DEPARTMENT OF TREASURY
FY 2013-14 JOINT BUDGET COMMITTEE HEARING AGENDA

Wednesday, January 2, 2013
1:30 – 3:00 pm

1:30-1:40 INTRODUCTIONS AND OPENING COMMENTS

1:40-1:45 QUESTIONS COMMON TO ALL DEPARTMENTS

1. The JBC occasionally hears complaints that base personal services reductions to capture vacancy savings result in more vacancy savings as managers reduce staff to absorb the reduction and then still experience turnover. Some departments refer to this as the "death spiral." Has your department experienced this problem? How does your department attempt to minimize and avoid the "death spiral?

1:45-2:15 DEPARTMENT OVERVIEW

Senior Homestead Tax Emption

2. How much of the senior homestead exemption was claimed as compared to how much was forecast? Is the $96.6M the capacity for what could be claimed? Historically, how does that compare to what was originally forecast and what actually was collected? What is the total potential liability to the State if everyone who qualifies for the exemption collects it?

3. H.B. 12-1326 may have included an amendment for the transfer of the unspent portion of the homestead exemption to other assistance to the elderly. What happens at the end of year as a result of this amendment for transfer of homestead exemption to other senior assistance? Did the bill create a transfer mechanism, and if so, how does it work? Will the transfer to the State Education Fund take precedent?

4. What is the window of time available to senior citizens to make a tax exemption claim? Why is it so imprecise in the forecast? How does the mechanism work for claiming the exemption?

FPPA

5. If we increase the amount we pay to FPPA for FY 2012-13, what would be the impact on out-year amounts?

6. What would be the cost to retire the entire FPPA liability now?

7. Does the Department have a position on retiring the FPPA liability?

From the CDPHE briefing:

8. The CDPHE briefing identified a repayment plan that was dependent on interest earned on settlement moneys. Are there other departments with debt repayment plans at risk because of federal zero interest policy?

2:15-2:45 COVERCOLORADO AND FUTURE USES OF THE UNCLAIMED PROPERTY FUND

9. Please discuss the timing of the HCPF Medicaid request (HCPF R-8) and what is required by CoverColorado? What would a payment transition from the Unclaimed Property Fund look like if the General Assembly chose to fund that request?

10. Currently the high-risk population in CoverColorado receive a premium subsidy: will the high-risk population receive that subsidy when they go into the Exchange? If there is no premium subsidy, what does it mean for these high-risk individuals? Please discuss the option of keeping the high-risk population in CoverColorado for a longer period before transitioning them into the Exchange, instead of immediately moving them into the Exchange by January 2014.

11. Will individuals under CoverColorado be brought into the Exchange in October 2013 or January 2014? How will this process work? Please explain the timing of the transition of CoverColorado members into the Exchange and coverage requirements related to federal health care reform.

12. How much risk is there to drawing funds or continuing to draw funds from the Unclaimed Property Fund principal? What level of withdrawals from principal are sustainable?

13. When principal from the Unclaimed Property Fund began being used for CoverColorado, was it intended that it be temporary or permanent?

14. Can the Unclaimed Property Fund be used for Medicaid purposes?

15. Please explain the Department's position regarding the future use of the Unclaimed Property Fund, particularly as based on experience from funding CoverColorado and its historical purpose and statutory designation as a *Trust Fund*.

2:45-3:00 THE UNCLAIMED PROPERTY PROGRAM AND GIFT CARDS

16. Please explain the Program's approach to the collection of gift cards.

17. Do gift card collections include vendors like Macy's? Do national companies have to comply? Are national companies finding a way to get out of turning the value of unused gift cards over to the Treasury? Does this impact local companies more than non-Colorado companies?

18. Please offer policy options and the Department's recommendations for clarifying statute regarding the collection of gift cards.

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED

1. The Joint Budget Committee has recently reviewed the State Auditor's Office *Annual Report of Audit Recommendations Not Fully Implemented* (October 2012). If this report identifies any recommendations for the Department that have not yet been fully implemented and that fall within the following categories, please provide an update on the implementation status and the reason for any delay.

   a. Financial audit recommendations classified as material weaknesses or significant deficiencies;
   b. Financial, information technology, and performance audit recommendations that have been outstanding for three or more years.

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Answer: Treasury has one of the smallest departments in the state, and arguably the lowest rate of turnover and vacancies. In general, most of the Department's vacancies are a result of a tenured employee's retirement. Thanks to the JBC allowing this department to take a zero base reduction because of our small staff size, we haven't seen the effects of the "death spiral" seen by other agencies.

1:45-2:15 DEPARTMENT OVERVIEW

Senior Homestead Tax Emption

2. How much of the senior homestead exemption was claimed as compared to how much was forecast? Is the $96.6M the capacity for what could be claimed? Historically, how does that compare to what was originally forecast and what actually was collected? What is the total potential liability to the State if everyone who qualifies for the exemption collects it?

Answer: The following information was provided by DOLA:

The amount that will actually be claimed is not able to be finalized until after the 2012 tax levies are set by each board of county commissioners at the end of December, 2012, which will be the basis for the 2013 tax bills against which the Senior Exemption is applied. At the state, we don't ever really know what that amount is going to be until the counties submit their request for reimbursement from the State Treasurer, because the specific mill levies are not reported to the state on an individual property-by-property basis for analysis.

However, we have an estimate based on the total number of approved applications for 2012 and the tax obligation that would have been exempted if the mills were applied based on the previous year's

tax levy. Understanding these limitations inherent in our assumptions, the total amount claimed in senior tax exemption for 2012, based on 2011 mill levy amounts, would be around $97,312,954. Our estimate is that this number will ultimately increase once all counties have submitted their reimbursement claims by April 1. There were a number of mill levy increases approved by the voters this fall that will influence over this ultimate number.

The $96.6 million number mentioned in this question is not the capacity for what could be claimed. There is no cut off to this program, when it is funded by the General Assembly. The state reimburses counties for every qualified senior exemption. The exemption itself is based on whatever the taxes would be for 50% of the actual value of the home up to $200,000 of value. In other words, the total obligation of the state per property cannot exceed the taxes owed on $100,000 of actual value of a home, less if the home is valued less than $200,000.

It is important to point out, when seniors learn that funding for the exemption has been restored, there is a sizable increase in the number of seniors that file applications and that ultimately qualify for the exemption. For instance, the net number of new exemptions applied for in 2011, when the program was not funded, was 1,178. The net number of new exemptions applied for in 2012, when funding was restored, was 11,920.

There is not really a reliable way to answer the question asking if there is a total potential liability to the State if everyone who qualifies for the exemption collects it. Legislative Council staff does extensive research in this area as they attempt to estimate the number. They compare census data on the number of seniors, who own their own property, etc. they do look at what the turnover is in home ownership. However, there is really no good way to estimate who is a senior who has owned and used a property as their primary residence for 10 years and has chosen not to apply for the exemption.

3. H.B. 12-1326 may have included an amendment for the transfer of the unspent portion of the homestead exemption to other assistance to the elderly. What happens at the end of year as a result of this amendment for transfer of homestead exemption to other senior assistance? Did the bill create a transfer mechanism, and if so, how does it work? Will the transfer to the State Education Fund take precedent?

Answer: The following information was provided by DOLA:

HB 12-1326 did include language requiring the State Treasurer to transfer to the senior services account within the older Coloradans cash fund an amount equal to the amount by which the total estimated amount specified in the long bill exceeds the total amount of all warrants issued by the State Treasurer to reimburse counties for the senior property tax exemption. That statute, CRS 39-3-207, does not dictate the transfer mechanism. However, the estimated reimbursement amount to counties for 2013 already exceeds the amount specified in the long bill – so more than likely there will be no transfer of funds.

4. What is the window of time available to senior citizens to make a tax exemption claim? Why is it so imprecise in the forecast? How does the mechanism work for claiming the exemption?

Answer: The following information was provided by DOLA:

CRS 39-3-201 outlines the process of eligibility and application. A senior must file an application no earlier than the year they are eligible. To be eligible, the senior must be 65 years of age AND own AND have resided in the property as their primary residence for 10 years as of January 1 in the year they become eligible. The senior then needs to fill out an application, available from the assessor of their county and on the fivision of property taxation's website. That application needs to be submitted to the assessor of the county where the property is located no later than July 15, or under special circumstances September 15, to have their application in place for taxes owed the following January. A senior needs to apply only once, and once approved their exemption stays in place until the ownership changes on the property. They will receive the exemption for every subsequent property tax year, as long as it is funded by the General Assembly.

To expand on this answer, there is no database anywhere that ties together the number of years a property has been owned with the age of the owner and then whether that property is that owner's primary residence. The staff of Legislative Council does extensive research to try to cull an estimate from information that is available. Finally, there is no good way to estimate how many seniors might qualify for the exemption but choose not to apply.

<u>FPPA</u>

5. If we increase the amount we pay to FPPA for FY 2012-13, what would be the impact on out-year amounts?

<u>Answer:</u> This Department does not have the authority over this program, and does not produce this analysis. But in general terms, the liability to FPPA accrues interest on an annual basis – so the quicker it is paid off, the greater interest savings will be realized by the State.

6. What would be the cost to retire the entire FPPA liability now?

<u>Answer:</u> According to Legislative Legal Services, the cost to retire the FPPA liability now would be about $142.9 million.

7. Does the Department have a position on retiring the FPPA liability?

<u>Answer:</u> The Department does not have a position on retiring the FPPA liability. It appears to be more of a policy issue as well as a budgeting priority that lies with the legislature. The one variable that the Department can control is its investment pool – and since the Treasury Pool is currently earning under 2% and the interest associated with FPPA is much greater, the Department is unable to recoup the interest costs associated with the unpaid FPPA liability versus the State's interest earnings.

<u>From the CDPHE briefing:</u>

8. The CDPHE briefing identified a repayment plan that was dependent on interest earned on settlement moneys. Are there other departments with debt repayment plans at risk because of federal zero interest policy?

<u>Answer:</u> The short answer is that the Department is unaware of other departments with debt repayment plans at risk because of a federal zero interest policy.

For informational purposes, in researching this question with OSPB, it appears that this question refers to a Federal settlement with the Rocky Mountain Arsenal totaling $17 million. In order to access these funds, the settlement costs must be paid off first. There was a loan provided by the General Fund, authorized by HB 10-1325, to the Hazardous Substance Response Fund to pay off the costs associated with the Department of Law. The bill assumed a 2.3% interest rate which was too high, which makes the loan repayment schedule through 2019 insufficient.

The question may be asking if this conflicts with a Federal zero interest policy, but the Department is not privy to opine as to these federal dollars conflict with federal guidelines, or whether the loan repayment schedule paid by interest from the settlement $17 million is acceptable under federal zero interest standards.

2:15-2:45 COVERCOLORADO AND FUTURE USES OF THE UNCLAIMED PROPERTY FUND

9. Please discuss the timing of the HCPF Medicaid request (HCPF R-8) and what is required by CoverColorado? What would a payment transition from the Unclaimed Property Fund look like if the General Assembly chose to fund that request?

<u>Answer:</u> Under the Affordable Care Act, beginning in 2014, health insurance carriers can no longer deny coverage to Colorado residents who apply. Therefore, the purpose of CoverColorado will no longer exist after 2013. The purpose for CoverColorado will vanish and so should CoverColorado. CoverColorado plans to end operations in 2014. Current projections are for total Program cost to be within the 2013 funding sources of member premiums, the 2013 contribution from the UPF and our reserves. Thus, we anticipate final payment from the UPF to be made in December, 2013.

10. Currently the high-risk population in CoverColorado receive a premium subsidy: will the high-risk population receive that subsidy when they go into the Exchange? If there is no premium subsidy, what does it mean for these high-risk individuals? Please discuss the option of keeping the high-risk population in CoverColorado for a longer period before transitioning them into the Exchange, instead of immediately moving them into the Exchange by January 2014.

<u>Answer:</u> CoverColorado premiums charged to members –by statute- have always been higher than the commercial market. Some years ago, in order to help a growing number of Colorado residents obtain health insurance, our Board created a "discount premium" available to members whose household

income is under $40,000.

Presently 22% of our membership qualifies for this premium discount.

Please understand that the member premiums fund only 50% of total program cost. The cost of medical claims is not covered fully by member premiums. Thus, extra funds are necessary to support the Program.

Under the Exchange, residents with a medical condition will no longer be surcharged an extra premium. They will pay the same as healthy individuals.

Premium subsidies will be available through the Exchange, based on income and not based on the health of the individual. These premium subsidies will have no relationship to the discount premium available in CoverColorado.

11. Will individuals under CoverColorado be brought into the Exchange in October 2013 or January 2014? How will this process work? Please explain the timing of the transition of CoverColorado members into the Exchange and coverage requirements related to federal health care reform.

<u>Answer</u>: CoverColorado is planning an education, communication and outreach plan to members, to begin in early 2013. We will assist our members to understand the changes to the health insurance industry and the Exchange coming in 2014. We will help members transition from CoverColorado to other coverage in the commercial market.

The earliest date for all residents to enroll for coverage via the Exchange marketplace will be October 1, 2013, for coverage to begin January 1, 2014. No coverage will be effective earlier than this through the Exchange.

Individuals will enroll themselves in the Exchange or outside the Exchange – meaning direct with commercial carriers, for coverage to begin January 1, February 1, or March 1, 2014.

CoverColorado plans to have transitioned all members to commercial coverage by April 1, 2014 so that all coverage offered by CoverColorado will end April 1, 2014.

12. How much risk is there to drawing funds or continuing to draw funds from the Unclaimed Property Fund principal? What level of withdrawals from principal are sustainable?

<u>Answer</u>: What should be emphasized is that the risks with respect to this fund are better viewed from an actuarial perspective than a year-to-year budget perspective. Taxpayers have a right to claim their unclaimed property regardless of whether the Fund is sufficient to pay these claims – so building an appropriate reserve is key to the long term health of this Fund. The Treasurer's Office and the State Controller's office have worked together to develop a methodology based on historical claims and data to estimate an appropriate reserve that could cover 20 years worth of claims. This reserve

requirement is about $103.6 million, while our current reserve is about $73 million. Building this reserve is viewed as an important measure to mitigating the long term risks associated with the Fund and the Unclaimed Property program as a whole.

13. When principal from the Unclaimed Property Fund began being used for CoverColorado, was it intended that it be temporary or permanent?

<u>Answer</u>: While we cannot accurately opine on the legislature's intent of a statute that was created well before the current Treasurer took office, it appears that the Unclaimed Property funding was not intended to be completely permanent. CRS 10-8-530(5)(a), which provides for the current funding formula (25% from UPF), also requires the State Auditor to provide an audit by January 1, 2017 recommending whether the funding structure should be continued, modified or repealed.

14. Can the Unclaimed Property Fund be used for Medicaid purposes?

<u>Answer:</u> This is out of the Department's expertise. If there are Federal or other issues that would prevent the State from using these funds, we are not privy to these answers.

15. Please explain the Department's position regarding the future use of the Unclaimed Property Fund, particularly as based on experience from funding CoverColorado and its historical purpose and statutory designation as a *Trust Fund*.

<u>Answer:</u> As the steward of this program, the Department views the Unclaimed Property fund as property of taxpayers. While the designation of the Unclaimed Property Fund is indeed a trust, it's clear that the legislature has treated it more as a special revenue fund. Since the Fund was established, the legislature has directed about $200 million of Unclaimed Property funds to the General Fund, and about $200 million toward CoverColorado.

While the legislature may have the prerogative to continue to use revenues or principal from this Fund, this Department continues to find ways to strengthen the reserve and improve the program as a whole in any way it is allowed to do so.

2:45-3:00 THE UNCLAIMED PROPERTY PROGRAM AND GIFT CARDS

16. Please explain the Program's approach to the collection of gift cards.

<u>Answer:</u> The Program's approach to the collection of gift cards is no different to its approach to other facets of Unclaimed Property. All businesses are required to report unclaimed property on an annual basis, which includes checking and savings, stocks and dividends, insurance claim payments, unpaid wages, title and mortgage refunds, and gift cards. The Program does not have separate departments for each type of unclaimed property, nor does it exclusively focus on one type of unclaimed property over another – it is simply a part of a more global approach. During the Program's regular audits, businesses are asked if they issue gift cards. If they do, then more specific questions are asked to determine whether their gift cards may qualify as unclaimed property.

17. Do gift card collections include vendors like Macy's? Do national companies have to comply? Are national companies finding a way to get out of turning the value of unused gift cards over to the Treasury? Does this impact local companies more than non-Colorado companies?

Answer: Under unclaimed property law, the state of incorporation generally has custodial rights to unclaimed gift cards. Since Macy's was incorporated in Delaware, it is likely that the state of Delaware has custody of Macy's unclaimed gift cards. On the other hand, Dairy Queen's gift card program is incorporated in Colorado, which means Colorado has custody of Dairy Queen's unclaimed gift cards.

18. Please offer policy options and the Department's recommendations for clarifying statute regarding the collection of gift cards.

Answer: Currently, the Program's protocol under the guidance of the Treasurer is to follow the law and current statutes. In the past, the Treasurer's Office has reached out for guidance from the Attorney General's office, which has provided an opinion that supported the interpretation of statutes.

The Treasurer's Office stresses that any changes to current law would have both negative and positive impacts, depending on the size and gift card program structure unique to each business. Colorado offers gift card issuers an advantage that is not available in any other state – a deduction of up to $25 from the value of each gift card. Many national companies have incorporated in Colorado specifically because of this deduction.

Changing the current gift card statutes could have positive and negative effects. For example, several states apply a 60-40 rule to all gift card unclaimed property (as in companies would pay 40% of total gift cards reported. This rule would benefit businesses who supply gift cards significantly greater than $25 dollars, but at an expense of the vast majority of businesses who offer much smaller gift card denominations. For example, Dairy Queen reported $549,987 in gift card revenue last year. But because of the $25 dollar exemption, they paid $0 to Unclaimed Property. Establishing a 60-40 policy in lieu of the $25 dollar exemption would cost this company about $329,992 in additional payments to the Program. Chipotle, a local Colorado company reported $646,963, and with the $25 exemption paid $23,203. A 40% amount would increase Chipotle's Unclaimed Property payments by $235,582.

It should be emphasized that the vast majority of companies offer gift cards of about $25 dollars, while only a small handful of companies offer gift cards in amounts over $100 – so it's likely that changing to a 60-40 split would likely have a greater negative impact to more businesses than to those who it would benefit. What's more, it is possible that companies currently incorporated in Colorado may choose to incorporate elsewhere if statutes are changed – which could have additional revenue impacts for the other state.

One possible recommendation is to redefine the statutory definition of small businesses with respect to unclaimed property. Small businesses with less than $500,000 of annual revenue do not have to report unclaimed property. Currently, about 90% of gift card-related Unclaimed Property revenue comes from larger national companies who enjoy the current statutory gift card structure. Perhaps a benefit to local, smaller businesses located in Colorado is to increase the $500,000 amount to a number at or over $1,000,000.

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED

1. The Joint Budget Committee has recently reviewed the State Auditor's Office *Annual Report of Audit Recommendations Not Fully Implemented* (October 2012). If this report identifies any recommendations for the Department that have not yet been fully implemented and that fall within the following categories, please provide an update on the implementation status and the reason for any delay.

   a. Financial audit recommendations classified as material weaknesses or significant deficiencies;
   b. Financial, information technology, and performance audit recommendations that have been outstanding for three or more years.

Answer: **The Treasurer's office currently has no audit recommendations that are classified as a material weakness, significant deficiency, or recommendations not fully implemented.**