASURY
Walker Stapleton, State Treasurer

(1) ADMINISTRATION

Provides accounting, cash management, and investment services for the State as well as administrative services for the Treasury Department. Cash are the Unclaimed Property Trust Fund, Treasury Transactions Fee revenue, and the Charter School Financing Administrative Cash Fund.

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	Request vs. Appropriation
Personal Services	1,208,310	1,228,479	1,294,244	1,294,244	
FTE	15.3	14.5	16.0	16.4	
General Fund	232,500	275,680	341,288	341,288	
Cash Funds	975,810	952,799	952,956	952,956	
Health, Life, and Dental	126,677	133,685	188,470	210,528	
General Fund	31,140	35,082	98,068	97,973	
Cash Funds	95,537	98,603	90,402	112,555	
Short-term Disability	2,652	2,751	3,225	3,618	
General Fund	1,608	1,524	1,998	2,273	
Cash Funds	1,044	1,227	1,227	1,345	
S.B. 04-257 Amortization Equalization Disbursement	37,711	43,873	59,209	68,554	
General Fund	21,560	24,461	36,737	43,040	
Cash Funds	16,151	19,412	22,472	25,514	
S.B. 06-235 Supplemental Amortization Equalization Disbursement	27,402	35,227	50,732	61,888	
General Fund	15,614	19,628	31,420	38,855	
Cash Funds	11,788	15,599	19,312	23,033	

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	Request vs. Appropriation
Salary Survey	0	0	0	50,595	
General Fund	0	0	0	31,597	
Cash Funds	0	0	0	18,998	
Merit Pay	0	0	0	36,012	
General Fund	0	0	0	21,771	
Cash Funds	0	0	0	14,241	
Workers' Compensation and Payment to Risk Management and Property Funds	1,452	1,769	1,907	2,290 *	
General Fund	1,452	1,769	1,907	2,290	
Operating Expenses	148,441	169,322	175,431	176,231	
General Fund	148,441	169,322	175,431	176,231	
Information Technology Asset Maintenance	8,942	5,131	12,568	12,568	
General Fund	2,658	(1,153)	6,284	6,284	
Cash Funds	6,284	6,284	6,284	6,284	
Legal Services	37,513	43,534	44,420	44,420	
General Fund	16,419	21,767	22,210	22,210	
Cash Funds	21,094	21,767	22,210	22,210	
Purchase of Services from Computer Center	3,811	132,060	10,673	52,059	
General Fund	3,811	132,060	10,673	52,059	
Multiuse Network Payments	0	0	1,149	8,021	
General Fund	0	0	1,149	8,021	

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	Request vs. Appropriation
Capitol Complex Leased Space	53,949	55,297	54,835	68,136	*
General Fund	53,949	55,297	54,835	68,136	
COFRS Modernization	0	0	101,116	101,116	
General Fund	0	0	45,502	45,502	
Cash Funds	0	0	55,614	55,614	
Charter School Facilities Financing Services	3,009	3,209	5,000	5,000	
Cash Funds	3,009	3,209	5,000	5,000	
Discretionary Fund	362	1,559	5,000	5,000	
General Fund	362	1,559	5,000	5,000	
TOTAL - (1) Administration	1,660,231	1,855,896	2,007,979	2,200,280	9.6%
FTE	15.3	14.5	16.0	16.4	2.5%
General Fund	529,514	736,996	832,502	962,530	15.6%
Cash Funds	1,130,717	1,118,900	1,175,477	1,237,750	5.3%

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	Request vs. Appropriation
(2) UNCLAIMED PROPERTY PROGRAM					
This program collects unclaimed property and attempts to locate and return unclaimed properties to the legal owners or heirs. Funding source is the Unclaimed Property Trust Fund.					
Personal Services	676,887	686,392	781,790	781,790	
FTE	8.2	10.6	15.5	15.5	
Cash Funds	676,887	686,392	781,790	781,790	
Operating Expenses	121,414	115,498	131,869	131,869	
Cash Funds	121,414	115,498	131,869	131,869	
Promotion and Correspondence	199,246	194,387	200,000	200,000	
Cash Funds	199,246	194,387	200,000	200,000	
Leased Space	47,527	46,059	55,456	57,189	
Cash Funds	47,527	46,059	55,456	57,189	
Contract Auditor Services	296,789	719,085	800,000	800,000	
Cash Funds	296,789	719,085	800,000	800,000	
TOTAL - (2) Unclaimed Property Program	1,341,863	1,761,421	1,969,115	1,970,848	0.1%
FTE	8.2	10.6	15.5	15.5	0.0%
Cash Funds	1,341,863	1,761,421	1,969,115	1,970,848	0.1%

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	Request vs. Appropriation

(3) SPECIAL PURPOSE

The expenditures in this section are included in the Long Bill for informational purposes only - they reflect continuous appropriations required by constitutional provisions or State statutes. The line items: reimburse local governments for property taxes foregone due to the Senior Citizen and Disabled Veteran Property Tax Exemption; transfer money from the Unclaimed Property Trust Fund to CoverColorado; transfer General Fund to the Fire and Police Pension Association (FPPA) "old-hire" pension plans; and allocate a portion of the Highway Users Tax Fund (HUTF) to local governments. The General Fund appropriations are exempt from the statutory limits on General Fund appropriations. The appropriation for the Senior Citizen and Disabled Veteran Property Tax Exemption, the transfer to CoverColorado, and the appropriation for FPPA "old-hire" pension plans are not subject to the TABOR limitations.

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	Request vs. Appropriation
Senior Citizen and Disabled Veteran Property Tax Exemption	1,574,580	1,752,486	98,500,000	102,600,000	
General Fund	1,574,580	1,752,486	98,500,000	102,600,000	
Fire and Police Pension Association - Old Hire Plans	0	5,321,079	10,000,000	25,321,079	
General Fund Exempt	0	5,321,079	10,000,000	25,321,079	
CoverColorado	31,918,341	37,347,125	46,000,000	39,000,000	
Cash Funds	31,918,341	37,347,125	46,000,000	39,000,000	
Highway Users Tax Fund - County Payments	185,391,721	187,067,783	189,977,570	192,906,168	
Cash Funds	185,391,721	187,067,783	189,977,570	192,906,168	
Highway Users Tax Fund - Municipality Payments	127,305,258	127,434,702	130,454,281	131,411,939	
Cash Funds	127,305,258	127,434,702	130,454,281	131,411,939	
TOTAL - (3) Special Purpose	346,189,900	358,923,175	474,931,851	491,239,186	3.4%
FTE	0.0	0.0	0.0	0.0	0.0%
General Fund	1,574,580	1,752,486	98,500,000	102,600,000	4.2%
General Fund Exempt	0	5,321,079	10,000,000	25,321,079	153.2%
Cash Funds	344,615,320	351,849,610	366,431,851	363,318,107	(0.8%)

	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Appropriation	FY 2013-14 Request	Request vs. Appropriation
TOTAL - Department of the Treasury	349,191,994	362,540,492	478,908,945	495,410,314	3.4%
FTE	23.5	25.1	31.5	31.9	1.3%
General Fund	2,104,094	2,489,482	99,332,502	103,562,530	4.3%
General Fund Exempt	0	5,321,079	10,000,000	25,321,079	153.2%
Cash Funds	347,087,900	354,729,931	369,576,443	366,526,705	(0.8%)

Appendix B: Recent Legislation Affecting Department Budget

2011 Session Bills

S.B. 11-076: For the 2011-12 state fiscal year only, reduces the employer contribution rate for the State and Judicial divisions of the Public Employees' Retirement Association (PERA) by 2.5 percent and increases the member contribution rate for these divisions by the same amount. In effect, continues the FY 2010-11 PERA contribution adjustments authorized through S.B. 10-146 for one additional year. Reduces the Department's total appropriation by $45,974, of which $29,150 is General Fund and $16,824 is cash funds.

S.B. 11-209: General appropriations act for FY 2011-12.

S.B. 11-221: Reduces State contributions to the Fire and Police Pension Association "old-hire" pension plans. Reduces the FY 2011-12 appropriation by $20.0 million and the FY 2012-13 appropriation by $15.3 million.

2012 Session Bills

S.B. 12-150: Centralizes management of certain state public financing transactions. Requires the state treasurer to act as the issuing manager for certain approved issuances or incurrences of financial obligations by the state acting by and through any state agency. The bill further specifies that the state treasurer has the sole discretion to manage the issuance or incurrence of such financial obligations, except for certain financial obligations of state institutions of higher education, subject to the criteria established in a state public financing policy to be promulgated as required;

- With respect to any state financial obligation, requires the state treasurer to, at minimum, determine the financing structure and term, decide the market timing, and select or hire, as applicable, the state financing team;
- Requires a state agency to provide written notice to the state treasurer of any anticipated issuance or incurrence of a financial obligation;
- Requires a state agency to provide the state treasurer with the information that the state treasurer considers necessary to act as the issuing manager for the issuance or incurrence of financial obligations and to comply with federal and state securities laws and contractual covenants;
- Requires the state treasurer, in performing his or her duties as the issuing manager, to consider any relevant factors that he or she considers necessary to protect the financial integrity of the state;
- Clarifies that the state treasurer is the elected representative and signatory for all forms required by the internal revenue code to be filed in connection with issuances or incurrences of financial obligations by the state acting by and through a state agency;
- Requires the state treasurer to collaborate with the state controller, the office of state planning and budgeting, bond counsel, the attorney general, and the capital development

committee in developing and then promulgating by rule a state public financing policy and provides a list of items that must minimally be included in the policy;

- Requires all state institutions of higher education to report specific information to the state treasurer related to financial obligations, the principal amount of which is one million dollars or more, that the treasurer does not manage on an institution's behalf;
- Requires the Department of Transportation to report specific information to the state treasurer related to financial contracts or instruments;
- On and after July 1, 2012, requires the issuance or incurrence of every financial obligation that the state treasurer manages to include a specified amount to be paid to the state treasurer and credited to the state public financing cash fund, to be used to reimburse the state treasurer for verifiable costs incurred in performing or overseeing the state's primary issuance compliance and post-issuance compliance responsibilities over the term of a financial obligation;
- Requires the state treasurer to create and maintain a correct and current inventory of all state-owned real property that is used as leased property or as collateral in any type of financial obligation. The state treasurer must annually provide a copy of the inventory to the capital development committee; and
- Requires a certain group of state agencies to notify the state treasurer when they enter into agreements for an exchange of interest rates, cash flows, or payments as provided in law. The bill also requires a qualified charter school to provide the state treasurer with certain information when the state treasurer authorizes expenditures from the state charter school debt reserve fund or the state charter school interest savings account of the fund.

Reduces the General Fund appropriation for FY 2012-13 to the Department of Personnel, Division of Accounts and Control, Office of the State Controller by $42,961 and 0.5 FTE. Moneys from the State Public Financing Cash Fund are continuously appropriated to the Department of the Treasury, but it is anticipated that the Treasury will expend $28,761 and 0.4 FTE from the Fund.

H.B. 12-1199: Supplemental appropriation to the Department of the Treasury to modify FY 2011-12 appropriations included in the FY 2011-12 Long Bill (S.B. 11-209).

H.B. 12-1246: Reverses the paydate shift for state employees who are paid on a bi-weekly basis, starting with FY 2012-13. Appropriates $794 to the Department of the Treasury for this purpose.

H.B. 12-1335: General appropriations act for FY 2012-13.

Appendix C:
Update on Long Bill Footnotes & Requests for Information

Long Bill Footnotes

4. **All Departments, Totals --** Every department is requested to submit to the Joint Budget Committee, by November 1, 2012, information on the number of additional federal and cash funds FTE associated with any federal grants or private donations that were received in FY 2011-12. The Departments are also requested to identify the number of additional federal and cash funds FTE associated with any federal grants or private donations that are anticipated to be received during FY 2012-13.

Comment: The Department does not receive federal funding.

Requests for Information

1. **Department of the Treasury, Administration --** The State Treasurer is requested to submit an annual report to the Joint Budget Committee concerning the performance of the state's investments. The report should include comparisons to relevant benchmarks and a detailed discussion of the benchmarks. This report should be submitted by November 1, 2012.

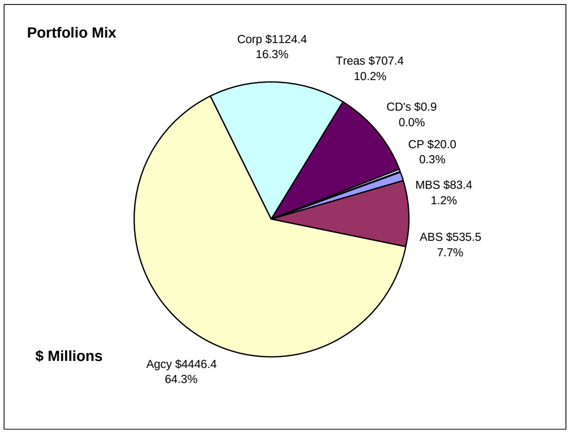
   Comment: The State Treasurer included the requested report as part of the State Treasurer's annual budget request. The document includes data for a number of funds and portfolios, including: the Treasury Pool Combined as well as its constituent parts, the State Education Fund, the Major Medical Insurance Fund, the Public School Fund (often called the *permanent fund*), and the Unclaimed Property Trust Fund. The report contains information concerning the value of each fund/portfolio, asset allocation, monthly yield, average maturity, and graphs that compare monthly performance against identified benchmarks. A copy of the reports for each of these funds is included at the back of this appendix.

2. **Department of the Treasury, Special Purpose, CoverColorado --** Pursuant to Section 10-8-530 (4) (c) (I), C.R.S., the Executive Director of CoverColorado is required to report annually to the Joint Budget Committee concerning actual program receipts and expenditures. In addition, the Department is requested to work with the Executive Director to provide reports to the Joint Budget Committee by October 1, 2012, and by February 1, 2013, that contain enrollment, revenue, expenditure, and assessment projections for the CoverColorado program for FY 2012-13 and FY 2013-14.

   Comment: CoverColorado provided information regarding enrollment, revenue, expenditure and assessment projections for calendar years 2012 and 2013. Please see the CoverColorado issue brief in this document.

Colorado Treasury Pool Combined

September 30, 2012



Portfolio Value

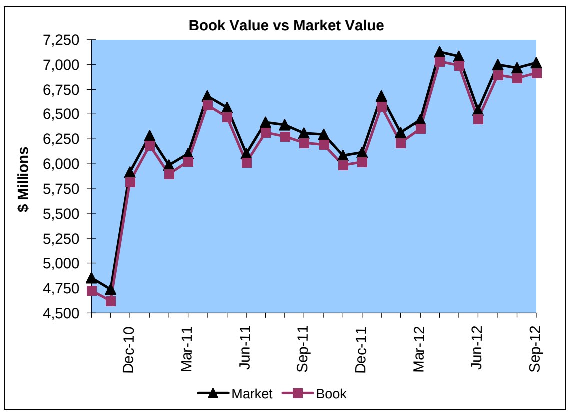
Market Value	$7,018.5	Million
Book Value	$6,918.0	Million

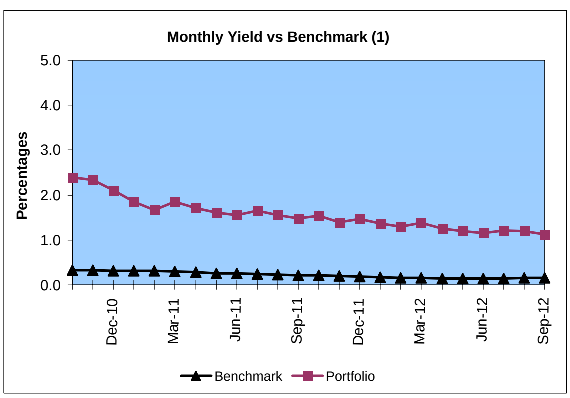
Yield and Average Maturity

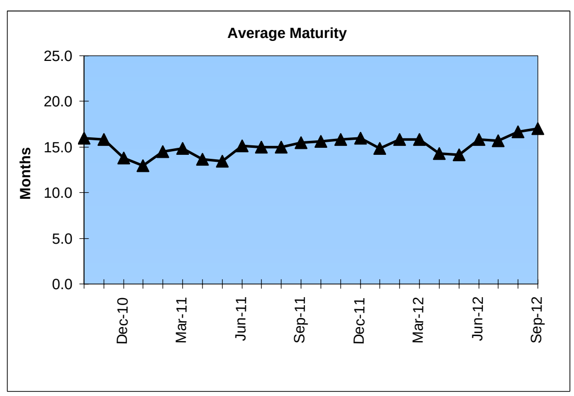
Portfolio Book Yield	1.2%	
Portfolio Average Maturity	17.0	Months

Portfolio Quality

	A1 / P1	AAA	AA	A	BBB	BB	B	Other	Portfolio Percent
Asset Backed		100.0%							7.7%
Corporates		3.3%	38.3%	57.0%	1.4%				16.3%
Mortgage Securities			100.0%						1.2%
Commercial Paper	100.0%								0.3%
Treasuries			100.0%						10.2%
Federal Agencies			100.0%						64.3%
Certificates of Deposit								100.0%	0.0%
Money Market Funds									
Total Portfolio	0.3%	8.3%	81.9%	9.3%	0.2%			0.0%	100.0%







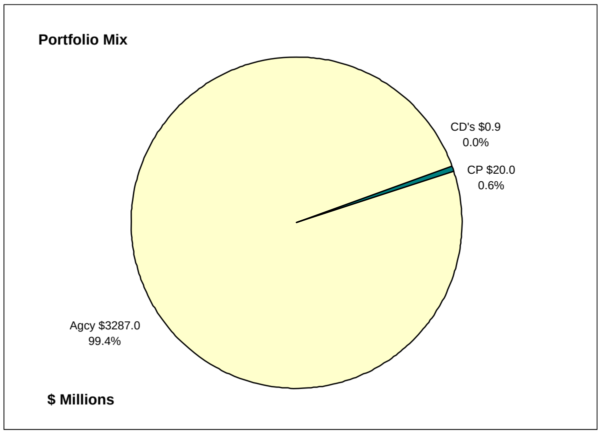
	$ Millions Average Portfolio	Realized Income	Book Yield	Performance Benchmarks (2)
FY '13 YTD	6,865.1	20.2	1.2%	0.2%
Last 12 months	6,600.0	85.3	1.3%	0.2%
FY '12	6,442.3	89.5	1.4%	0.2%
FY '11	5,718.6	113.0	2.0%	0.3%
FY '10	5,717.7	139.0 [3]	2.4%	0.4%
FY '09	5,828.6	177.4	3.0%	1.1%
FY '08	5,835.7	249.9	4.3%	3.1%
Avg FY '08-12	5,908.6	153.7	2.6%	1.0%

(1) 12 month moving average of the constant maturity yield on the 1 year Treasury note
(2) 12 month moving average of the constant maturity yield on the 1 year Treasury note at end of period
(3) Excludes $5.5 million in losses on sale of investments in July 2009.

Colorado Treasury Cash

(0 - 1 year maturities)

September 30, 2012



Portfolio Value

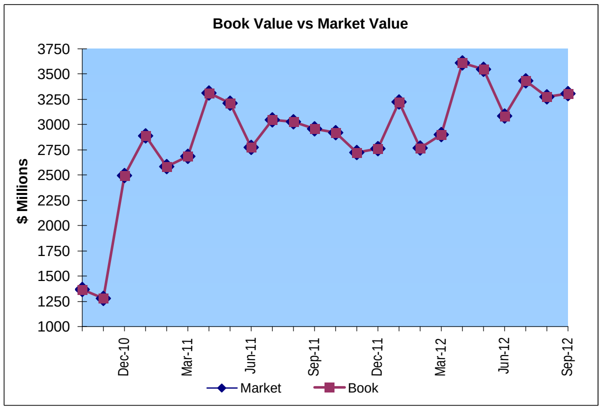
Market Value	$3,308.3	Million
Book Value	$3,307.9	Million

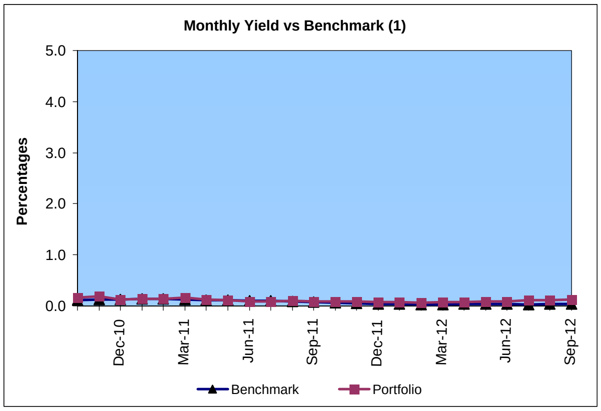
Yield and Average Maturity

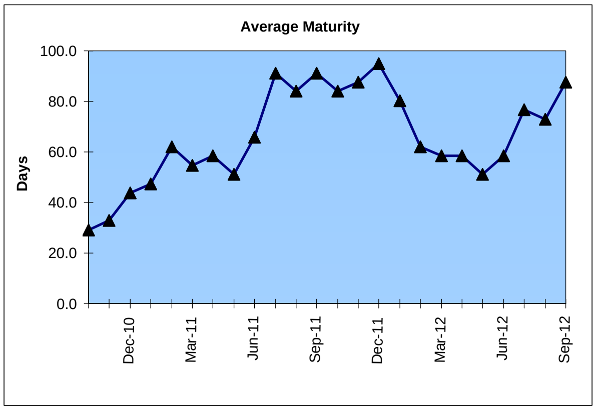
Portfolio Book Yield	0.12%	
Portfolio Average Maturity	88	Days

Portfolio Quality

	A1 / P1	AA	Other	Portfolio Percent
Commercial Paper	100.0%			0.6%
Federal Agencies		100.0%		99.4%
Treasuries				0.0%
Certificates of Deposit			100.0%	0.0%
Money Market Funds				0.0%
Total Portfolio	0.6%	99.4%	0.0%	100.0%







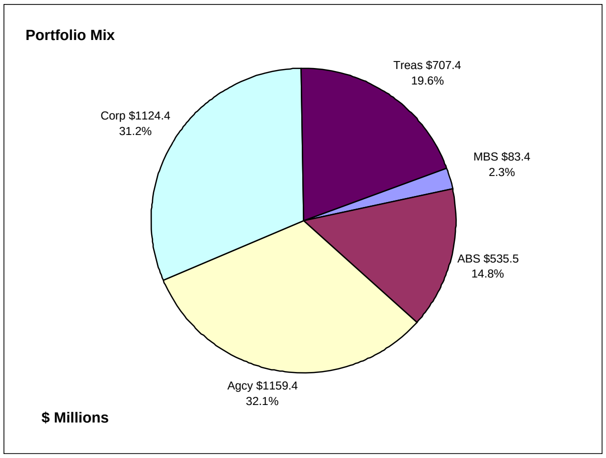
	$ Millions Average Portfolio	Realized Income	Book Yield	Performance Benchmarks (2)
FY '13 YTD	3,378.6	1.0	0.12%	0.04%
Last 12 months	3,229.4	2.9	0.09%	0.04%
FY '12	3,135.5	2.6	0.08%	0.03%
FY '11	2,355.2	3.2	0.14%	0.10%
FY '10	2,013.9	4.1	0.20%	0.09%
FY '09	2,705.6	39.2	1.40%	0.40%
FY '08	2,895.9	114.9	4.00%	2.60%
Avg FY '08-'12	2,621.2	32.8	1.16%	0.64%

(1) 12 month moving average of the 30 day Treasury bill
(2) 12 month moving average of the 30 day Treasury bill at end of period

Colorado Treasury Pool

(1 - 5 year maturities)

September 30, 2012



Portfolio Value

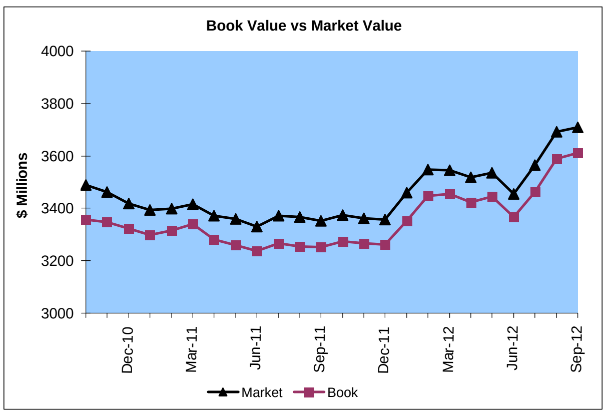
Market Value	$3,710.2	Million
Book Value	$3,610.1	Million

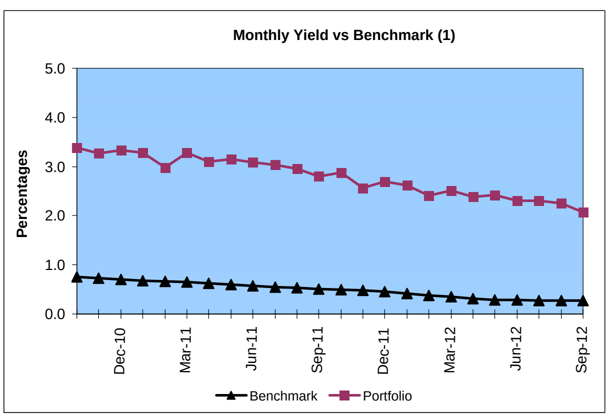
Yield and Average Maturity

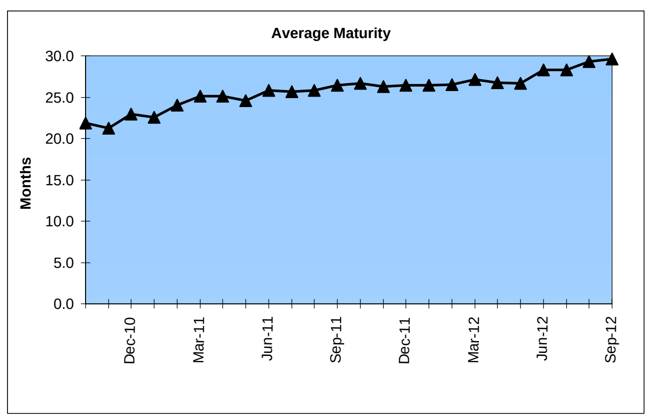
Portfolio Book Yield	2.2%	
Portfolio Average Maturity	29.6	Months

Portfolio Quality

	AAA	AA	A	BBB	BB	B	Other	Portfolio Percent
Asset Backed	100.0%							14.8%
Corporates	3.3%	38.3%	57.0%	1.4%				31.2%
Mortgage Securities		100.0%						2.3%
Treasuries		100.0%						19.6%
Federal Agencies		100.0%						32.1%
Total Portfolio	15.9%	65.9%	17.8%	0.4%				100.0%





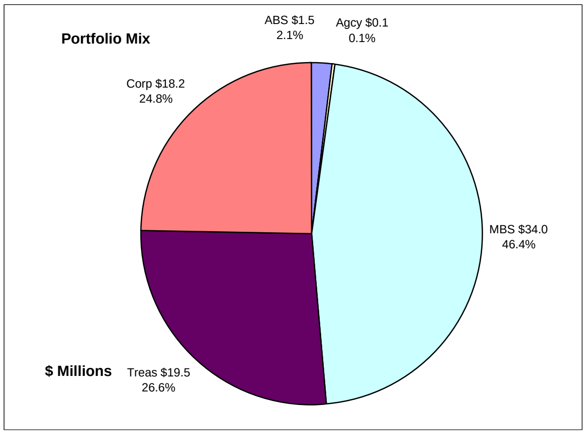


	$ Millions Average Portfolio	Realized Income	Book Yield	Performance Benchmarks (2)
FY '13 YTD	3,486.6	19.2	2.2%	0.3%
Last 12 months	3,370.6	82.4	2.4%	0.3%
FY '12	3,306.8	86.9	2.6%	0.3%
FY '11	3,363.5	109.8	3.3%	0.6%
FY '10	3,703.9	134.9 [3]	3.6%	0.9%
FY '09	3,123.0	138.2	4.4%	1.4%
FY '08	2,939.8	134.9	4.6%	3.1%
Avg FY '08-'12	3,287.4	120.9	3.7%	1.3%

(1) 12 month moving average of the constant maturity yield on the 2 year Treasury note
(2) 12 month moving average of the constant maturity yield on the 2 year Treasury note at end of period
(3) Excludes $5.5 million in losses on sale of investments in July 2009.

Colorado Major Medical Insurance Fund

September 30, 2012



Portfolio Value (1)

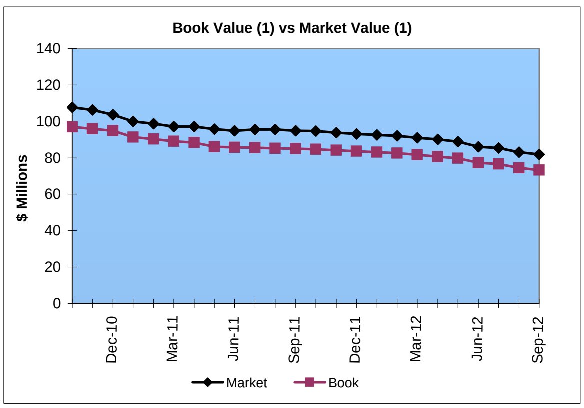
Market Value	$81.8	Million
Book Value	$73.3	Million

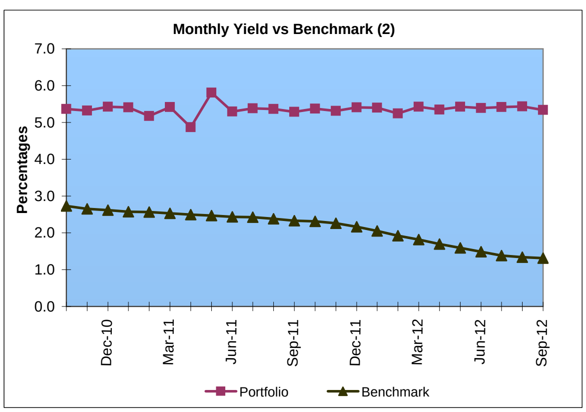
Yield and Effective Duration

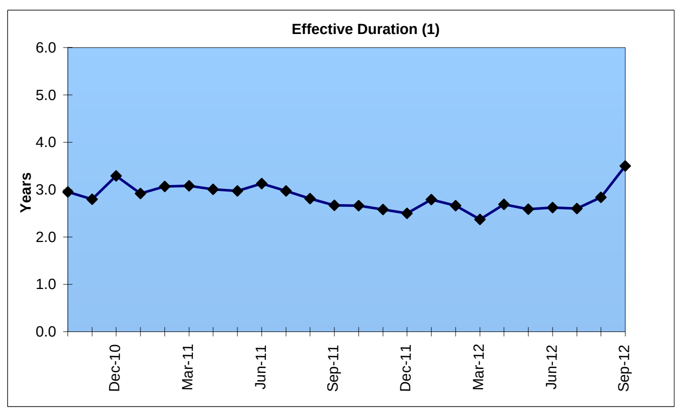
Portfolio Book Yield	5.0%	
Portfolio Effective Duration (1)	3.5	Yrs

Portfolio Quality (1)

	AAA	AA	A	BBB	BB	Portfolio Percent
Asset Backed	100.0%					2.1%
Corporates	11.0%	38.5%	45.0%	5.5%		24.8%
Federal Agencies		100.0%				0.1%
Mortgage Securities		100.0%				46.4%
Treasuries		100.0%				26.6%
Total Portfolio	4.8%	82.7%	11.2%	1.3%		100.0%





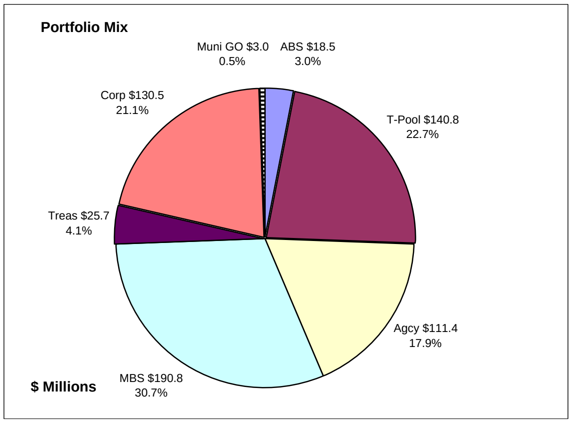


	$ Millions Average Portfolio	Realized Income	Book Yield	Performance Benchmarks (3)
FY '13 YTD	81.1	1.0	5.0%	1.3%
Last 12 months	93.8	4.5	4.8%	1.3%
FY '12	99.4	4.7	4.7%	1.5%
FY '11	120.5	5.5	4.5%	2.4%
FY '10	126.8	6.0 [5]	4.7%	3.1%
FY '09	163.0	7.4 [4]	4.6%	2.8%
FY '08	133.7	6.6	4.9%	3.8%
Avg FY '08-'12	128.7	6.0	4.7%	2.7%

(1) Does not include State Treasury Pool balances in calculation.
(2) 12 month moving average of the constant maturity yield on the 7 year Treasury note
(3) 12 month moving average of the constant maturity yield on the 7 year Treasury note at end of period
(4) Excludes $.4 million in gains on sale of investments in May 2009.
(5) Excludes $.2 million in losses on sale of investments in July 2009.

Colorado Public School Permanent Fund

September 30, 2012



Portfolio Value

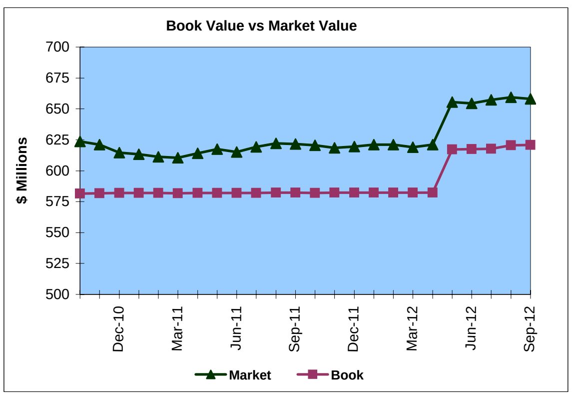
Market Value	$658.1	Million
Book Value	$620.7	Million

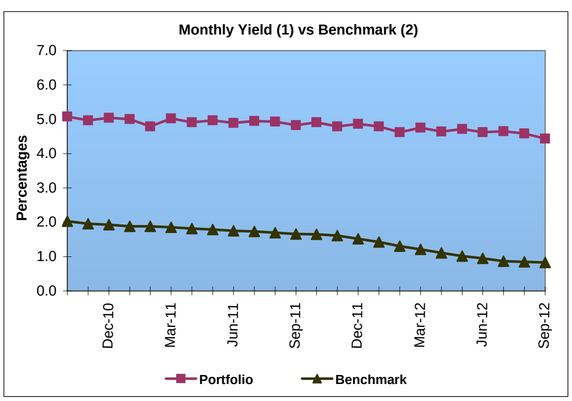
Yield and Average Maturity

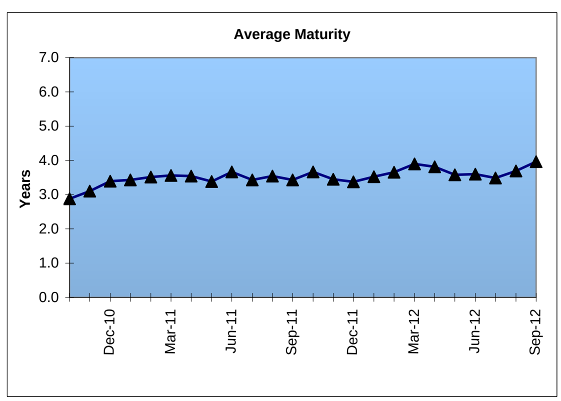
Portfolio Book Yield	3.7%	
Portfolio Average Maturity	4.0	Yrs

Portfolio Quality

	A1 / P1	AAA	AA	A	BBB	BB	B	Other	Portfolio Percent
Asset Backed		100.0%							3.0%
Corporates		6.9%	67.9%	18.7%	6.5%				21.1%
Mortgage Securities			100.0%						30.7%
Treasuries			100.0%						4.1%
Federal Agencies			100.0%						17.9%
Muni GOs			100.0%						0.5%
T-Pool Combined	0.3%	8.3%	81.9%	9.3%	0.2%	0.0%	0.0%	0.0%	22.7%
Total Portfolio	0.1%	6.3%	86.2%	6.0%	1.4%			0.0%	100.0%



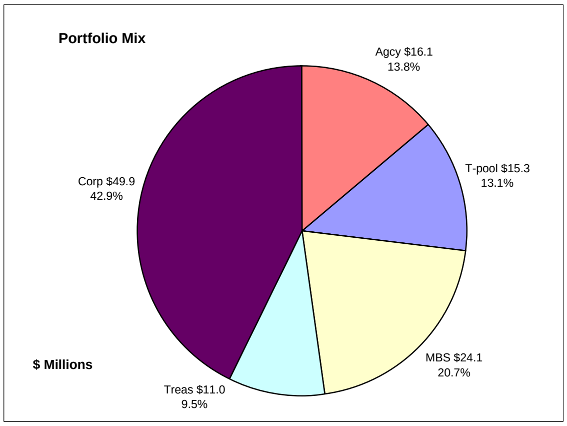




	$ Millions Average Portfolio	Realized Income	Book Yield	Performance Benchmarks (3)
FY '13 YTD	616.6	5.7	3.7%	0.8%
Last 12 months	591.3	23.4	4.0%	0.8%
FY '12	582.2	24.1	4.1%	1.0%
FY '11	580.7	27.0	4.6%	1.8%
FY '10	580.8	28.5	4.9%	2.4%
FY '09	572.4	29.2	5.1%	2.3%
FY '08	519.3	27.1	5.2%	3.6%
Avg FY '08-'12	567.1	27.2	4.8%	2.2%

(1) Does not include State Treasury Pool balances in calculation.
(2) Latest 12 month moving average of the constant maturity yield on the 5 year Treasury note
(3) Latest 12 month moving average of the constant maturity yield on the 5 year Treasury note at end of period

Unclaimed Property Tourism Fund
September 30, 2012



Portfolio Value

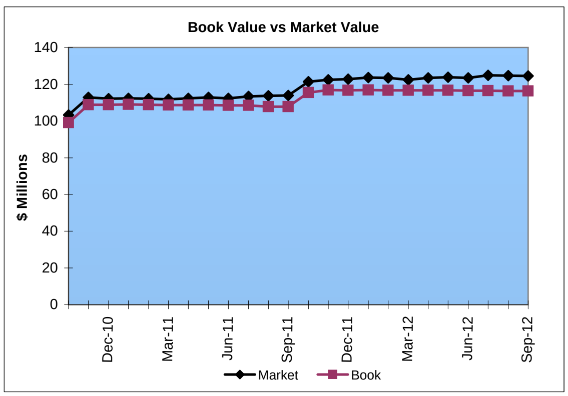
Market Value	$124.5 Million
Book Value	$116.4 Million

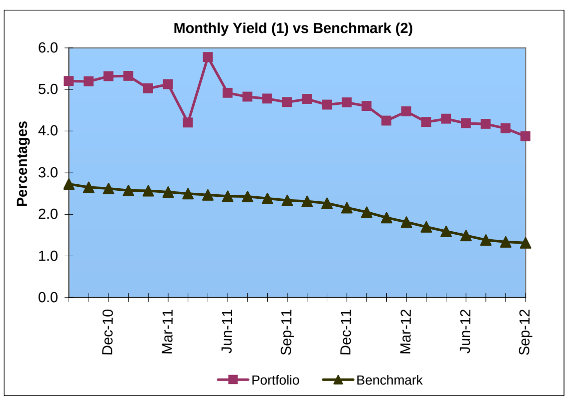
Yield and Average Maturity

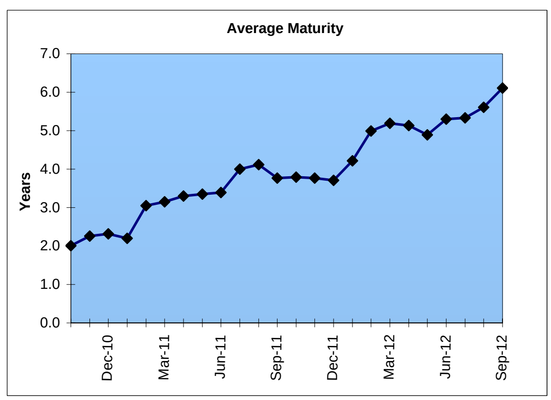
Portfolio Book Yield	3.3%
Portfolio Average Maturity	6.1 Yrs

Portfolio Quality

	A1 / P1	AAA	AA	A	BBB	BB	B	Other	Portfolio Percent
Asset Backed									0.0%
Corporates		2.0%	23.1%	70.9%	4.0%				42.9%
Federal Agencies			100.0%						13.8%
Mortgage Securities			100.0%						20.7%
Treasuries			100.0%						9.5%
T-Pool Combined	0.3%	8.3%	81.9%	9.3%	0.2%	0.0%	0.0%	0.0%	13.1%
Total Portfolio	0.0%	2.0%	64.6%	31.6%	1.8%			0.0%	100.0%







	$ Millions Average Portfolio	Realized Income	Book Yield	Performance Benchmarks (3)
FY '13 YTD	116.4	1.0	3.3%	1.3%
Last 12 months	116.3	3.8	3.3%	1.3%
FY '12	114.3	3.8	3.3%	1.5%
FY '11	104.7	3.5	3.4%	2.4%
FY '10	87.9	3.4 [4]	3.9%	3.1%
FY '09	65.9	3.1	4.8%	2.8%
FY '08	65.7	3.3	5.0%	3.8%
Avg FY '08-'12	87.7	3.4	4.1%	2.7%

(1) Does not include State Treasury Pool balances in calculation.
(2) 12 month moving average of the constant maturity yield on the 7 year Treasury note
(3) 12 month moving average of the constant maturity yield on the 7 year Treasury note at end of period
(4) Excludes $.2 million in losses on sale of investments in July 2009.

Appendix D: Indirect Cost Assessment Methodology

The Department is a central services agency and therefore its departmental indirect costs are included within the Statewide Indirect Cost Plan.

Appendix E: Change Requests' Relationship to Performance Measures

The Department of Treasury did not submit any change requests.

Change Requests' Relationship to Performance Measures			
R	**Change Request Description**	**Goals / Objectives**	**Performance Measures**

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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FORMAL OPINION	)	
	)	No. 05-01
of	)	
	)	AG Alpha No. TR UP AGBBH
JOHN W. SUTHERS	)	April 13, 2005
Attorney General	)	Status of stored value cards, including gift cards

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This opinion concerns the status of stored value cards, including gift cards, under Colorado's Unclaimed Property Act. It is issued at the request of the State Treasurer, who asks whether Colorado's Unclaimed Property Act applies to stored value cards and gift cards, and if so, which section of the Act is applicable.

QUESTIONS PRESENTED AND CONCLUSION

Questions: Does Colorado's Unclaimed Property Act, article 13 of title 38, C.R.S. (2004), apply to stored value cards and gift cards? If so, which section of the Act is applicable?

Answer: Pursuant to applicable principles of statutory interpretation, the broad provisions of §§ 38-13-103 and 104, C.R.S. (2004) of Colorado's Unclaimed Property Act encompass stored value cards, including gift cards. Therefore, the unused monetary value of cards held by a card issuer is subject to the provisions of the Act.

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ANALYSIS

A. Introduction

Colorado's Unclaimed Property Act is found at article 13 of title 38, C.R.S. (2004) ("the Act") and is modeled after a Uniform Unclaimed Property Act.[1] Unclaimed property laws are designed to transfer property that is presumed to have been abandoned or lost by its owner from the private entity that is in possession of the property ("the holder") to the custody of the State, so that the State may attempt to reunite the abandoned property with its owner, and so that the property may be used for the benefit of the public until it is claimed by its owner, rather than becoming a windfall to private holders. Generally the law covers intangible property, rather than real property. Under the Act, the Treasurer is responsible for enforcing its provisions and ensuring that holders of unclaimed or abandoned property are properly reporting such property to the State.[2]

In requesting this Opinion, the Treasurer's inquiry focuses on a kind of property known as gift cards or stored value cards. He asks whether such property is subject to the provisions of the Act. He notes that these forms of property have become increasingly common in recent years. Therefore, it is important that the Treasury determine the property's status under the Act, so that the Treasury office's statutory responsibilities can be fulfilled. The Treasurer also states that there is a divergence of opinion as to the answer to the question presented: some apparently take the position that the Act does not cover the property at all; others believe that it is covered by the provisions relating to gift certificates; and still others consider it to be subject to the Act's omnibus provisions making all intangible property subject to the Act unless otherwise excluded. The Treasurer believes that such property is subject to §§ 38-13-103 and 38-13-104 of the Act and asks whether that conclusion is legally correct.

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[1] Colorado's law is modeled after the 1981 Uniform Act. UNIF. UNCLAIMED PROPERTY ACT (amended 1981), 8C U.L.A. 151 (2001).

[2] *See, for example,* § 38-13-123(1), C.R.S. (2004) (Treasurer may require holders to file reports "stating whether or not the person is holding any unclaimed property reportable or deliverable" under the Act). The Treasurer may also "examine the records of any [holder] to determine whether the person has complied with" the Act, and may do so "even if the [holder] believes he is not in possession of any property reportable or deliverable" under the Act. § 38-13-123(2), C.R.S. (2004). Finally, the Treasurer "may bring an action in a court of competent jurisdiction to enforce" the provisions of the Act. § 38-13-125, C.R.S. (2004).

Colorado's law does not contain the terms "stored value card" or "gift card" (collectively "SVC"). The Act does explicitly cover "gift certificates" in a section headed "Gift certificates and credit memos," although the term gift certificate is not defined in Colorado's law.[3] § 38-13-108.4, C.R.S. (2004). Despite the superficial similarity of the terms "gift certificate" and "gift card," the Treasurer indicates that the kind of instrument referred to in his request for an opinion has certain characteristics that generally distinguish it from traditional gift certificates. For instance, according to the Treasurer's letter requesting this opinion, gift cards and stored value cards are purchased and used differently than gift certificates, e.g., they may be given as gifts or retained by the purchaser. Also, they are recorded and tracked by the issuer more like the way credit card or bank accounts are memorialized, with the issuer frequently maintaining a record of the method of payment, the name and address of the purchaser (or even of the recipient if it is to be used as a gift). Also unlike a gift certificate, an SVC is more likely to be retained over a period of time, with value added to it periodically.

On a practical level, the Treasurer correctly distinguishes between gift certificates and SVCs. SVCs are different in form than gift certificates, the first being a plastic card on which value is recorded electronically, and the latter being a paper without any electronic component. More significantly, SVCs function quite differently than gift certificates. The dictionary defines "gift certificate" as "a certificate entitling the recipient to purchase goods or services in the establishment of the issuer to the amount specified." *Merriam-Webster Online* (visited March 11, 2005) <http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=gift+certificate&x=9&y=7. Thus a gift certificate generally represents a fixed value that can be exchanged for goods or services from only the merchant who issued it, and generally in a one-time transaction. On the other hand, SVCs, as discussed below, are electronic payment products that operate much more like currency, or like an on-going account with value periodically removed or enhanced. Also, SVCs may be issued by one entity, but may be redeemable at various other entities.

B. Electronic Payment Products

SVCs are a variety of electronic payment product or electronic cash technology, which has developed rapidly over the past fifteen years. This opinion necessarily deals only with the current state of development. SVCs are variously known as electronic gift cards, merchandise cards, smart cards, shopping cards, prepaid cards, student cards, etc., and the terms under which they are issued vary widely. For purposes of this opinion, SVCs include only those cards that

[3] § 38-13-102 is entitled Definitions and use of terms. Within subsection (7)(a)(II), gift certificates are listed as one variety of intangible property, and grouped with "credit balances, customer overpayments, gift certificates, refunds, credit memos, and unidentified remittances." § 38-13-102(7)(a)(II), C.R.S. (2004).

are purchased, i.e., value has been transferred from the purchaser to the issuer, and exclude those for which no value has been exchanged (e.g., those issued as promotional benefits).

As used herein, SVCs operate as follows. When an individual buys an SVC from an issuer, "[m]onetary 'value' is stored in the form of electronic signals . . . on a plastic card." Ellen d'Alelio and John T. Collins, *Electronic Cash Under Current Banking Law* (1996) <http://www.cla.org/RuhBook/chp8.htm. The plastic card, which is similar in appearance to a credit card, is presented to a merchant in payment for goods or services. The merchant reads the electronic value of the card, and this value is reduced by the amount of the purchase. Value may be added to a card, or the card may be discarded once its value is exhausted.

As one commentator has noted, "These new technologies . . . do not necessarily fit neatly into the present framework" of unclaimed property laws. Anita Ramasastry, *State Escheat Statutes and Possible Treatment of Stored Value, Electronic Currency, and Other New Payment Mechanisms*, 57 BUS. LAW 475, 477 (2001). "Clearly the statutes at present do not readily fit the changing environment of electronic commerce." *Id.* at 478.

Nonetheless, this opinion concludes that, under traditional rules of statutory construction, Colorado's Act operates broadly to cover all intangible property unless specifically exempted by the Act or as otherwise provided in other statutes or local laws. Sections 38-13-103 and 38-13-104, C.R.S. (2004), are omnibus or "catch-all" provisions modeled after the Uniform Act, and SVCs are covered by these provisions.[4]

C. Operation and Purpose of Unclaimed Property Laws

No State court has ruled on whether SVCs are included within the meaning of "intangible property" in an unclaimed property act. Our analysis begins with a brief history and an overview of the operation and purposes of unclaimed property laws. Though often referred to as "escheat" laws, this is a misnomer. *Cf. Delaware v. New York*, 507 U.S. 490, 497 (1993). So-called "true (or absolute) escheat" refers to the reversion of real property to the State when

[4] At least one commentator has concluded that a category of SVCs, those issued by financial institutions, are covered by the Uniform Act's "catch-all" provisions. Ellen d'Alelio, *Smart Cards and Escheat: Can the States Reach "Abandoned" Funds Held to Pay Smart Card Liabilities?*, ELECTRONIC BANKING L. AND COM. REP., May 1996, at 15.

the owner dies without heirs.[5] In contrast, unclaimed property law, sometimes called "custodial escheat," generally refers to intangible rather than real property that appears to have been abandoned by its owner (e.g., inactive bank accounts; uncashed checks and money orders; and unclaimed wages, deposits, refunds, and life insurance policy proceeds). After some fixed period of time without activity or contact with the owner, a presumption of abandonment arises, and the value of the property is transferred from the private holder to the State. The State then takes custody but not ownership of the property, holding the amount in perpetuity for the owner or his heirs.

The U.S. Supreme Court has likened unclaimed property laws to statutes of limitations or recording statutes. Such laws have withstood legal challenge over the years. "From an early time, [the Supreme Court of the United States] has recognized that States have the power to permit unused or abandoned interests in property to revert to another after the passage of time." *Texaco, Inc. v. Short*, 454 U.S. 516, 526 (1982) (citing *Hawkins v. Barney's Lessee*, 30 U.S. 457 (1831)). *See also Delaware v. New York*, 507 U.S. 490, 502 (1993) (State may protect interests of owners of abandoned property by taking custody thereof) (citing *Anderson Nat. Bank v. Luckett*, 321 U.S. 233, 241 (1944)). "Disposition of abandoned property is a function of the state, a sovereign exercise of regulatory power over property." *Id*. (internal quotation marks omitted) (citing *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 436 (1951)).

In 1954, the National Conference of Commissioners on Uniform State Laws ("the Commissioners") approved the first Uniform Disposition of Unclaimed Property Act (1954 Uniform Act). UNIF. DISPOSITION OF UNCLAIMED PROPERTY ACT (1954), 8A U.L.A. 215 (1983). Since that time the Commissioners have issued three subsequent Uniform Acts,[6] and

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[5] The term "escheat" stems from medieval times when feudal law provided that the real property of a tenant who died without heir reverted to his mesne lord. Cary B. Hall, *Escheat? Gesundheit. But for States, It's Nothing to Sneeze at: Delaware v. New York, 113 S.Ct. 1550 (1993)*, 5 U. MIAMI BUS. L.J. 79, 80 (1995); K. Reed Mayo, *Virginia's Acquisition of Unclaimed and Abandoned Personal Property*, 27 WM. & MARY L. REV. 409, 409-10 (1986). With regard to personal property, the English common law rule of *bona vacantia* provided that unclaimed personal property reverted to the custody of the Crown. Hall, *supra* at 80-81; Mayo, *supra* at 411-12. *See also Delaware v. New York*, 507 U.S. at 497-98. The principle that government is responsible for regulating the property of its absent citizens, however, can be traced back even further to Roman times. *Cunnius v. Reading School Dist.*, 198 U.S. 458, 469-70 (1905).

[6] The 1966 Uniform Act is found at UNIF. DISPOSITION OF UNCLAIMED PROPERTY ACT (amended 1966), 8A U.L.A. 135 (1983); the 1981 Uniform Act at UNIF. UNCLAIMED PROPERTY ACT (amended 1981), 8C U.L.A. 151 (2001); and the 1995 Uniform Act at UNIF. UNCLAIMED PROPERTY ACT (amended 1995), 8C U.L.A. 87 (2001).

most, if not all, States have utilized these Uniform Acts in creating their own laws on the subject. Joshua A. Joyce and Hugh F. Drake, *Found Treasure: A Primer On Unclaimed Property in Illinois*, 91 ILL. B.J. 409, 409 (2003). Upon promulgating the first Uniform Act, the Commissioners identified the need for uniformity in the unclaimed property laws of all the States. "In addition to the general desirability of symmetry in the law for the benefit of persons doing business in more than one state," uniform unclaimed property legislation is necessary in order to prevent holders from incurring "multiple liability" to different States with regard to the same property, and to prevent unseemly races among States seeking to be the first to claim the property. UNIF. DISPOSITION OF UNCLAIMED PROPERTY ACT PREFATORY NOTE (1954), 8A U.L.A. 215, 215-16 (1983). The Uniform Acts prevent such problems by providing, *inter alia*, for reciprocity. UNIF. DISPOSITION OF UNCLAIMED PROPERTY ACT PREFATORY NOTE (1954), 8A U.L.A. 215, 216 (1983).

Unclaimed property laws have a number of underlying beneficent purposes. The Commissioners note that such laws "protect the interests of owners" of unclaimed property, "relieve holders from annoyance, expense, and liability," "preclude multiple liability," and give States "the use of some considerable sums of money that otherwise would, in effect, become a windfall to holders." UNIF. DISPOSITION OF UNCLAIMED PROPERTY ACT PREFATORY NOTE (1954), 8A U.L.A. 215, 217 (1983). Stated differently, they protect the property rights of the missing owner; prevent seizure by and unjust enrichment to the private holder of the property; guarantee that "a perpetually solvent" entity, the State, exists to honor the owner's claim, relieve the holder of the burden of having "a potentially infinite liability on its . . . books," provide "an additional, if only temporary, source of revenue for" States, and allow for "the redistribution of the unclaimed property back into the commercial stream for the common good." Hall, *supra* at 83. Such laws also require that the State and the holder attempt "to reunite the owner with his property," may prevent any statute of limitations from running against the State or the owner, and promote "the general welfare of the community." Mayo, *supra* at 419-20.

D. Applicable Principles of Statutory Construction

The question then becomes the legislature's intent regarding which intangible property is to be covered by Colorado's unclaimed property law. More specifically, did the General Assembly intend to include SVCs as intangible property subject to the Act, even though that term is not included in the Act? The question is answered by utilizing various canons of statutory construction, and referring to §§ 38-13-103 and 38-13-104, the omnibus or "catch-all" sections of the Act.

A recent Colorado Supreme Court case sets out a number of the "well-established principles of statutory construction." *Showpiece Homes Corp. v. Assurance Co. of America*, 38 P.3d 47 (2001).

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> The first goal of a court construing a statute is to ascertain and give effect to the intent of the General Assembly. Constructions that defeat the obvious legislative intent should be avoided. To determine the legislative intent, courts look first to the statutory language, giving words and phrases their plain and ordinary meaning.

Id. at 51 (citations omitted*); see also State v. Nieto*, 993 P.2d 493, 509 (Colo. 2000) ("Legislative intent is the polestar of statutory construction.") (quoting *Schubert v. People*, 698 P.2d 788, 793 (Colo. 1985).

1. Legislative Intent

In promulgating the Act, the Colorado legislature evinced an intent to subject *all* intangible property to its terms, except as otherwise specified. Section 38-13-103 states:

> § 38-13-103. Property presumed abandoned - general rule. (1) Except as otherwise provided by this article, **all** intangible property, including any income or increment derived therefrom, less any lawful charges, that is held, issued, or owing in the ordinary course of a holder's business and has remained unclaimed by the owner for more than five years after it became payable or distributable is presumed abandoned.

(emphasis added). This general rule applies unless the Act itself provides otherwise.

Section 38-13-104 refers to these exceptions:

> § 38-13-104. General rules for taking custody of intangible unclaimed property. (1) **Unless otherwise provided in this article or by other statute or local law**, intangible property is subject to the custody of this state as unclaimed property if the conditions raising a presumption of abandonment under section 38-13-103 or sections 38-13-105 to 38-13-109.7 are satisfied . . . .

(emphasis added). Thus, § 38-13-104 specifies three instances in which intangible property is not subject to the custody of the State as unclaimed property: first, if the Act itself provides that such property is not subject to the Act; second, if another statute provides otherwise; and third, if local law provides otherwise.[7]

The Act excludes property from its coverage by specifying that it is not included in the definition of intangible property. *See* § 38-13-102(7)(b), C.R.S. (2004) ("'Intangible property' does not include unclaimed capital credit payments held by cooperative electric associations and telephone cooperatives, gaming chips or tokens, or gaming award points."). The Act also excludes property from its coverage by specifying that certain intangible property is not subject to the Act. *See* § 38-13-108.8, C.R.S. (2004) (property held by racetracks); § 38-13-129, C.R.S. (2004) (property associated with transactions in foreign countries). The plain language of the statute does not exclude SVCs from the Act's coverage either by excluding them from the definition of intangible property, or by providing that they are not subject to the Act.

2. Words Used Deliberately and No Exceptions Read In

Two related principles of statutory construction apply to this analysis: (1) it is presumed that the legislature used language deliberately, and (2) courts will not read in exceptions to the statutory language that were not made by the legislature.

First, courts must not only give effect to every word, but they must also presume that the legislature used language deliberately. "[W]e are not to presume that the legislative body used the language idly and with no intent that meaning should be given to its language." *Blue River Defense Comm. v. Town of Silverthorne*, 33 Colo. App. 10, 14, 516 P.2d 452, 454 (1973). *See also Silverview at Overlook, LLC v. Overlook at Mt. Crested Butte Ltd. Liability Co.*, 97 P.3d 252, 255 (Colo. App.) ("When the statutory language is clear and unambiguous, we interpret the statute as written because the General Assembly is presumed to have meant what it plainly said.") (*cert. denied* 2004). The language the Colorado legislature used in the Act with regard to the meaning of "intangible property" is particularly significant.

The definition section of the Act provides that "[i]ntangible property includes" nine categories of property, such as moneys, checks, drafts, deposits, interest, dividends, and income; stocks and other intangible ownership interests in business associations; security

[7] *See also* § 38-13-134, C.R.S. (2004) ("This article applies to any unclaimed or intangible property as provided in this article; but, where there is a conflict between this article and a specific statutory provision or local law relating to the disposition of tangible or intangible unclaimed property, such specific statutory provision or local law shall control the disposition of said property.").

deposits, unpaid wages, and unused airline tickets; and amounts due and payable under the terms of insurance policies. § 38-13-102, C.R.S. (2004).

The use of the word "includes" in the introductory portion to paragraph § 38-13-102(7)(a) is controlling. While the introductory portions of all the other definitions in § 38-13-102 utilize the word "means" (or, in one instance, "shall have the same meaning as set forth in [another statute]"), only paragraph (7)(a) provides that the defined term, "intangible property," "*includes*" rather than "*means*." This signifies that the legislature was not limiting intangible property to the subsequent list, but rather that the subsequent list merely contains examples of intangible property, and that, for purposes of the Act, the term "intangible property" is not limited to such examples. As stated in 2A N. SINGER, SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION, § 47:07 at 231-32 (6th ed. 2000):

> [T]he word 'includes' is usually a term of enlargement, and not of limitation . . . . It, therefore, conveys the conclusion that there are other items includeable, though not specifically enumerated. . . . A definition which declares what a term means, on the other hand, excludes any meaning that is not stated.

(internal quotation marks and citation omitted). This is a principle well-established in Colorado case law. *See, e.g., Colorado Common Cause v. Meyer*, 758 P.2d 153, 164 (Colo. 1988); *see also Lyman v. Town of Bow Mar*, 188 Colo. 216, 222, 533 P.2d 1129, 1133 (1975).

The words of the Colorado Supreme Court in *Showpiece*, 38 P.3d at 53-54, are also particularly apt here. In *Showpiece* the Court was construing the Colorado Consumer Protection Act ("CCPA"), and dealing with the question of whether insurance companies are covered by the CCPA. In response to the argument that since the CCPA does not specifically mention insurance companies and transactions in the listing of unfair or deceptive practices, they are not covered by the CCPA, the Court stated:

> [T]his omission is not determinative. The CCPA does not list all the industries to which it applies, nor does it specify all the types of transactions it covers. In enacting the statute, the General Assembly could not have possibly enumerated all, or even most, of the practices that the CCPA was intended to cover. . . .
>
> We also find it persuasive that although certain persons and entities are expressly excluded from the provisions of the CCPA, the General Assembly did not see fit to exclude insurance companies or insurance transactions from the broad

> scope of the CCPA . . . . If the General Assembly did not see fit to exclude insurance companies from the purview of the CCPA, it is not for this court to do so. Because exemptions in other areas have been explicitly addressed, the omission of an exemption for insurance companies strongly indicates that the General Assembly did not intend such an exemption.

Id. (citations omitted).

This statement is equally applicable to the question of whether SVCs are subject to the Act. The intent of the legislature was to cover all intangible property unless such property was explicitly excluded. The Act does not enumerate all the types of intangible property that are to be covered by its terms. Some types of property are expressly excluded from the Act, but the General Assembly did not exclude SVCs from the Act's purview. The omission of an exemption for SVCs strongly indicates that the General Assembly did not intend such an exemption.

The second related principle of statutory construction is that courts will not read in exceptions to the statutory language that were not made by the legislature. It is a "time-honored" rule that courts "will not create an exception to a statute that the plain language does not suggest or demand." *Slack v. Farmers Ins. Exchange*, 5 P.3d 280, 284 (Colo. 2000) (citing *Scoggins v. Unigard Ins. Co.*, 869 P.2d 202 (Colo. 1994), for the proposition that courts "will not judicially legislate by reading a statute to accomplish something the plain language does not suggest, warrant or mandate."). *See also Dikeou v. Dikeou*, 928 P.2d 1286, 1292 n.3 (Colo. 1996) ("We will not read in an exception that the General Assembly chose not to include.") ("In general, an exception not expressly made by the legislature should not be read into a statute by the courts.") (citing *Karoly v. Industrial Comm'n of Colo.*, 65 Colo. 239, 245, 176 P. 284, 286 (1918)). Since the General Assembly did not state that SVCs are an exception to the Act's broad coverage of intangible unclaimed property, principles of statutory construction will not permit such an exception to be created.

E. Remedial Legislation

Unclaimed property laws are universally categorized as remedial legislation. Black's Law Dictionary defines a "remedial statute" as "one that . . . is designed to introduce regulations conducive to the public good." BLACK'S LAW DICTIONARY 1457 (4th ed. 1951). The purposes of unclaimed property laws include preserving the value of the intangible property for citizens who have lost track of their property, attempting to reunite owners with their missing property, holding the value of the property in perpetuity for its owner or the owner's heirs, and preventing unjust enrichment to private holders to the detriment of the public. Thus, such laws do indeed constitute remedial legislation. They promote "the general welfare of the community." Mayo, *supra* at 419-20. *See also* 73 Am. Jur. 2d Statutes § 185 (2004) (Remedial statutes are those that are concerned with "new regulation for the advancement of the public welfare.").

Laws that are considered remedial legislation are to be liberally construed. "It is a general rule of law that statutes which are remedial in nature are entitled to a liberal construction in favor of the remedy provided by law, or in favor of those entitled to the benefits of the statute." 73 Am. Jur. 2d Statutes § 185 (2004). *See also Showpiece*, 35 P.3d at 50-51 (as a remedial statute, CCPA should be liberally construed in view of its "broad legislative purpose").[8] As was said in *Marriott v. National Mut. Cas. Co.*, 195 F.2d 462, 466 (10th Cir. 1952), with regard to another remedial statute, a Kansas law requiring commercial carriers to have liability insurance:

> The Kansas statute was enacted . . . to protect the public . . . . It is fundamental that a statute designed to protect the public, if its language permits, must be construed in the light of the legislative intent and purposes it sought to achieve. It is entitled to a broad interpretation so that its public purposes may be fully effectuated.

(citing *United States v. American Trucking Ass'n*, 310 U.S. 534 (1940) and *McDonald v. Thompson*, 305 U.S. 263 (1938)).

Consistent with these principles, the New Jersey Supreme Court has specifically held that New Jersey's unclaimed property law should be broadly interpreted in favor of the State:

> Generally, the public policy of the State is in favor of the custodial taking of abandoned or unclaimed property by the State Treasurer . . . . This public policy is so strong that attempts to circumvent a custodial taking by private arrangements or private law have been declared invalid. Similarly, because of the remedial effect of the custodial scheme, the prevailing custodial statutes have been given a liberal interpretation in favor of the State and as to the position of any stakeholder or obligor.

Clymer v. Summit Bancorp., 792 A.2d 396, 402 (N.J. 2002).

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[8] *See also* § 2-4-212, C.R.S. (2004) ("Liberal construction. All general provisions, terms, phrases, and expressions, used in any statute, shall be liberally construed, in order that the true intent and meaning of the general assembly may be fully carried out.").

Like those of the other States, including New Jersey, Colorado's unclaimed property law is a remedial statute, which is to be broadly construed in favor of the State's right to take custody of abandoned property and hold it on behalf of the owner. Including SVCs as intangible property that is subject to the Act implements this principle.

F. Public Interest Preferred Over Private Interests

The General Assembly has instructed that Colorado's laws should be presumed to favor public over private interests. *See* § 2-4-201(1)(e), C.R.S. (2004) ("Intentions in the enactment of statutes. (1) In enacting a statute, it is presumed that: . . . (e) Public interest is favored over any private interest."). Unclaimed property laws favor the public interest over private ones because they elevate the owner's (and the State's) interests over those of private holders. Private holders are not entitled to retain the value of property that belongs to the property's owner, not to the holder. While always safeguarding the property until it is claimed by its owner, in the interim the State uses the property to benefit the public as a whole.

As was said in *State by Richman v. Sperry & Hutchinson Co.*, 127 A.2d 169 (N.J. 1956):

> [A holder has] no just claim to retain [unclaimed property] for its own benefit. . . . New Jersey's quest for legitimate revenues to be used for the good of all of its citizens is in nowise to be condemned and its right to the unclaimed [property] is admittedly superior to that of the [holder] which had custody but no moral or legal claim to [its] retention.

Including SVCs as property subject to the Act favors public over private interests.[9]

G. Terms of Expiration or Other Conditions in SVCs Do Not Remove Them from the Act's Coverage

Some issuers of SVCs may impose an expiration date or other conditions for use of the value stored in the card, and some argue that this prevents such SVCs from being covered as intangible property pursuant to unclaimed property laws. For instance, several sources have concluded that if SVCs are not redeemable for cash from the issuer, or if they contain an expiration date, they are not covered under unclaimed property laws. *See, for example,*

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[9] If a holder subsequently honors the claim of an owner whose property has been paid to the State, the holder will be reimbursed by the State. § 38-13-113, C.R.S. (2004).

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Proposed June 1998 Comment Directed to the Treatment of Stored Value Cards Under the Uniform Unclaimed Property Act (visited Feb. 28, 2005) <http://www.abanet.org/scitech/ ec/ecp/escheat2.html. *See also* Richard L. Field, *Forgotten But Not Gone: Escheatment of Stored Value Cards*, Electronic Banking L. and Com. Rep., June, 1996.

Such conditions do not alter the legal conclusion that SVCs are intangible property within the meaning of Colorado's law. Unclaimed property laws typically provide that private parties cannot establish periods of limitation that would defeat the purposes of such laws. Colorado's Act, for example, provides:

> The expiration, before or after July 1, 1987, of any period of time specified by contract, statute, or court order, during which a claim for money or property can be made . . . does not prevent the money or property from being presumed abandoned or affect any duty to file a report or to pay or deliver abandoned property to the administrator as required by this article.

§ 38-13-122(1), C.R.S. (2004).

Section 16 of the 1954 Uniform Act, "Periods of Limitation," provided that the expiration of a statute of limitations regarding a claim for property prior to the effective date of the Act did not affect the holder's obligation to report the property as unclaimed property under the Act. In the 1981 Uniform Act (after which Colorado's original law was modeled), Section 29, "Periods of Limitation," broadened the Act's applicability further by adding the provision that an expiration date in a contract also did not affect the holder's obligation to report the property as unclaimed property. The Comment to the 1981 Act states that "Section 29 has an added provision that the expiration of time periods set forth in contracts will not prevent the property from becoming reportable . . . ."

The 1981 Comment relied on several cases where courts held that expiration dates or other mechanisms did not bar the State from applying the unclaimed property law. *See People v. Marshall Field & Co.*, 404 N.E.2d 368 (Ill. 1980) (expiration of gift certificates did not prevent State from taking custody of property) ("[W]here a private agreement between the parties is in fundamental conflict with public policy as established by the legislature, the private agreement must fall."); *Screen Actors Guild, Inc. v. Cory*, 91 Cal.App.3d 111 (Ca. 1979) (union bylaw that allowed residual funds to revert to the union if not claimed within six years did not prevent the residuals from being unclaimed property); *State of New Jersey v. Jefferson Lake Sulphur Co.*, 178 A.2d 329 (N.J.) (corporation's amendment of its articles of incorporation to provide that dividends that were unclaimed for three years reverted to the corporation was an attempt to "establish a private escheat law for itself," and therefore was invalid) *cert. denied*, 370 U.S. 158 (1962). *See also Connecticut Mutual Life Insurance Co.*

v. Moore, 333 U.S. 541 (1948) (custody of unclaimed insurance proceeds taken by New York even though the owners of the policies had failed to perform certain conditions precedent to being paid), *cited in Marshall Field* at 373.

Thus, based upon this case law and the periods of limitation statutory provision in Colorado's law, SVCs remain intangible personal property within the ambit of the Act, even if the issuer of a particular SVC has imposed an expiration date or other condition on the use of the card by the owner.

CONCLUSION

The public policy reasons for unclaimed property laws and applicable principles of statutory construction consistently point to the same conclusion. Colorado's Act covers all intangible property, unless otherwise excluded. SVCs are a type of intangible property not otherwise excluded from the Act's operation. Thus, SVCs are covered by the omnibus sections of the Act, §§ 38-13-103 and 38-13-104. If the issuers of SVCs or any other interested parties want to exclude SVCs from the Act, they could propose legislation that, if adopted by the General Assembly, would establish a specific exemption. Until the enactment of any such exemption, the Treasurer has authority under the Act to collect the value of abandoned SVCs from holders and to attempt to find the owners of the SVCs.

Issued this 13th day of April, 2005.

JOHN W. SUTHERS
Colorado Attorney General

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