

DEPARTMENT OF STATE
FY 2025-26 JOINT BUDGET COMMITTEE HEARING AGENDA

Thursday, November 21, 2024

2:30 pm – 3:30pm

2:30-2:35 INTRODUCTIONS AND OPENING COMMENTS

Presenter:

- Jena Griswold, Secretary of State

2:35-2:45 BUSINESS FILINGS

Main Presenters:

- Jena Griswold, Secretary of State
- Chris Beall, Deputy Secretary of State
- Brad Lang, Chief Financial Officer

Supporting Presenters:

- Maytham Alshadood, Business & Licensing Division Director
- Mike Fitzpatrick, Business & Licensing Division Deputy Director

Topics:

- Effects of H.B. 22-1001: Page 3, Question 1 in the packet
- Fraudulent Filings Update: Pages 3-4, Question 2 in the packet

2:45-3:10 OPEN COMMITTEE DISCUSSION ON VOTING MACHINE PASSWORD RELEASE

Main Presenters:

- Jena Griswold, Secretary of State
- Chris Beall, Deputy Secretary of State
- Brad Lang, Chief Financial Officer

Supporting Presenters:

- Judd Choate, Elections Division Director
- Hilary Rudy, Elections Division Deputy Director
- Rich Schliep, Chief Information Officer

3:10-3:30 INFORMATION TECHNOLOGY DEVELOPMENT AND DEPARTMENT OF STATE CASH FUND

Main Presenters:

- Jena Griswold, Secretary of State
- Chris Beall, Deputy Secretary of State
- Brad Lang, Chief Financial Officer

Supporting Presenters:

- Rich Schliep, Chief Information Officer

Topics:

- TRACER Implementation Update: Page 4, Question 3 in the packet
- DOS Cash Fund Transfer Impacts: Pages 4-5, Question 4 in the packet

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BUSINESS FILINGS

1. ***[Sen. Amabile]*** What were the impacts of reductions to business filing fees from H.B. 22-1001? What was the cost of this legislation and what were the outcomes on business filings?

The Colorado Business Fee Relief Act (HB 22-1001) provided fee relief for new LLC formations and new trade name filings. The program ran from July 1, 2022 through May 21, 2023. When it was in place, the fee-relief provided a credit for LLC and trade name filings (at \$49 and \$19, respectively) that totaled \$8.435 million. This cost was funded by a one-time transfer from the General Fund of \$8.435 million.

While the fee credit was in effect, more than 155,000 new LLCs and 39,000 trade names were registered. This contributed to a year-over-year increase of 48,326 more LLCs than the prior year, for a 39.2% annual increase, and 3,131 more trade names, for a 7.7% annual increase. The fee credit was a factor in creating a favorable climate for business in Colorado.

Prior to the fee-credit program in FY 2022-23, the average annual rate of growth over the prior ten years in the number of entities in good standing on the Secretary's business registry was 5.1%. That is, the total number of business entities in good standing grew by an average of 5.1% year to year. During the period of the fee-credit and thereafter, the growth rate has been the same, 5.1% annual growth.

2. ***[Sen. Bridges]*** What were *the effects* of the large increase on fraudulent business filings in recent years? How has the Department addressed this problem and what is the current status of the Department's efforts?

Since the pandemic, fraudulent business filings have increased around the country. The Department has dedicated a significant amount of resources to the issue of fraudulent business filings in recent years. The Department has worked to pass two separate pieces of legislation on this topic (SB22-034 "Business Filing Address and Name Fraud"; HB24-1137 "Implement Fraudulent Filings Group Recommendations"), facilitated a working group on the topic, and expanded our staff capacity to focus on addressing fraudulent filings. Thank you to Senator Bridges, Representative Taggart, and Representative Bird for their work on carrying these bills.

The current complaint program for fraudulent filings went into operation in February 2023, and since the start of the program, the Department has received more than 2,900 complaint cases, for an average of about 130 cases filed each month. Initially, at the start of the program, the average

monthly count was below 100 cases. Over time as the program has become more well known, the Department has received more complaints each month.

To date, the Department has taken action to designate an entity as fraudulently created in 1,136 cases. We are currently waiting on more than 1,100 cases at the Attorney General's office.

Separately, the Department also has made referrals of cases to the Attorney General's office to be handled outside of the fraudulent filing complaint process. In May 2023, the Department referred to the Attorney General's office a large number of filings at a single address. The Attorney General settled the case in September 2024. The Department referred another case to the Attorney General's office in September 2024, related to a single credit card to create many business entities.

With the additional staffing for fraudulent business filings made available in the Department's current FY 2024-25 budget, the Department has hired a manager and is in the process of hiring business specialists for the fraud complaints group.

IT DIVISION AND DEPARTMENT OF STATE CASH FUND

3. [Rep. Sirota and Sen. Bridges] What is the status of TRACER implementation? How has the Department utilized appropriations to complete development?

Earlier this year, the Department published an Invitation to Negotiate (ITN), similar to a Request for Proposal (RFP), for the "Money in Politics System" project. The Department received multiple responses from vendors interested in the project and worked to narrow the decision down to the 'finalists.' At this point, the Department has notified the winner of the ITN committee process and is in process to finalize a contract to initiate this work to deploy the campaign finance portion of the system.

As previously reported to the Joint Technology Committee, the initial appropriation will be insufficient due to increased software and vendor costs since securing the initial appropriation. The existing appropriation will be used to develop the module for campaign finance filings and disclosures.

In the ITN process, the Department proposed dividing the work into three separate phases. It is anticipated that the current available budget of \$1,610,000 will cover the work as described in Phase 1 (Campaign Finance System). The Department will need to seek additional funding for the remaining phases (Lobby and integration of Lobby with Campaign Finance). The Department expects to have a better understanding of additional financial needs for the individual phases of the system development upon completing the contract negotiation with the vendor.

4. [Sen. Amabile] Why is a transfer from the Department of State Cash Fund to the General Fund likely to cause future litigation?

There was previous litigation, starting in 2015, brought by the National Federation of Independent Business, that challenged the method of using Colorado Department of State cash funds obtained from business fees to support election-related costs, including election-cost reimbursements to counties. That case ultimately ended with a ruling by the Colorado Supreme Court, in Griswold v. Nat'l Fed'n of Indep. Bus., 2019 CO 79, 449 P.3d 373 (Colo. 2019) ("NFIB"), holding that the plaintiff had failed to establish a sufficient factual basis to show that

a direct, causative link between increased election spending and increased business-fee revenue to the CDOS Cash Fund and that therefore, there was no basis to conclude that the Department's increased fee revenue at the time (in 2015) constituted a tax-policy change that would therefore subject the Department's fees to TABOR review:

NFIB contends that the Department implemented a new tax or a new tax policy in 1996 (and again in 2000) by using revenue from the [business fee] charges to fund county elections. It also makes reference to other "expansions," such as the new all-mail-ballot election system. Still, even if using the revenue from the charges to fund county elections and oversee the mail ballot system constituted a policy change, there isn't any evidence suggesting this use resulted in a net revenue gain in violation of TABOR's limitations. Similarly, the record doesn't establish how the use of the collected revenue to fund county elections and mail ballots could constitute a new tax or a tax rate increase. The record says nothing about whether the Secretary increased charges, or created new charges, to fund the county elections and mail ballots.

NFIB, 2019 CO 79, P42.

NFIB may indicate that if the evidence were sufficient to show that a business fee increase was caused by the need to increase the funding of a non-business related activity or service, then such a fee increase could subject the Department to review of its business fees under TABOR. A transfer from the Department of State Cash Fund to the General Fund could result in the need to increase business fees to make up for the money, which in turn could lead to litigation.