

**DEPARTMENT OF REVENUE
FY 2013-14 JOINT BUDGET COMMITTEE HEARING AGENDA**

**Thursday January 3, 2012
9:00 am – 12:00 noon**

9:00-9:45 INTRODUCTIONS AND OPENING COMMENTS

9:45-10:00 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?"

10:00-10:20 CONSERVATION EASEMENTS

2. Please discuss the status of progress toward resolution of the disputes regarding conservation easement tax credits.
3. Regarding the issue of preapproval of conservation easement tax credits, what is the Department's perspective on the ability of the Department to reexamine the pre-approval by DORA?
4. What process did the Department use to identify the disputed conservation easement tax credits? Was it solely the result of the federal investigation of the Colorado conservation easement donations?
5. What counties had the most disputed conservation easement tax credits? A list by county or a map of the disputed easements would be helpful.
6. Please explain the process by which interest and penalties are determined on disputed conservation easement tax credits. Include information on how interest and penalties are waived or suspended during certain parts of the dispute resolution process.
7. Please explain how the mediation process from the 2010 decision item has worked. Has the process always been available? Why has the mediation process not resulted in the resolution of any disputes?
8. Could the Department provide a graphical or other breakdown of the conservation uses of the easements in the state?

10:20-10:40 BREAK

10:40-11:00 MEDICAL MARIJUANA/AMENDMENT 64

9. Please discuss funding issues at the Medical Marijuana Enforcement Division (MMED), specifically the reasoning behind the staffing decisions that were made in light of the funding shortfall in the Medical Marijuana Licensing Cash Fund.
10. Please discuss what the Department knows about how Amendment 64 will be implemented and how that implementation will affect the MMED.
11. Many local governments have banned medical marijuana facilities within their jurisdictions. Would this fact have caused funding problems in any event? How do these bans affect the long-term revenue projections?
12. Please explain how the revenue shortfall affects enforcement actions. Does the State still plan to extensively monitor medical marijuana from the cultivation facilities to manufacturing facilities to retail operations? Given the present lack of resources in the MMED, how will the Department carry out enforcement?
13. Please discuss the number of enforcement actions that have been taken by the MMED.
14. What facilities, vehicles, and equipment does the Department have for staff in the MMED that have either been transferred or not hired?
15. Is Amendment 64 going to result in an unfunded mandate to the counties/municipalities? Has the Department discussed this with the counties?

11:00-11:10 DRIVER'S LICENSE ADMINISTRATIVE REVOCATION ACCOUNT AND FIRST TIME DRUNK DRIVING OFFENDER ACCOUNT

16. Please discuss the revenue deficiency in the Driver's License Administrative Revocation Account. How did this occur and what is the Department's plan to resolve the funding shortfall for this account?
17. Staff presented three options to resolve the funding issues in these accounts (underfunding of the Driver's License Account and overfunding of the First Time Drunk Driving Account. Which, if any, of these options does the Department support? Does the Department have a proposal that they would offer?
18. What is the subsidy for people who qualify for assistance for an ignition interlock device? If the numbers of people who qualify increase, what impact will that have on the fund?

19. If the General Assembly enacts a driving under the influence of drugs (DUID) bill, what does the Department project will happen to the Driver's License Administrative Revocation Account as a result of the suspensions?
20. Was the Driver's License Administrative Revocation Account used in the past to backfill revenue shortfalls in other cash funds?

11:10-11:15 TAX PIPELINE

21. Do other states use a similar system to automate the processes in the tax pipeline? Why did the Department choose to use this automated system?

11:15-11:25 WORKLOAD DECREASE IN THE HEARINGS DIVISION

22. Please discuss the workload decrease in the Hearings Division, including why the Department did not submit a base reduction for consideration.

11:25-11:30 VARIOUS FEES NOT CREDITED TO A SPECIFIC CASH FUND

23. Please discuss the Department's position on crediting fees that are currently collected for administrative purposes to a specific cash fund.

11:30-11:45 DEPARTMENT OVERVIEW/MISCELLANEOUS

24. Regarding Request #2, are the 22 FTE requested by the Office of Information Technology permanent FTE? What are the responsibilities of those FTE?
25. Has the State ever funded the underage drinking grant from the General Fund or has it always been federally funded?
26. Sections 24-75-1305, C.R.S. prohibits the restoration of previously federal or grant funding without specific legislation authorizing such funding. Does the request to restore the Enforcement of Underage Drinking Laws comport with this provision?
27. Regarding vehicle emissions testing, what percentage of the vehicles tested fail the emissions test? What is the breakdown of these test failures by vehicle age?
28. Regarding special license plates, please provide data on the purchase of authorized special license plates, and include data on how many are in inventory.
29. What percentage of vehicles currently has a special license plates?

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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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?"

Response:

Since FY 2011-12, the Department has taken two permanent personal services cuts including a reduction of \$1,285,199 in FY 2011-12 and a reduction of \$757,297 in FY 2012-13. The cumulative impact of these actions is a permanent base reduction of \$2,042,496. This equates to a reduction of 37.1 FTE (see table below).

Department of Revenue Vacancy Savings Personal Services History by Line					
Long Bill Line Item	FY 2011-12 Incremental Change from FY 2010-11	FY 2012-13 Incremental Change from FY 2011-12	Cumulative Change in Personal Services Base	Average Salary*	FTE Equivalent
(1) Executive Director's Office	(\$59,184)	(\$38,948)	(\$98,132)	\$74,050	(1.3)
(2) Central Department Operations	(\$81,245)	(\$49,609)	(\$130,854)	\$43,423	(3.0)
(3) Information Technology Division	(\$20,523)	\$0	(\$20,523)	\$0	0.0
(4) Taxation Business Group	(\$344,984)	(\$191,095)	(\$536,079)	\$71,340	(7.5)
(5) Division of Motor Vehicles	(\$315,082)	(\$172,507)	(\$487,589)	\$40,246	(12.1)
(6) Motor Carrier Services	(\$105,587)	(\$67,274)	(\$172,861)	\$47,503	(3.6)
(7) Enforcement Business Group	(\$222,130)	(\$158,121)	(\$380,251)	\$63,468	(6.0)
(8) Lottery	(\$136,464)	(\$79,743)	(\$216,207)	\$57,267	(3.8)
Total	(\$1,285,199)	(\$757,297)	(\$2,042,496)	\$55,092	(37.1)

*Average salary is calculated using the totals from the Schedule 14 as reported in the Department's November 1, 2012 budget submission.

The Department does see some vacancy savings associated with the natural fluctuation in staffing as employees leave the Department or retire. However, the amount of these savings can vary significantly on an annual basis depending on a number of factors including: 1) how quickly the Department can fill vacancies; 2) starting salaries of new hires; 3) the cost of temporary employees to backfill; 4) overtime costs; 5) the number of retirements; and 6) the cost of leave payouts.

Permanent reductions impact the base budget that the Department has available to make hiring decisions. This forces the Department to hire fewer positions over time due to the net reduction of resources available to hire staff. Permanent base reductions create a forced vacancy savings as departments no longer have the resources to be fully staffed (see table below). As a result, permanent base reductions identified as vacancy savings act as personal services cuts rather than a mechanism to capture savings occurring from the natural variations in staffing.

Forced Vacancy Savings Example							
Fiscal Year	Budget				Actual		
	2% Base Reduction	FTE Allocation	Salary per Staff	Base Budget	FTE Utilization	Expended Budget	Vacancy Savings
Year 0	0%	20.0	\$50,000	\$1,000,000	20.0	\$1,000,000	\$0
Year 1*	2%	20.0	\$50,000	\$980,000	19.0	\$950,000	\$30,000
Year 2	2%	20.0	\$50,000	\$960,400	19.0	\$950,000	\$10,400
Year 3*	2%	20.0	\$50,000	\$941,192	18.0	\$900,000	\$41,192
Year 4	2%	20.0	\$50,000	\$922,368	18.0	\$900,000	\$22,368
Year 5	2%	20.0	\$50,000	\$903,921	18.0	\$900,000	\$3,921

As shown in the above table, in Year 1, the first 2% base reduction forces the Department to hold a vacancy because it no longer has the budget to support the position. This creates a structural vacancy savings that is no longer associated with the fluctuations in staffing. Assuming that staffing remains consistent and the 2% base reductions continue, by Year 3 the Department will be required to cut another position because the base budget will no longer support 19.0 FTE.

The net impact over time is a cycle of staffing reductions as structural vacancy savings are eroded through additional permanent base reductions. This was reflected, at least to some extent, when the Department’s FTE was reduced by 100.0 in FY 2011-12 due to reversions. To mitigate the death spiral, the Department has had to do the following: 1) leave positions vacant longer, thereby potentially impacting service delivery; and 2) reduce flexibility in hiring higher skilled/experienced employees.

10:00-10:20 CONSERVATION EASEMENTS

2. Please discuss the status of progress toward resolution of the disputes regarding conservation easement tax credits.

Response:

As of November 27, 2012, the 478 disallowed conservation easement cases subject to the provisions of House Bill 11-1300 that filed district court cases against the Department of Revenue have been consolidated into 125 discrete cases. Two additional district court judges have been identified to hear these district court cases bringing the total number of judges hearing conservation easement disputes to five.

The majority of the district court appeals are entering the discovery phase. After necessary procedural determinations by the Colorado Court of Appeals regarding the proper parties to the conservation easement tax credit litigation, the first of many district court hearings to determine the validity of the conservation easement tax credits was held in October 2012, with a decision expected to be issued shortly from a Region 2 judge. Validity hearings have been set for 25 additional cases in the first part of 2013, with the Department of Revenue pressing to set the remaining hearings as soon as possible. Substantial settlements have been negotiated with donors and transferees, mitigating the need for and expense of further litigation.

More than half of the cases remaining in the administrative process have been settled. Thirty-six of the sixty five cases electing to remain in the administrative process have been settled resulting in \$466,133 in tax collected and \$1,219,424 in abandoned tax credits. Many of the remaining cases are in settlement negotiations. All of the cases will have had a hearing or have been settled prior to the dates imposed under House Bill 11-1300.

3. Regarding the issue of preapproval of conservation easement tax credits, what is the Department's perspective on the ability of the Department to reexamine the pre-approval by DORA?

Response:

Pre-approval of the conservation easement transaction, including the conservation purpose, conservation easement deed, and the appraisal properly lies with the Division of Real Estate and the Conservation Easement Oversight Commission. These agencies have the relevant expertise in those matters. Therefore, the Department of Revenue would defer to these agencies' expertise regarding the appraisal, the conservation easement deed, and conservation purpose.

Although the Department would not re-examine the appraisal, easement deed, or conservation purpose, the Department would continue to regulate the use of the tax credit that is derivative of the conservation easement donation. Only issues of tax compliance related to the use of the credit would remain with the Department of

Revenue. Examples of tax compliance include, but are not limited to, ensuring that a taxpayer claims a single credit in a tax year, that the taxpayer is a Colorado resident, and that the holding period required under Treasury Regulations is met by the taxpayer to allow for a claim of credit in excess of the basis in the property over which the conservation easement is donated.

4. What process did the Department use to identify the disputed conservation easement tax credits? Was it solely the result of the federal investigation of the Colorado conservation easement donations?

Response:

The Department of Revenue utilizes a risk-based approach when reviewing conservation easement tax credit claims which has been deemed reasonable by the Office of the State Auditor. A tax credit claim can be disallowed at several different points during the review process, and credit claims that are not disallowed are available for use by the taxpayer. A landowner (i.e. donor) must file a claim for the tax credit in the tax year in which the easement is donated, regardless of whether the credit is used to offset a tax liability in that year. However, in terms of the timing of the Department's review, tax examiners only review tax credit claims once a taxpayer (either a donor or a transferee) files a tax return *using* the credit.

The Department and the U.S. Internal Revenue Service (IRS) investigate many of the same conservation easement donations. However, the Department does not disallow conservation easement tax credits merely as a result of any federal investigation. Action taken by the IRS against a taxpayer's conservation easement tax *deduction* affects the taxpayer's Colorado income tax liability in that it affects their federal taxable income. However, the IRS action does not automatically result in a change to a taxpayer's Colorado conservation easement tax *credit*. Instead, the Department conducts an independent review of all conservation easement tax credits.

During the initial review of all conservation easement tax credits, a tax examiner determines compliance with basic tax requirements. The tax examiner also determines whether certain risk factors or "triggers" are present, thereby warranting a more in-depth review by another tax examiner. Examples of risk factors include appraisers or conservation easement holders with past problems or issues and appraisals that list gravel mining as the highest and best use. During an in-depth review, a more experienced tax examiner reviews the deed of conservation easement, the appraisal, and other documentation substantiating the tax credit claim. Concerns identified in the advance review that relate to the appraisal or other aspects of the conservation easement transaction (e.g. conservation purpose) are referred for a formal consultation with the Division of Real Estate (DRE) and the Conservation Easement Oversight Commission (CEOC). Generally, after receiving input from DRE and the CEOC, the Department makes the final decision to allow or disallow the tax credit claim.

5. What counties had the most disputed conservation easement tax credits? A list by county or a map of the disputed easements would be helpful.

Response:

Please see the attached map that shows the number of disputed conservation easement tax credits for each county. Please note that the data is for all disputed conservation easement tax credits, involving both settled and active cases. Additionally, this data includes cases that are subject to House Bill 11-1300 and those that are not.

6. Please explain the process by which interest and penalties are determined on disputed conservation easement tax credits. Include information on how interest and penalties are waived or suspended during certain parts of the dispute resolution process.

Response:

Interest on a balance due is calculated using a “simple” rather than “compound” interest calculation pursuant to Section 39-21-109, C.R.S. The interest rate(s) that applies to the time period during which the amount is actually owed is set by Section 39-21-110.5, C.R.S. If the balance due is paid in the same year as the tax is due, then only one interest rate is used to calculate the interest due. However, if the balance due is paid in a later year, then the interest rates for all years during which the tax is owed must be used to compute the interest due.

In general, penalties are cumulative and multiple penalties can be combined for the same assessment. Typically, an assessment for a disallowed conservation easement tax credit will include the following two penalties: Delinquent Payment Penalty which is the greater of \$5 or 5% of tax due for the first month or fraction thereof, plus 1/2% each additional month or fraction thereof, not to exceed 12% (Section 39-22-621 (2) (b), C.R.S.); and Deficiency Due to Negligence Penalty which is 25% of the deficiency (Section 39-22-621 (2) (h), C.R.S.).

Interest and penalties are suspended for cases subject to House Bill 11-1300 if the taxpayer waived the administrative process and filed an appeal in district court. In settling cases, the Department of Revenue has routinely waived interest and penalties for taxpayers acting in good faith to resolve the disputed conservation easement tax credit issues pursuant to the General Assembly’s encouragement in Section 39-22-522.5 (1) (i), C.R.S.

7. Please explain how the mediation process from the 2010 decision item has worked. Has the process always been available? Why has the mediation process not resulted in the resolution of any disputes?

Response:

The Department of Revenue has used pre-hearing informal conferences as part of its administrative process in the resolution of all tax disputes for many years. However, a

formal mediation involving a third-party arbitrator or mediator during the administrative process for disallowed conservation easement tax credits became an option with the 2010 decision item.

The mediation process financed by the General Assembly in 2010 required “buy-in” by taxpayers. Prior to the implementation of House Bill 11-1300, taxpayers were hesitant to work with the Department in resolving these cases because there were several legislative bills introduced during the 2010 and 2011 legislative sessions providing complete amnesty to taxpayers involved in conservation easement tax credit cases. Therefore, very few taxpayers expressed an interest in the formal mediation process.

Two formal mediation sessions were held, involving a total of over fifty separate donations. The mediation sessions were unproductive for several reasons. First, the donors or tax matters representatives appeared to lack the resources to settle the tax liability of the transferees who were not parties to the mediation. Second, a lack of development of the issues to be litigated and incentive for the donors to settle at the time also contributed to the failure of the mediation sessions. Third, mediation of valuation of the conservation easement is difficult when the underlying easement appears invalid. Finally, House Bill 11-1300 provided an avenue for taxpayers to opt out of the administrative process and appeal directly to court, which the majority of the taxpayers chose to do.

Mediation is one form of alternative dispute resolution. Other methods include arbitration and negotiation. Although formal mediation has not proven to be successful, resources allocated for mediation in 2010 are essential for continued resolution of the disallowed conservation easement tax credits as the Department utilized the funds to fulfill the requirements of House Bill 11-1300. Less formal negotiations with the donors in some circumstances and the transferees in others have led to substantial settlements between the Department and affected taxpayers. Additionally, informal conferences and settlement negotiations between the Department and the taxpayers have led to substantial settlements and resolution of some of these cases, obviating the need to try these at the administrative level or in district court.

The Department has settled 53 cases since the introduction of House Bill 11-1300 resulting in \$6,601,652 in tax collected and \$1,752,069 in abandoned tax credits. The Department has resolved an additional 14 cases in which tax credits totaling \$3,603,450 were allowed in full. Many more settlement agreements are pending.

8. Could the Department provide a graphical or other breakdown of the conservation uses of the easements in the state?

Response:

The Department of Revenue assumes the JBC question about “conservation uses” relates to the U.S. Treasury Regulations’ requirements which limit the “conservation purposes” of the easement to one or more of the following four purposes: 1)

preservation of land for outdoor recreation; 2) protection of fish, wildlife, or plant habitat; 3) preservation of open space; or 4) preservation of a historically important land area. Unfortunately, the Department does not currently have reliable information available about the numbers of conservation easements donated under each of the four federally recognized conservation purposes.

Although landowners report the conservation purpose of a donated conservation easement on Form DR1304, this current reporting mechanism is limited in two primary ways. First, descriptions of the conservation purposes are captured only in text format. As a result, there is very little consistency among the entries – landowners have written as little as two words and as much as a paragraph. Form DR1304 is being revised to provide check boxes requiring the landowner completing the form to select from one of the allowable conservation purposes applying to the easement. Second, landowners do not always file Form DR1304 as there is no incentive for doing so. The Department is reviewing its reporting requirements and considering options for ensuring data is reported that would ultimately prove more useful.

Additionally, this JBC question about “conservation uses” could relate to an appraiser’s methodology of valuing a conservation easement by considering the property’s “highest and best use” before and after the placement of the easement. The “highest and best use” methodology falls into two predominant categories: gravel mining and subdivision development. The Department does not currently have complete information about the numbers of conservation easements appraised using either category of the “highest and best use” of property. Currently, the landowner is not required to report this information to the Department in any way and not all appraisers utilize the “highest and best use” methodology for valuing conservation easements.

The Department realizes that this question from the JBC may be regarding the “uses” or “benefits” to the State of Colorado as a result of conservation easement donations. Again, the Department does not track this information or have a quantifiable method for determining such a benefit as was reported in the performance audit by the State Auditor’s Office. In some instances, taxpayers donate a conservation easement but the restrictions associated with the easement merely restrict the use of the land to conform to existing uses. For example, a landowner uses land as a private hunting club and, citing outdoor recreational purpose as the “conservation use”, creates a conservation easement on a portion of the land restricting future subdivision development. The land was used as a private hunting club before the easement, continues to be used as a private hunting club, and will continue into perpetuity as outdoor recreational use. The Department is unable to state what, if any, the public benefit or value is associated with the conservation easement tax credits used to encourage such an easement donation.

10:20-10:40 BREAK

10:40-11:00 MEDICAL MARIJUANA/AMENDMENT 64

9. Please discuss funding issues at the Medical Marijuana Enforcement Division (MMED), specifically the reasoning behind the staffing decisions that were made in light of the funding shortfall in the Medical Marijuana Licensing Cash Fund.

Response:

After the initial collection of application fees in August of 2010 totaling \$8.6 million, revenues decreased dramatically in FY 2011-12 to \$3.8 million. Conversely, expenditures increased as the MMED continued to implement its operational plan supported by its spending authority in the Long Bill of approximately \$5.7 million. There are several factors that contributed to the decrease in revenue that were not fully anticipated. These include the following: (1) the moratorium on new applications from July 1, 2011-July 1, 2012; (2) significant delays in the local licensing approval process; (3) local governments banning medical marijuana businesses within their jurisdictions; (4) effects of federal enforcement (banning businesses within 1,000 feet of schools); (5) effects of the vertically-integrated business requirement on the licensing background process; and (6) failure to collect license fees at the time of application. Given the above factors as well as the lack of historical data and national trends, and a very dynamic industry, the MMED determined by February 2012 that it needed to decrease expenditures in order to operate within lower projected revenues.

Consequently, the MMED developed a financing plan for the remainder of FY 2011-12 that reflected less spending and lower revenue projections. The MMED implemented a spending reduction plan totaling \$1.6 million, which resulted in reducing 22.0 FTE from 37.0 FTE to 15.0 FTE, postponing contracts, terminating leases, reallocating indirect costs, and cancelling equipment purchases. Further, in an attempt to collect \$4.8 million in outstanding license fees from medical marijuana businesses that were close to licensure, the MMED sent letters to those businesses that had not made payment by April 30 requesting remittance. By June 30, 2012, 60% of total business applications that were filed on August 2, 2010 paid their first annual license fee. As a result of this action, the Medical Marijuana Enforcement Licensing Cash Fund ended FY 2011-12 with a fund balance of \$2.4 million.

Although the action above resulted in payment of license fees, the MMED cannot collect additional license renewal fees until the businesses are actually licensed. Due to the unpredictability of this revenue, the Department developed a spending plan for FY 2012-13 that was fully supported by the fund balance. This level of funding is sufficient to support 15.0 FTE and associated expenditures. Although this funding is not optimal in the long-term, the plan will afford the MMED time to get medical marijuana businesses on a licensing cycle that is more predictable and sustainable over time. Once this cycle can be established, MMED plans to develop a financing plan that can support its operations in the long-run.

10. Please discuss what the Department knows about how Amendment 64 will be implemented and how that implementation will affect the MMED.

Response:

Pursuant to Executive Order B 2012-004, the Governor created a task force on the implementation of Amendment 64 for the use and regulation of marijuana in Colorado. The task force includes two co-chairs and twenty-two stakeholders representing the General Assembly, various state departments, marijuana industry and consumers, legal and medical professionals, local government, and the business community. The Task Force is charged with making Amendment 64 implementation recommendations to be considered by the Governor, the General Assembly, and the Attorney General. This will be accomplished through five work groups that will produce specific recommendations within their subject areas. The Regulatory Framework Work Group is tasked with making recommendations on the construction of a legislative and regulatory framework including the consideration of existing medical marijuana, liquor, and gaming statutory provisions.

11. Many local governments have banned medical marijuana facilities within their jurisdictions. Would this fact have caused funding problems in any event? How do these bans affect the long-term revenue projections?

Response:

Yes. Local governments' bans of medical marijuana businesses, either by vote of the people, ordinance, or resolution, destabilized the licensee population for purposes of projecting revenue. In fact, the uncertainty that at any time a local government can ban medical marijuana businesses even after initially approving them exacerbates the difficulties in developing reliable and predictable revenue projections. The potential loss of revenue attributable to local bans cannot be adequately projected since there is no historical data available to perform trend analyses.

12. Please explain how the revenue shortfall affects enforcement actions. Does the State still plan to extensively monitor medical marijuana from the cultivation facilities to manufacturing facilities to retail operations? Given the present lack of resources in the MMED, how will the Department carry out enforcement?

Response:

Currently, the MMED has a financing plan to support 15.0 FTE, of which 10.0 FTE are Investigators. This level of enforcement staff has resulted in scaled-back enforcement activities for the remainder of this fiscal year, but includes pre-licensing inspections, licensing applicants, and investigating complaints.

There is insufficient funding to commence development of a video surveillance system as originally envisioned, or to sustain maintenance of such a system in the future. In addition, there is insufficient funding to complete the "seed-to-sale" inventory tracking system as contemplated under the existing contract. The Department is exploring other strategic approaches with the contractor to complete this project. Depending upon the regulatory framework recommended by the Amendment 64 Task Force, the monitoring of medical marijuana businesses may change significantly.

13. Please discuss the number of enforcement actions that have been taken by the MMED.

Response:

February 1, 2011 (the date enforcement related activities began) – April 30, 2012 (date enforcement staff reduced):

Inspections – 1,381

Investigations – 78

May 1, 2012 – present:

Inspections – 704

Investigations – Assisted other law enforcement agencies only

February 1, 2011 – present:

Business Applications Denied – 143

Business Applications Withdrawn in Lieu of Denial - 826

14. What facilities, vehicles, and equipment does the Department have for staff in the MMED that have either been transferred or not hired?

Response:

Eighteen vehicles and their related fixed and variable monthly expenses have been transferred to other divisions in the Department or to other state agencies. The MMED maintains eight vehicles for current enforcement use.

Regarding facilities, the MMED reduced the size and associated monthly lease expense of its Denver office (455 Sherman) by subleasing half of the office space to another Department division (CITA post-production staff) beginning January 1, 2013. The Fort Collins, Fruita, and Colorado Springs offices were closed and their associated monthly lease expenses were greatly reduced. One employee assigned to the western slope was relocated to the Grand Junction Regional Service Center; two remaining employees assigned to Colorado Springs were relocated to the Colorado Springs Regional Service Center; and two employees assigned to Fort Collins were relocated to the Denver office.

The MMED retained all the equipment previously purchased since it does not create any on-going expense. The MMED does not plan to liquidate these assets at this time.

15. Is Amendment 64 going to result in an unfunded mandate to the counties/municipalities? Has the Department discussed this with the counties?

Response:

The Amendment 64 Implementation Task Force assembled stakeholders representing the Colorado Municipal League and Colorado Counties. In addition, one of the work groups is Local Authority and Control, which is tasked with making specific recommendations concerning among other things: (1) local level licensing and compliance; (2) defining role/responsibility at the state and local level; (3) defining role

of state and local governments in the regulatory model; (4) determining local authority to opt out; (5) identifying state and local mandates; and (6) identifying potential sources of revenue at the state and local levels.

11:00-11:10 DRIVER'S LICENSE ADMINISTRATIVE REVOCATION ACCOUNT AND FIRST TIME DRUNK DRIVING OFFENDER ACCOUNT

16. Please discuss the revenue deficiency in the Driver's License Administrative Revocation Account. How did this occur and what is the Department's plan to resolve the funding shortfall for this account?

Response:

The structural imbalance in the Driver's License Administrative Revocation (DLAR) Account is due to a significant decrease in revenue since FY 2008-09 as well as a significant budget action first authorized by the General Assembly in FY 2008-09 that shifted Driver Control costs from the General Fund to the DLAR Account.

In FY 2008-09, the DLAR Account received \$5.31 million in revenue from fees paid to reinstate suspended or revoked driver's licenses. However, annual reinstatement fee revenues have decreased in every subsequent fiscal year, reaching \$4.75 million in FY 2011-12, a 10.7% decrease from FY 2008-09.

At the same time that revenues to the DLAR Account began to decrease, the General Assembly shifted certain costs of the Driver Control program to the DLAR Account from the General Fund, whose revenues decreased dramatically in FY 2008-09 due to the economic downturn. Senate Bill 09-200 (FY 2008-09 Supplemental Appropriation to the Department of Revenue) increased utilization of DLAR Account moneys to offset General Fund expenses incurred by the Driver Control program, increasing DLAR Account appropriations to the Department's Driver and Vehicle Services Long Bill Line Item from \$314,828 to \$1,429,699.

House Bill 10-1376 (the FY 2009-10 Long Bill) made permanent the use of DLAR Account moneys to support the Driver Control program's expenditures, appropriating \$2,246,318 to the Department's Driver and Vehicle Services Long Bill Line Item. Combined with existing appropriations, this appropriation allocated almost the entirety of annual DLAR Account revenue collections (\$5.1 million in FY 2009-10) to fund Department expenditures, virtually eliminating reversion of any DLAR Account monies to the HUTF at the end of each fiscal year. The subsequent decrease in reinstatement fee revenue since FY 2009-10 explains the year-end deficits in FY 2010-11 and FY 2011-12.

17. Staff presented three options to resolve the funding issues in these accounts (underfunding of the Driver's License Account and overfunding of the First Time Drunk Driving Account. Which, if any, of these options does the Department support? Does the Department have a proposal that they would offer?

Response:

The Department appreciates JBC staff highlighting the structural imbalance in the DLAR Account and agrees that all of the options presented would suffice as medium-term solutions to the deficit in the DLAR Account. The Department intends to prepare a long-term comprehensive financing plan for the Division of Motor Vehicles (DMV) that includes both driver and vehicle services for consideration by the General Assembly in the 2014 legislative session (please response to question #23 (2)). Consequently, the Department has determined that any changes to the sources of funding that support the provision of driver and vehicle services would be premature at this time and requests that this issue be addressed in the DMV financing plan.

18. What is the subsidy for people who qualify for assistance for an ignition interlock device? If the numbers of people who qualify increase, what impact will that have on the fund?

Response:

The subsidy award is a \$400 credit against interlock expenditures for those who qualify. At current financial assistance request and participation rates, the Department is expending funds for assistance in an amount well under the annual appropriation. From its FY 2011-12 appropriation of \$934,842 from the First Time Drunk Driving Offenders Account for Ignition Interlock operating expenses, the Department provided 2,330 DUI offenders a total of \$432,287 in subsidies.

The Department has instituted measures to increase financial assistance participation and continues to monitor progress towards full utilization of the annual appropriation. Should there be a legislative effort to increase the overall first offender interlock population, the expected impacts to the fund would have to be analyzed as part of the fiscal note process. The Department does not anticipate a need to increase the appropriation under existing legislation.

19. If the General Assembly enacts a driving under the influence of drugs (DUID) bill, what does the Department project will happen to the Driver's License Administrative Revocation Account as a result of the suspensions?

Response:

Presently, Section 42-2-1301 (1) (a), C.R.S. penalizes DUID as a DUI offense. However, the Department is aware of a proposal to establish a *per se* evidentiary threshold for Tetrahydrocannabinol (THC) that could help facilitate prosecutions for driving under the influence of THC. If drafted and passed as set forth in House Bill 12S-1005, the Department expects little if any impact to the DLAR Account. The Department anticipates that the same driving and enforcement that now results in a DUI charge with resultant dispositions and potential for license suspension or revocation would simply originate with a tandem charging of DUI and DUI *per se* and would have the same likelihood of resulting suspensions or revocations.

However, should a bill be passed to impose an additional independent administrative action for THC *per se* under Section 42-2-126, C.R.S. similar to our current administrative *per se* actions for 0.08, 0.04, and 0.02 blood alcohol content (BAC) levels for adult, commercial, and underage drivers, then such legislation would create an entirely new administrative action type, new revocation types, and hearings that include a fact-finding component. Without actual draft legislation to analyze, it is not possible to anticipate the impacts to the DLAR Account.

Fines and surcharge revenues associated with the number of convictions of DUI *per se* instances are deposited into the following cash funds:

- Fines Collection Cash Fund;
- Crime Victim Compensation Fund;
- Persistent Drunk Driver Cash Fund;
- Rural Alcohol and Substance Abuse Fund; and
- Colorado Traumatic Brain Injury Trust Fund.

It is not currently anticipated that the implementation of a THC *per se* bill will have significant impact on the DLAR Account.

20. Was the Driver's License Administrative Revocation Account used in the past to backfill revenue shortfalls in other cash funds?

Response:

Pursuant to Section 42-2-132 (4) (b) (I) (B), C.R.S., the DLAR Account funds the direct and indirect costs incurred by the Department in the administration of driver's license restraints pursuant to either article 2, 4 or 7 of title 42, including, but not limited to, the direct and indirect costs of providing administrative hearings under title 42. It has not been used to backfill revenue shortfalls in other Department cash funds.

11:10-11:15 TAX PIPELINE

21. Do other states use a similar system to automate the processes in the tax pipeline? Why did the Department choose to use this automated system?

Response:

The Department of Revenue queried other states that use the GenTax system on their method of processing paper tax returns. The Department received responses from seven states (Utah, Minnesota, Wisconsin, West Virginia, Arkansas, Idaho, and Montana) and all of them utilize an automated front-end data capture system for paper tax returns and documents. In addition, during the research and analysis phase of the Pipeline Lean Project, the team sought out other industries that performed similar functions and interviewed them. This information was considered during the pipeline systems analysis.

As referenced in the Office of the State Auditor's report, the current tax document processing system relies on outdated manual processes, exhibits a lack of strong coordination between the Department of Revenue and the Department of Personnel and Administration (the departments), and fails to capitalize on either department's expertise. The departments jointly identified a processing methodology that creates digital data from paper documents quickly and utilizes the data rather than paper in all subsequent processes.

However, specific hardware and software architecture have not yet been chosen for the project. Responses to the Request for Proposal (RFP) are currently being evaluated. Installing equipment such as that described in the Department of Personnel and Administration's capital construction request for tax document processing will enable the Department of Revenue to eliminate manual processes, which results in over \$1.0 million in savings to the state (\$1.7 million in the second year) and, as referenced above, to utilize standard industry practices for capturing information from tax returns and documents. It will also allow the Department of Personnel and Administration to leverage its expertise in document management to lower costs to other state agencies after both departments have automated tax document processing.

11:15-11:25 WORKLOAD DECREASE IN THE HEARINGS DIVISION

22. Please discuss the workload decrease in the Hearings Division, including why the Department did not submit a base reduction for consideration.

Response:

The average number of hearings conducted by the Hearings Division over the last 10 fiscal years is 27,806 hearings (see table below). In fiscal years 2005-2009, the number of hearings was higher than the 10-year average largely due to an increase in Express Consent cases. Federal grant funds were available to local jurisdictions to hire more officers for DUI enforcement, which contributed to an increase in Express Consent (alcohol) cases during that time. The Hearings Division is required under Section 42-2-126 (8) (a) (I), C.R.S. to complete Express Consent hearings within 60 days of the request for a hearing and, consequently, they take priority over all other hearings. While the Hearings Division struggled to process the increase in alcohol cases, the number of Excessive Points cases processed by the Hearings Division (for traffic offenses ranging from speeding to careless driving resulting in death) decreased in FY 2006-07 and FY 2007-08, creating a backlog of these cases.

In FY 2007-08 and FY 2008-09, the division extended its business hours for scheduled hearings and assigned at least two additional hearings per Hearing Officer per day to address the backlog of Excessive Points cases that included many dangerous drivers who continued to drive because the Hearings Division had not been able to conduct a hearing to adjudicate their pending suspension. Hearing Officers conducted 12-15 hearings per day to eliminate the backlog in Excessive Points cases while meeting the statutory

requirements for alcohol cases. As a matter of perspective, the average experienced Hearing Officer typically performs 8-10 hearings per day.

In recent fiscal years, federal grant funds that provide additional resources for DUI enforcement have not been made available to local jurisdictions. As a result, the number of alcohol cases has returned to levels common before the increase in the mid-2000's. However, the number of non-motor vehicle (MV) hearings has increased by nearly 300% from FY 2002-03 to FY 2011-12. These hearings are more complex and time intensive to conduct because they require the following: (1) extensive testimony and evidence to establish the facts since the parties often do not agree on the factual context of the case; (2) cross examination of witnesses; (3) presentation of legal arguments; and (4) a written formal decision. Conversely, many motor vehicle hearings are not in dispute and, therefore, do not require much testimony to establish facts nor do they require a formal written decision. On average, non-motor vehicle cases take two days to complete, and can take up to five days for more complicated cases. Whereas, the average time to complete a driver license hearing is 40 minutes.

Number of Hearings Conducted											
Type	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	Avg.
MV	26,436	27388	30454	30,840	28,100	29,407	31,293	27,324	23,526	22,710	27,748
Other	30	30	50	21	27	67	62	54	125	119	59
Total	26,466	27,418	30,504	30,861	33,225	34,538	34,279	27,378	23,647	22,829	27,806

Although the total number of hearings conducted by the Hearings Division has decreased in the last two fiscal years, the Department has not submitted a base reduction for consideration for the following reasons:

- 1) While the number of hearings for motor vehicle cases has decreased, the number of other more complex and time intensive Department hearings has increased significantly.
- 2) There is uncertainty about future caseloads due to DUI enforcement levels, Amendment 64 legislation, and economic factors.
- 3) There is a lengthy training period for Hearing Officers (up to one year). Consequently, the Hearings Division must have a sufficient number of Hearing Officers to fulfill its statutory obligations and ensure public safety.

11:25-11:30 VARIOUS FEES NOT CREDITED TO SPECIFIC CASH FUND

23. Please discuss the Department's position on crediting fees that are currently collected for administrative purposes to a specific cash fund.

Response:

Per the FY 2013-14 Staff Budget Briefing document for the Department of Revenue, staff recommended that the Joint Budget Committee (JBC) consider legislation that would direct specific fees to specific cash funds and that the existing appropriations be

appropriated from these cash funds. These fees include the following: (1) investigation and application fees for the Division of Racing Events; (2) outstanding judgments and warrants; (3) penalty assessment fees; (4) fees for the registration of special mobile machinery; and (5) waste tire fees.

- (1) Investigation and application fees for the Division of Racing Events: Pursuant to Section 12-60-506 (1), C.R.S., investigation and application fees shall be established in connection with the issuance of licenses or registrations. These fees are collected to fund costs incurred by the Division to perform background checks on tracks and totalisator businesses (manufacturers and operators of pari-mutuel machines). Per the letternote in the Department's Long Bill, \$25,000 in the Division of Racing Events Operating Expenses appropriation is funded by these fees. Other cash funds managed by the Department do impose fees to fund the cost of background checks. These fees are often included in the application fee or license fee and are deposited in the respective cash fund.

The Department *agrees* that it is appropriate to deposit these fees in the Racing Cash Fund pursuant to Section 12-60-205 (1), C.R.S. There will need to be a change to the Department's Long Bill letternote to increase the amount from the Racing Cash Fund by \$25,000 and eliminate the language that \$25,000 shall be from application fees, along with a corresponding change to state statutes, if applicable.

- (2) Outstanding judgments and warrants: Pursuant to Section 42-2-118 (3) (c), C.R.S., any person who pays an outstanding judgment, or who has a warrant entered, or who makes payment for a check or order, that has been returned for insufficient funds or a closed account is required to pay a \$30 administrative processing fee for each judgment, warrant, or returned check or order. If the court collects the fee, the court retains 50.0 percent of the fee and transmits the remainder to the Department of Revenue. If the fee is collected by the Department of Revenue, the Department retains the fee.

This fee is used to offset personal services, operating expenses, and indirect costs incurred by the Driver Control Section of the DMV. In FY 2011-12, expenses totaled less than \$300,000 while revenues totaled nearly \$2.0 million. Any unexpended and unencumbered moneys remaining in the account at the end of the fiscal year are credited to the Highway Users Tax Fund (HUTF).

For the 2014 legislative session, the Department intends to prepare a long-term comprehensive financing plan for the Division of Motor Vehicles that includes both driver and vehicle services for consideration by the General Assembly. The current financing plan expires at the end of FY 2013-14 when Section 42-2-114, C.R.S. (2012) directs the State Treasurer to credit \$15 of each fee for a driver license document to the HUTF instead of the Licensing Services Cash Fund. This would necessitate General Fund appropriations to the DMV for Driver's License operations beginning in FY 2014-15. The financing plan will include at least the following: (1) identifying

costs of providing driver and vehicle services; (2) analyzing current fees; (3) realigning fees with services provided; (4) streamlining and simplifying fees; (5) identifying costs to replace existing IT systems and provide ongoing maintenance and support; and (6) identifying impacts on the HUTF. Consequently, the Department has determined that any changes to the sources of funding that support the provision of driver and vehicle services would be premature at this time and the Department would request that this issue be addressed in the DMV financing plan, if appropriate.

- (3) **Penalty assessment fees:** Pursuant to Section 42-1-217 (2), C.R.S., the Department retains the first \$0.50 of any penalty for a traffic infraction, which is used for administrative purposes. The remainder is credited to the HUTF.

This fee funds personal services, operating expenses, and indirect costs incurred by the Driver Control Section of the DMV. In FY 2011-12, penalty assessment fees totaled nearly \$11.1 million, but expenditures totaled less than \$100,000. Any unexpended and unencumbered moneys remaining in the account at the end of the fiscal year are credited to the HUTF.

As reiterated above, the Department has determined that any changes to the sources of funding that support the provision of driver and vehicle services would be premature at this time and the Department requests that this issue be addressed in the DMV financing plan, if appropriate.

- (4) **Fees for the registration of special mobile machinery:** Pursuant to Section 42-3-107 (16) (f) (IV) (C), C.R.S., the registration of multiple pieces of special mobile machinery requires the payment of a \$7.00 fee, of which \$3.60 is retained by the authorized agent or Department issuing the registration and plates, \$0.40 is transferred by the Department to the HUTF, and \$3.00 is available upon appropriation to the Department of Revenue DMV Titles Program.

The portion of the fee retained by the Department covers the costs of the DMV Titles Program to administer and enforce special mobile machinery fleet registration.

As reiterated above, the Department has determined that any changes to the sources of funding that support the provision of driver and vehicle services would be premature at this time and would request that this issue be addressed in the DMV financing plan, if appropriate.

- (5) **Waste tire fees:** Pursuant to Section 25-17-202 (2) (a), C.R.S., retailers of new tires are required to collect \$1.50 for each new tire sold. The State Treasurer is required to pay the Department of Revenue an amount equal to the Department's direct and indirect administrative costs associated with the collection of this fee. Per the letternote in the Department's Long Bill, \$7,754 in personal services expenses incurred by the Taxpayer Services Division is funded by this fee.

There is no cash fund managed by the Department for this purpose in which to credit

these fees. Although the total cost incurred to administer this fee is relatively small, there is still a cost to the Department that would need to be offset with a funding source. Consequently, the Department defers to the JBC on whether \$7,754 in personal services costs should continue to be covered by the waste tire fee or by the General Fund, which would require increasing the General Fund appropriation for personal services by a corresponding amount.

11:30-11:45 DEPARTMENT OVERVIEW/MISCELLANEOUS

24. Regarding Request #2, are the 22 FTE requested by the Office of Information Technology permanent FTE? What are the responsibilities of those FTE?

Response:

R-2 DOR IT Infrastructure Performance Enhancements funding request consists of four components all of which are interdependent upon each other. The request totals \$3,917,008 (\$2,859,487 General Fund and \$1,057,521 Cash Funds) and funds server hosting services, hardware and software upgrades, and operations support services. Operations support services includes service desk, desk side support, network support, server and systems support, security, and project management. This request totals \$2,282,541 and 22.0 FTE for OIT, all of which would be permanent staff.

The duties and responsibilities of the 22.0 FTE by functional area include the following:

Service Desk: 3.0 FTE -- This staff provides Tier 1 support for a wide range of services, products, and applications and is the primary intake for problem and incident management. Specific responsibilities include the following:

- **Records details of customer contacts and actions taken**
- **Diagnoses problems and provides solutions**
- **Resets and restores end users passwords and provides access to the mainframe**
- **Uses documented processes and procedures to manage outages**
- **Ensures outage notifications are sent and status updates are provided timely**
- **Manages service tickets in incident management system**
- **Escalates large scale incidents and liaisons with other OIT sections**
- **Determines solutions, procedures, and configuration options**
- **Determines which technical specialist to refer problems**

Desk Side Support: 5.0 FTE – This staff provides Tier II support including on-call support 24/7/365. Specific responsibilities include the following:

- **Troubleshoots and finds resolutions to software, hardware, computers, mobile devices, and network problems associated with the LAN/WAN environments**
- **Configures, images, and deploys computers, laptops, and mobile devices in accordance with OIT service standards**
- **Determines resolution for software and hardware problems and estimates resources required**

- Remotely pushes/publishes software, security updates, and patches
- Ensures software license compliance
- Analyzes and tests configuration options
- Runs diagnostic procedures and determines cause of problems
- Works on IT projects involving software, hardware, and network connectivity issues
- Provides scope, estimates, and plans and schedules projects
- Participates and tracks project progress and provides technical support

Network Support: 1.0 FTE – This staff supports day to day operations of the network environment including LANs, WANs, network segments, intranets, and other data communication systems. Specific responsibilities include the following:

- Tests and evaluates existing network systems
- Performs regular maintenance and responsible for day to day operations
- Supports and troubleshoots the network environment and other data communications
- Designs, configures, installs, and modifies network hardware and software
- Selects network equipment to create fully functional network systems using appropriate protocols
- Documents business rules; creates, configures, and customizes equipment and tracks warranties
- Manages firewalls including rules and upgrades
- Completes annual legislative changes
- Assists in testing service packs and new application releases
- Provides development and technical support and problem resolution
- Maintains network and computer system security
- Collects data and evaluates network/system performance
- Manages telecommunications networks
- Assesses capacity and functionality criteria for networks

Servers/Systems Support: 10.0 FTE – This staff is responsible for managing the Department’s server environment. Specific responsibilities include the following:

- Performs functions as domain administrator of the server network and application administration (i.e., Altiris, Commvault, HP SIM, PSR, VMware, Sharepoint, Tumbleweed, Active directory, SAN administration)
- Recommends administrative systems and procedures to ensure infrastructure/domain run smoothly
- Diagnoses, plans, and solves problems relating to all servers and networks
- Advises and counsels DOR management in server systems, recovery, and software issues
- Oversees monitoring of infrastructure performance insuring high speed and reliable access and recovery
- Researches, develops, and evaluates specifications for new hardware and software

- Produces plans and makes recommendations on policy and operating procedures to manage network updates and improvements
- Supports IT project implementation
- Oversees the installation, adaptation, and functionality of new system hardware and software
- Prepares technical specifications for RFP and bid processes and costs for fiscal notes

Security: 1.0 FTE – This position is responsible for providing operational and technical advice in matters relating to information security and works to ensure confidentiality, integrity, and availability of systems, networks, and data. Specific responsibilities include the following:

- Addresses practical and statutory requirements of computer security program
- Provides technical support to ensure effective IT security practices are incorporated into the analysis, development, implementation, maintenance, and enhancement of systems, programs, and policies
- Advises system owners of security implementation, operations, maintenance, and disposal activities
- Conducts system security audits and risks and vulnerability assessments and makes recommendations
- Prepares information security plans, contingency plans, and disaster recovery procedures
- Develops security certification, accreditation, and security assessment policies and procedures that are consistent with IRS Publication 1075 and applicable federal laws
- Participates in defining information technology security requirements, developing security standards, implementing best practices, and supporting IT security applications
- Monitors networks for anomalous activity and security breaches and investigates violations
- Researches information security trends

Project Management: 2.0 FTE – This staff provides project management support to the Department. Specific responsibilities include the following:

- Develops project plans to include high level statement of work, project schedule, resource planning and scheduling, change management plan, communication plan, risk and mitigation plan, and quality assurance
- Provides project leadership and guidance by prioritizing, problem solving, decision making, and conflict resolution and communicates and coordinates with stakeholders
- Utilizes Enterprise Portfolio and Project Management methodology and Clarity to manage and report project status

25. Has the State ever funded the underage drinking grant from the General Fund or has it always been federally funded?

Response:

The Liquor Enforcement Division has always enforced underage drinking statutes since its inception in 1935. The Division began receiving federal grant funding through the Enforcing the Underage Drinking Laws (EUDL) program on June 1, 2005. These funds have been used to conduct compliance checks at retail liquor establishments using underage operatives and to conduct minor in possession operations at major sporting and entertainment events. The EUDL grant funds have not only supplemented the Division's underage drinking enforcement activities, but they have allowed the Division to utilize its existing resources to increase enforcement in all other areas of liquor enforcement. The table below shows that both Administrative Actions and Division-Filed Court Cases increased 47% and 180%, respectively, since FY 2005-06. In addition, total activity including inspections, compliance checks, and investigations increased 63% over the same period of time.

**LIQUOR ENFORCEMENT DIVISION
Summary of Enforcement Activities**

Activity	FY12	FY11	FY10	FY09	FY08	FY07	FY06
Administrative Actions	253	369	296	320	248	191	173
Division-Filed Court Cases	756	784	466	512	340	292	270
Inspections	2,565	2,487	1,512	502	1,770	2,231	2,236
Compliance Checks	1,728	1,770	1,125	979	1,316	741	391
Compliance Rate	84%	81%	85%	82%	78%	75%	75%
Investigations	1,140	833	861	740	834	946	715
Total Activity	5,433	5,090	3,498	2,221	3,920	3,918	3,342

26. Section 24-75-1305, C.R.S. prohibits the restoration of previously federal or grant funding without specific legislation authorizing such funding. Does the request to restore the Enforcement of Underage Drinking Laws comport with this provision?

Response:

The Liquor Enforcement Division enforced underage drinking laws prior to the EUDL program and will continue to enforce them after EUDL funding ends.

27. Regarding vehicle emissions testing, what percentage of the vehicles tested fail the emissions test? What is the breakdown of these test failures by vehicle age?

Response:

In calendar year 2011, the 240-second inspection/maintenance test (IM240) failure rate was 8.27% and the two-speed idle test failure rate was 10.38%, resulting in an overall failure rate of 8.45%.

Pursuant to Section 25-7-105, C.R.S., the State of Colorado requires non-exempt 1981 model year and older vehicles to undergo annual 2-speed idle testing. Certain heavy-duty vehicles newer than 1981 model year and fleet vehicles undergoing fleet inspections also undergo an idle inspection, though in the case of 1982 and newer vehicles, on a biennial basis. All other non-exempt 1982 and new vehicles undergo IM240 testing on a biennial basis.

The tables below show the failure rate, by vehicle year, for both the IM240 and two speed idle tests. The data is from the 2011 Annual Report of the Automobile Inspection and Readjustment Program provided by the Colorado Department of Public Health and Environment. A copy of the report can found at <http://1.usa.gov/RSAXhC>.

CY 2011 Initial IM240 Emissions Inspection Failure Rate by Vehicle Year			
Vehicle Year	Total Vehicles Tested	Total Vehicles Failing the Initial Inspection	Vehicle Failure Rate (%)
1982	743	224	30.15%
1983	1,703	553	32.47%
1984	2,102	640	30.45%
1985	4,120	1,187	28.81%
1986	3,828	896	23.41%
1987	6,504	1,322	20.33%
1988	5,892	1,190	20.20%
1989	10,831	1,915	17.68%
1990	10,212	1,642	16.08%
1991	17,496	2,560	14.63%
1992	14,99	2,340	15.61%
1993	25,478	3,606	14.15%
1994	25,701	3,579	13.93%
1995	39,439	5,190	13.16%
1996	31,511	3,677	11.67%
1997	51,180	5,842	11.41%
1998	44,529	4,609	10.35%
1999	64,679	6,113	9.45%
2000	53,009	4,752	8.96%
2001	68,225	4,416	6.47%
2002	48,736	3,044	6.25%
2003	66,594	3,156	4.74%

CY 2011 Initial IM240 Emissions Inspection Failure Rate by Vehicle Year			
Vehicle Year	Total Vehicles Tested	Total Vehicles Failing the Initial Inspection	Vehicle Failure Rate (%)
2004	41,546	1,944	4.68%
2005	71,005	2,381	3.35%
2006	42,629	1,329	3.12%
2007	74,574	1,864	2.50%
2008	17,075	440	2.58%
2009	4,217	71	1.68%
2010	3,746	49	1.31%
2011	1,096	9	0.82%
2012	28	1	3.57%

The table below summarizes the failure rates, by vehicle year, for the two-speed idle test.

CY 2011 Initial Idle Emissions Inspection Failure Rate by Vehicle Year			
Vehicle Year	Total Vehicles Tested	Total Vehicles Failing the Initial Inspection	Vehicle Failure Rate (%)
1974	4,744	1345	28.35%
1975	499	127	25.45%
1976	1,533	413	26.94%
1977	1,940	490	25.26%
1978	2,340	607	25.94%
1979	2,369	882	37.23%
1980	1,392	434	31.18%
1981	1,613	678	42.03%
1982	181	30	16.57%
1983	311	62	19.94%
1984	392	66	16.84%
1985	630	112	17.78%
1986	442	93	21.04%
1987	578	131	22.66%
1988	596	102	17.11%
1989	1,264	203	16.06%
1990	882	149	16.89%
1991	1,074	145	13.50%
1992	1,035	117	11.30%
1993	1,368	133	09.72%
1994	1,475	180	12.20%

CY 2011 Initial Idle Emissions Inspection Failure Rate by Vehicle Year			
Vehicle Year	Total Vehicles Tested	Total Vehicles Failing the Initial Inspection	Vehicle Failure Rate (%)
1995	2,327	278	11.95%
1996	1,569	107	06.82%
1997	2,631	98	03.72%
1998	1,470	92	06.26%
1999	4,910	220	4.48%
2000	4,102	183	4.46%
2001	6,778	186	2.74%
2002	3,918	140	3.57%
2003	6,048	174	2.88%
2004	3,362	91	2.71%
2005	5,152	92	1.79%
2006	3,385	50	1.48%
2007	5,265	56	1.06%
2008	1,326	10	0.75%
2009	442	6	1.36%
2010	402	3	0.75%
2011	71	0	0.00%
2012	2	0	0.00%

28. Regarding special license plates, please provide data on the purchase of authorized special license plates, and include data on how many are in inventory.

Response:

The Department utilizes a well-defined license plate inventory management methodology, including special plates, and submits orders to Correctional Industries to provide license plates to county Motor Vehicle offices based on a minimum three-month statewide inventory. In addition, the Department redistributes license plates from county offices with low demand and relocates license plates to county offices with insufficient inventory and greater demand. The methodology adheres to a quarterly ordering process based on a minimum three-month statewide inventory of all license plate types.

In FY 2011-12, 1,096,177 license plates were issued/purchased, of which 112,483 (10.25%) were special license plates. The Department maintained an average of 802,249 license plates in inventory to meet issuance demands, of which 143,843 (17.93%) were special license plates.

The tables below summarize the FY 2011-12 issuance of special license plates by type and the current inventory of special license plates by type, respectively. They are categorized as follows:

- Alumni license plates consist of special license plates authorized by the General Assembly for alumni of Colorado’s various institutions of higher education;
- Designer license plates are plates with an alternate color scheme and background authorized by Section 42-3-212, C.R.S.;
- Military license plates consist of special license plates authorized by the General Assembly for members and veterans of the various branches of the United States armed forces, specific units within those branches, service medal awardees, and other distinguished members of the military; and
- Group Special license plates consist of special license plates issued to qualifying donors to specific charities and other non-profit entities as authorized by law.

FY 2011-12 Special License Plate Issuance by Type		
Plate Type	Number Issued	Percent of Issued
Alumni	4,858	0.44%
Designer	17,110	1.56%
Military	30,188	2.75%
Group Special	60,327	5.50%
Total Special Plates	112,483	10.25%

As of November 30, 2012, a total of 717,805 license plates were in inventory in 106 county Motor Vehicle offices and at the state. Of those, 139,331 (19.4%) were special license plates.

Special License Plate Inventory by Type as of November 30, 2012		
Plate Type	Inventory	Percent of Inventory
Alumni	18,150	2.5%
Designer	10,649	1.5%
Military	45,384	6.3%
Group Special	65,148	9.1%
Total Special Plates	139,331	19.4%

In collaboration with the County Clerks and Recorders, Department of Corrections, and the Office of Information Technology, the Department has initiated a Print on Demand license plate project. Upon completion, specialty license plates and other low issuance plate types will be removed from county motor vehicle inventories and the process of pre-manufacturing these plate types will be discontinued. At the point of the registration transaction, a Print on Demand order will be provided to the Department of Corrections who will print and mail the license plate to the vehicle owner.

Once fully implemented, the Department anticipates saving \$1.5 million annually by no longer having to pre-manufacture and stock inventories. Additional savings will also be realized in personnel costs for inventory management, auditing, and travel. The Department will submit a budget request to align spending authority from the License Plate Cash Fund with the reduced annual expenditures once permanent annual cost savings from Print on Demand can be quantified.

29. What percentage of vehicles currently has a special license plate?

Response:

As of October 31, 2012 there are currently 5,218,086 registered vehicles in Colorado, of which 606,554 (11.63%) are registered with a special license plate.

Total Vehicles Registered with Special License Plates as of October 31, 2012		
Plate Type	Registered	Percent of Registered
Alumni	23,490	0.45%
Designer	169,379	3.25%
Military	125,253	2.40%
Group Special	288,432	5.53%
Total Special Plates	606,554	11.63%

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.

Response

- a. **The Department has no audit recommendations classified as material weakness and has one audit finding classified as significant deficiencies. This audit recommendation was issued in the FY 2010-11 Statewide Audit report and requests the Department improve the identification of first-time severance tax filers. This recommendation is fully implemented as of December 2012. The Department has access to oil and gas production permitting data available through the Department of Natural Resources as a means of verifying those who are subject to severance tax have filed a tax return.**
- b. **The Department has one financial and three information technology audit recommendations that are outstanding for three or more years.**

The financial audit recommendation directs the Department to monitor its excess uncommitted reserves to ensure all cash funds are in compliance with Senate Bill 98-194 requirements. The Department monitors its excess uncommitted reserves on a monthly basis by reviewing its current cash fund analysis and adjusts fees annually to account for economic and industry fluctuations and reduces the excess uncommitted reserves to bring the cash funds in compliance with Senate Bill 98-194.

The three information technology audit recommendations were issued in the Driver's License and Identification Card Security Performance Audit released in 2008. Two of the recommendations relate to the disaster recovery planning and preparedness of the driver's license system. The third recommendation is to improve the physical access and environmental controls over the data center at the Pierce location.

The implementation of these three recommendations is the responsibility of the Office of Information Technology (OIT). The OIT contract personnel hired to formalize and document the disaster recovery plan for the driver's license system is complete. The contractor is compiling deficiencies and will include these in the action plan. A project to mitigate deficiencies will be initiated that will include running a complete end-to-end disaster recovery. OIT anticipates implementing the last steps of these two recommendations by October 2013. These recommendations

were impacted by the three-year driver's license system (L-1/MorphoTrust) refresh contract and project. That project is currently in a burn in period and was not ready for the annual mainframe disaster recovery exercise in October 2012. The L-1/MorphoTrust recovery plan will conduct a separate disaster recovery for their equipment following the burn in period, and will also be incorporated in the next mainframe disaster recovery schedule anticipated for October 2013.

To date, approximately 75% of servers and equipment at the Pierce location have been moved to the Kipling data center. Moving the remaining equipment is part of OIT's data center consolidation initiative and part of the 2012-2013 OIT playbook. This move is expected to be completed sometime in 2013.

Appendix A

Disputed Conservation Easement Credits by County in Colorado

