

Colorado Office of the State Auditor

**Department of State
Licensing and Elections Divisions
Oversight of Charitable Solicitations,
Lobbyists and Notaries Public**

**Performance Audit
May 2008**

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May 12, 2008

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Department of State, Licensing and Elections Divisions' oversight of charitable solicitations, lobbyists and notaries public. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions and agencies of state government. The Colorado Office of the State Auditor contracted with Clifton Gunderson LLP to conduct this performance audit in accordance with generally accepted government auditing standards. The report presents the audit findings, conclusions and recommendations, and the responses of the Department of State.

Very truly yours,

Clifton Gunderson LLP

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Report Summary

Department of State

Authority, Purpose, and Scope

This performance audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct performance audits of all departments, institutions and agencies of state government. This audit reviewed the responsibilities and activities of the Department of State's (Department) Licensing and Elections Divisions related to the oversight of charitable solicitations, lobbyists and notaries public. Audit work was completed in May 2008 and performed in accordance with generally accepted government auditing standards. We acknowledge the assistance and cooperation extended by management and staff at the Department, members of the General Assembly, personnel of the Attorney General's Office, legislative staff, local district attorneys, and selected lobbyists who agreed to be interviewed for this audit.

Background

The mission of the Department is to collect, secure and make accessible a wide variety of public records, ensure the integrity of elections, and enhance commerce in the State. To fulfill this mission, the Department oversees and administers a variety of laws, including those related to charitable solicitations, lobbyists and notaries public.

The Department is primarily funded by user fees, such as charges for registering as a charity or a lobbyist. In Fiscal Year 2007, Department revenue and expenditures totaled about \$439,000 and \$391,000, respectively, for its charitable solicitations, lobbyist and notary programs combined.

Summary of Audit Findings

We examined the Department's policies, procedures and practices for ensuring compliance with registration, filing and commissioning requirements related to charitable solicitations, lobbyists and notaries public. We also reviewed the Department's administration of these programs. We identified problems in each of these areas, as described below.

Charitable solicitations. Statute requires charities to register with the Department before soliciting donations in the State and to file annual financial disclosure reports. Statute also requires paid solicitors, who are paid to solicit contributions, and professional fundraising consultants, who plan and manage fundraising campaigns, to register with the Department and file financial disclosure reports. About 4,400 charities registered with the Department in Fiscal Year 2007 and reported collecting donations of about \$26.3 billion in Colorado and nationwide in Fiscal Year 2007.

We reviewed Department and Internal Revenue Service data and found evidence suggesting that a significant number of charities are not complying with Colorado registration requirements.

Specifically, we reviewed a sample of 25 Colorado-based tax-exempt organizations with annual incomes totaling more than \$1 million that were registered with the IRS, but not with the Department, and found that 21 (84 percent) were either soliciting donations on their Web site or had reported to the IRS in the prior year that they had received contributions in excess of \$25,000.

We also found that the Department does not ensure that all charities, paid solicitors, and professional fundraising consultants file required financial disclosures timely. The Department reported that each year during Calendar Years 2004 through 2007, between 65 and 79 percent of all registered charities received at least one delinquency notice. In addition, between 12 percent and 14 percent of all paid solicitors and between 17 percent and 22 percent of all professional fundraising consultants were suspended for late filings in Calendar Years 2006 and 2007. We found that the Department sent out 35 (15 percent) of 236 delinquency and suspension notices to charities late, including four cases in which the notices were sent between 94 and 204 days after the charity became delinquent. Finally, the Department does not have sufficient enforcement mechanisms to deter charities, paid solicitors, and professional fundraising consultants from filing delinquent reports.

Lobbyists. Statute defines lobbying as communicating with state officials (e.g., the Governor, General Assembly members, and individuals with rule-making authority) to influence the passage or defeat of legislation and regulations. Statute requires all lobbyists to register with the Department and most lobbyists to file monthly financial disclosure statements. During Fiscal Year 2007, 635 professional lobbyists (the largest class of lobbyists) reported spending more than \$875,000 on gifts and entertainment for public officials.

We reviewed whether lobbyists submitted required disclosure reports timely and found that 52 percent (320 of 611) of registered professional lobbyists in Fiscal Year 2006 and 42 percent (264 of 635) of registered professional lobbyists in Fiscal Year 2007 filed at least one financial disclosure statement late. Further, we identified that 13 percent of lobbyists in Fiscal Year 2006 and 8 percent in Fiscal Year 2007 were chronically late, which we defined as submitting 25 percent or more of the disclosure statements late. The chronic late filers were responsible for 47 percent of all late filings in Fiscal Year 2006 and 45 percent in Fiscal Year 2007. Although most of the delinquencies were remedied within a month, 53 of the 1,055 untimely statements (5 percent) were filed more than one month late. In addition, we found that as of October 2007, six lobbyists had not filed 11 disclosure statements originally due in Fiscal Years 2006 and 2007.

For registered state employees that were designated to be responsible for their department's lobbying efforts, 47 percent (14 of 30) filed at least one disclosure statement late in Calendar Year 2006 and 30 percent (11 of 37) filed at least one disclosure statement late in Calendar Year 2007.

We found that staff inappropriately waived professional lobbyist fines totaling \$2,300 in 15 (94 percent) of 16 cases from Fiscal Year 2008 involving professional lobbyists. We also identified unbilled penalties totaling more than \$27,000, dating back to September 2005.

Notaries public. Statute authorizes the Department to commission (i.e., license) notaries public in the State for four-year terms. The Department approved about 27,500 notary applications in Fiscal Year 2007. As of October 2007, there were about 106,000 total active notaries in the State.

We reviewed a sample of 45 closed complaints against notaries from Fiscal Years 2006 and 2007 and found 11 (24 percent) cases in which the Department had issued a variety of corrective actions. Statutes are unclear as to the Department's authority to issue such actions, and the Department has not developed guidelines, policies, and procedures to ensure equitable and appropriate treatment. Violations included notarizing documents with blank fields, notarizing documents that the notary did not witness being signed, and notarizing documents for oneself. We also found that the Department's controls over notary seals and journals are not sufficient. For example, the Department does not require notaries that resign their commissions to return their notary seals to the Department as mandated by statute.

Administration. We reviewed the Department's complaint process and found that the Department lacks a complaint handling system for charities, lobbyists and notaries to ensure that complaints are documented and handled appropriately. For example, of our sample of 41 charity complaint files from Fiscal Years 2006 and 2007, 32 (78 percent) were missing key documentation that would allow a reviewer to determine the date and nature of the complaint and the timeliness, equitability and appropriateness of the case's resolution. Of our sample of 45 notary complaints from Calendar Years 2006 and 2007, 6 (13 percent) were not resolved timely and 6 (13 percent) lacked sufficient documentation. Finally, we found that the Department does not maintain complaint logs for lobbyists and notaries or conduct supervisory reviews in any of the programs to ensure that complaints are handled appropriately.

We also found that the Department's fees for the charitable solicitations, lobbyist and notary programs do not appear to reflect the costs of administering these programs. Specifically, for Fiscal Years 2005 through 2007, the lobbyist program ran an average deficit of about \$24,650 on average revenue of about \$24,000, even though statute requires the lobbyist program to be self-supporting. Although the charity program broke even in Fiscal Year 2005, it reported a net deficit of about \$14,600 in Fiscal Year 2006 on about \$85,400 in revenue and a deficit of about \$17,800 in Fiscal Year 2007 on about \$88,900 in revenue, even though statute also requires the charity program to be self-supporting. In contrast, the notary program's Fiscal Year 2005 revenues of about \$351,300 exceeded expenditures by about \$85,000 and Fiscal Year 2007 revenues of about \$321,000 exceeded expenditures by about \$88,000. Statute requires the notary program's fees to reflect the program's direct and indirect costs.

Our recommendations and the responses from the Department of State can be found in the Recommendation Locator and in the body of the report.

Recommendation Locator

All recommendations are addressed to the Department of State.

Rec. No.	Page No.	Recommendation Summary	Agency Response	Implementation Date
1	17	Improve oversight of unregistered charities in Colorado by: conducting annual data matches to identify potentially unregistered charities; following up on those identified to bring them into compliance; and implementing the new enforcement powers authorized by House Bill 08-1109 through rules and procedures.	Agree	September 2008
2	21	Improve the timeliness of financial disclosure reports submitted by charities, professional fundraising consultants, and paid solicitors by: implementing procedures to ensure that delinquency and suspension notices are sent out timely; periodically conducting a review to ensure necessary suspensions have occurred; developing monitoring reports; developing criteria for when charitable organizations, paid solicitors, and professional fundraising consultants should be subject to fines, suspensions, denials, and/or revocations; and establishing procedures for identifying charitable organizations that continue to solicit funds and ensuring that they discontinue solicitations until the suspension has been cleared.	Agree	September 2008

Rec. No.	Page No.	Recommendation Summary	Agency Response	Implementation Date
3	29	<p>Improve the timeliness of lobbyists' monthly disclosure filings by: conducting routine analysis of delinquencies and targeting enforcement actions; enhancing its process to promptly fine and bill lobbyists for late reports; determining whether current statutory fines are adequate for deterring delinquencies; defining "bona fide personal emergency"; establishing criteria for the imposition of penalties; defining when a lobbyist has committed a "substantial" violation of the Colorado Sunshine Act; and implementing rules that create reasonable remedies for state employees that do not file their disclosure reports timely.</p>	Agree	May 2009
4	37	<p>Improve its enforcement of the Notaries Public Act by: working as necessary with the General Assembly to clarify its authority to impose intermediate sanctions other than revocation; establishing guidelines, policies and procedures for applying corrective action; documenting all enforcement decisions; discontinuing remedies that allow notaries to choose their own penalties; and completing investigations and pursuing revocations against notaries, even if they resign their commissions or let their commissions expire.</p>	Agree	May 2009

Rec. No.	Page No.	Recommendation Summary	Agency Response	Implementation Date
5	40	<p>Improve the controls over notary seals and journals by: ensuring that notaries with expired commissions either renew their commissions or resign; considering seeking a statutory change to define the expiration and non-renewal of a commission as a resignation; requiring that a notary attest to the Department that he or she did not keep a journal if none is returned when the notary submits a resignation letter; considering seeking a statutory change that would require notaries public to record all notarial acts in a journal and allow notaries public or their representatives to submit an affidavit attesting to the destruction of the notary's seal upon the notary's resignation or death; and performing a periodic reconciliation of seals and journals returned or destroyed against those notaries that are no longer commissioned.</p>	Agree	May 2009
6	44	<p>Consider strengthening commissioning requirements for notaries public in Colorado by: evaluating the Model Notary Act and other states' commissioning requirements; and identifying additional commissioning requirements necessary to ensure that notaries perform their duties properly and working with the General Assembly, as necessary, to implement additional commissioning requirements for notaries.</p>	Agree	May 2009
7	49	<p>Create an effective complaint handling system for the charitable solicitations, lobbyist and notary programs by: creating a complaint log for each program; developing and implementing policies and procedures for handling complaints across all three programs; and analyzing complaint data (e.g., logs and complaint files) on a periodic basis to determine whether complaints are being handled appropriately.</p>	Agree	October 2008

Rec. No.	Page No.	Recommendation Summary	Agency Response	Implementation Date
8	53	Improve its management of funds in the charitable solicitations, lobbyist, and notary programs by: establishing an adequate tracking system and cost centers within the Secretary of State Fees Cash Fund; improving the collection of assessed penalties against lobbyists; and routinely monitoring whether revenue is covering the expenditures in each program.	Agree	July 2008

Overview

Background

The mission of the Department of State (Department) is to collect, secure and make accessible a wide variety of public records, ensure the integrity of elections, and enhance commerce in the State. The Department fulfills this mission by overseeing and administering a variety of laws related to elections, lobbyists, business licensing, the Uniform Commercial Code, charitable solicitations, and notaries public.

Our audit focused on the Department’s oversight and regulation in three specific areas—two of these areas are located within the Department’s Licensing Division and one within the Department’s Elections Division, as follows:

- **Charitable solicitations.** The Licensing Division registers charities that solicit contributions in Colorado, paid solicitors, and professional fundraising consultants. The Division is responsible for issuing registration numbers to and collecting and disseminating financial information from these three types of charitable organizations.
- **Lobbyists.** The Department’s Elections Division registers lobbyists and receives financial disclosure information about lobbyist activities that the Department then makes available to the public.
- **Notaries public.** The Licensing Division also commissions (i.e., licenses) notaries public and administers Colorado’s Notaries Public Act.

We describe the Department’s responsibilities in each of these areas in more detail below.

Charitable Solicitations

The General Assembly adopted the Colorado Charitable Solicitations Act [Section 6-16-101, et seq., C.R.S.] in 1988, which states that “... fraudulent charitable solicitations are a widespread practice in this state which results in millions of dollars of losses to contributors and legitimate charities each year.” In the Act, the General Assembly declared that it is “necessary to protect the public’s interest in making informed choices as to which charitable causes should be supported.”

Statute defines a charitable organization as an entity that is or holds itself to be established for any “benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary purpose” Every charitable organization must register with the Department annually. Entities not required to register include political parties or candidates, churches or religious organizations exempt from federal income tax requirements, and charities that do not intend to solicit funds or do not actually raise or receive gross revenue of more than \$25,000 in one year.

Statute also requires paid solicitors and professional fundraising consultants to register with the Department. Statute defines paid solicitors as anyone that is compensated for soliciting contributions in Colorado. Paid solicitors do not include: volunteers; persons whose sole responsibility is to print or mail fundraising literature; and employees of a charitable organization that had, at the time of the solicitation, been granted tax-exempt status by the Internal Revenue Service. Statute defines a fundraising consultant as a person, other than a director or an employee, that is retained by a charity to plan and manage fundraising campaigns. Paid solicitors and professional fundraisers must register with the Department if they have custody or control of charitable contributions.

According to reports filed with the Department, charities (Colorado and national, registered with the Department) reported collecting a total of about \$26.3 billion (not just in Colorado) in Fiscal Year 2007. Charities also reported using \$19.6 billion (75 percent) of that amount for direct program services and the remaining \$6.7 billion (25 percent) for administration, fundraising, payments to affiliates, and other unspecified expenses. In addition, paid solicitors reported collecting about \$185.7 million on behalf of charities during the same period. Of this total, charities received about \$84.5 million (46 percent), with the remaining amount retained by the paid solicitors to pay expenses, salaries and commissions.

Lobbyists

The Colorado Sunshine Act [Section 24-6-101, et seq., C.R.S.] regulates financial disclosures, meetings by public officials, and the activities of lobbyists. With respect to lobbyists, the purpose of the Colorado Sunshine Act is to “achieve a more uniform application of the lobbying laws to witness testimony and to clarify the ability of the public to provide testimony to the General Assembly and to state agencies.” Statute [Section 24-6-301(3.5)(a), C.R.S.] defines lobbying as “communicating directly, or soliciting others to communicate, with a covered official for the purpose of aiding in or influencing” the drafting, introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval or veto of bills, resolutions and/or regulations by any covered official. A “covered official” is defined as the Governor, the Lieutenant Governor, a member of the General Assembly or individuals with rule-making authority (e.g., board or commission members and state officials). Under statute, lobbying excludes persons who limit their activities to appearances to give testimony or provide information to committees of the General Assembly or public hearings of state agencies and who clearly identify themselves and the interest for whom they are testifying or providing information.

Statute [Sections 24-6-301 and 24-6-303.5, C.R.S] recognizes three classes of lobbyists:

- Professional lobbyists, who receive compensation working individually or for a private firm to provide lobbying services for other companies or organizations. Lobbyists do not include: elected public officials working in their official capacity; most state employees or officials; or an individual appearing as counsel or advisor in an adjudicatory proceeding. Professional lobbyists are what the public generally envisions when it hears the word “lobbyist.”
- Designated state employees, who are a sub-category of professional lobbyists. Each department must designate one employee that is responsible for the department’s lobbying activities. This employee is responsible for registering and filing reports on the agency’s lobbying efforts.
- Volunteer lobbyists, who lobby for companies and organizations but receive no compensation for their services except for reimbursement of “actual and reasonable expenses,” such as meals, travel, lodging and parking.

Professional lobbyists must submit monthly disclosure reports listing amounts spent on gifts and entertainment for public officials. During Fiscal Year 2006, 611 registered professional lobbyists reported to the Department that they spent more than \$775,000 on expenditures for gifts and entertainment for public officials. During Fiscal Year 2007, 635 registered professional lobbyists reported spending more than \$875,000 on these expenditures.

Notaries Public

The Notaries Public Act [Section 12-55-101, et seq., C.R.S.] empowers notaries public to take acknowledgements, depositions, affidavits, verifications and other sworn and unsworn testimony and administer oaths and affirmations. Notaries also are required to act as an unbiased, disinterested and official witness to the identity of a person who signs a document, although the notary is not required to verify the authenticity of the person’s identification documents. Notaries also ensure that the signer has entered into the agreement knowingly and willingly.

Fiscal Overview

The Department is primarily funded by user fees, such as charges for registering as a charity or a lobbyist. As the following table shows, the Department’s expenditures for the charity and lobbyist programs have increased 30 percent and 20 percent, respectively, from Fiscal Years 2005 through 2007. The Department attributed the increases to higher personnel benefits and more appropriate allocation of those benefits to the programs. The notary program experienced a brief increase in expenditures in Fiscal Year 2006, as it began implementing a

new electronic filing system. Other notary program expenses declined overall, due to lower personnel costs and a reduced lease payment. Additionally, the notary program's revenue has declined since Fiscal Year 2005, as the Department eliminated certain fees to reduce the net income for the program.

Department of State Charitable Solicitations, Lobbyists and Notaries Public Programs Revenues, Expenditures, and FTE Fiscal Years 2005 Through 2007				
	Fiscal Year 2005	Fiscal Year 2006	Fiscal Year 2007	Percent Change 2005-2007
Charitable Solicitations				
Revenues	\$80,510	\$85,445	\$88,925	10%
Expenditures	\$81,840	\$100,074	\$106,774	30%
Net Income	(\$1,330)	(\$14,629)	(\$17,849)	1,242%
FTEs	2	2	2	0%
Lobbyists				
Revenue	\$15,006	\$27,810	\$29,255	95%
Expenditures	\$42,816	\$51,890	\$51,326	20%
Net Income	(\$27,810)	(\$24,080)	(\$22,071)	-21%
FTEs	1	1	1	0%
Notaries Public				
Revenues	\$351,250	\$348,525	\$321,062	-9%
Expenditures	\$266,633	\$392,392	\$233,324	-12%
Net Income	\$84,617	(\$43,867)	\$87,738	4%
FTEs	3	3.5	4.5	50%

Source: The Department of State.

Licensees and Registrants

As the following table shows, the number of charities registered with the Department has increased by about 21 percent during Fiscal Years 2005 through 2007. The Department indicated that this increase is due both to the increase in the number of charities nationwide and to outreach efforts made by the Department to identify unregistered charities. The table also shows that the number of registered lobbyists has increased by about 12 percent during the same period, while the number of new notaries public decreased slightly.

Department of State Approved Applications¹ – Charities, Lobbyists and Notaries Public Fiscal Years 2005 Through 2007				
Program	Fiscal Year 2005	Fiscal Year 2006	Fiscal Year 2007	Percent Change 2005-2007
<i>Charities</i>	3,634	3,903	4,396	21%
<i>Paid Solicitors</i>	78	87	84	8%
<i>Professional Fundraising Consultants</i>	35	29	23	-34%
Charitable Solicitations Total	3,747	4,019	4,503	20%
Lobbyists	605	641	675	12%
Notaries Public	27,889	28,100	27,531	-1%
¹ Charities and lobbyists must register annually with the Department, while notaries public are commissioned for four-year terms. For charities and lobbyists, the numbers in the table represent the total active charities and lobbyists for that year. For notaries, the numbers represent the new notaries commissioned in each year. As of October 2007, there were about 106,000 total active notaries.				
Source: The Department of State's databases of charitable solicitations, lobbyists, and notaries public registrations.				

Scope and Methodology

This audit was performed under contract with the Colorado Office of the State Auditor and conducted in accordance with generally accepted government auditing standards. The scope of the audit was to review the Department's administration and enforcement of laws related to charitable solicitations, lobbyists and notaries public. Specific data reviewed varied based on the objective being reviewed, as well as the information available for testing, and ranged between Fiscal Years 2004 and 2008. Audit fieldwork was conducted between October 2007 and May 2008.

Our methodology included:

- Interviews with Department personnel, as well as selected members of the General Assembly, legislative staff, personnel of the Office of the Attorney General, local district attorneys, and registered lobbyists.
- Reviews of documentation maintained by the Department of State, including complaint files, letters and filings.
- Tests of supporting data maintained by the Department of State, including random, judgmental and systematic sampling.
- Data analysis.
- Surveys of other states' practices and information from professional organizations.

Charitable Solicitations

Chapter 1

Background

As noted in the Overview, the General Assembly enacted the Colorado Charitable Solicitations Act [Section 6-16-01, et seq., C.R.S.] in 1988 to protect the public and legitimate charities from fraudulent charitable activities. Under the Colorado Charitable Solicitations Act, the General Assembly charged the Department of State (Department) with overseeing and regulating charitable solicitations in three main ways:

- **Registration.** Statute requires charities that intend to solicit contributions in the State to register with the Department prior to seeking donations. Information required on the registration statement includes: the purpose of the charity; the name(s) under which it intends to solicit contributions; the names and addresses of key officials, such as officers and directors; and a financial report for the most recent year, such as Internal Revenue Service (IRS) form 990. Statute also requires that charities amend their registrations annually to reflect any significant changes at the charity (e.g., name, address, and tax status). Charities that do not (1) intend to solicit or raise more than \$25,000 annually or (2) receive contributions from more than 10 persons annually are exempt from these requirements. Political organizations, churches and certain other religious and educational organizations are also exempt from registration requirements. During Fiscal Year 2007, almost 4,400 charities were registered in Colorado.

Statute also requires professional fundraising consultants and paid solicitors to register with the Department annually before engaging in these activities. Information required from both professional fundraising consultants and paid solicitors includes: the location of their offices; the names and addresses of owners or officers (if the applicant is not an individual); and attestations that the applicant has not been convicted within the previous five years of various felonies including fraud or embezzlement. Additionally, the applicant must attest that he or she has not had a similar registration denied or revoked in another state. During Fiscal Year 2007, there were 23 professional fundraising consultants and 84 paid solicitors registered in Colorado.

- **Required disclosures.** Statute requires charities to submit annual financial disclosure reports to the Department. A charity must file its financial report by the 15th day of the fifth month after the end of its fiscal year. The report must include information about (1) revenue from contributions, (2) expenses, broken out into program services, administration, fundraising, and payments to affiliates, and (3) the charity’s balance sheet. The report must also list the names of outside fundraising professionals used by the charity and the amount paid to outside fundraisers.

Statute also requires paid solicitors to file a “solicitation notice” with the Department no later than 15 days before beginning a solicitation campaign. This notice must include a summary of the contract between the paid solicitor and the charity, the names and addresses of the individuals involved in the campaign, the purpose and nature of the campaign, and a certification from the charity stating that the solicitation notice is accurate and complete. Within 90 days of completing the campaign, paid solicitors must file a campaign financial report with the Department, which itemizes the revenues and expenses from the campaign.

Statute does not require fundraising consultants to file any documents with the Department other than the annual registration statement.

- **Enforcement.** Statute states that the Department may deny, suspend or revoke the registration of any charitable organization, professional fundraising consultant, or paid solicitor that makes a false statement, omits material information in any filing or otherwise violates any provision of the Charitable Solicitations Act. The Department may also seek an injunction in district court against any person who violates the provisions of this Act.

We reviewed the Department’s oversight of charities, paid solicitors, and professional fundraising consultants and found the Department could improve its efforts for ensuring that all applicable charities register with the Department and that charities, paid solicitors, and professional fundraising consultants file required reports timely. We also identified ways in which the Department could improve the use of its enforcement powers to provide more effective oversight of charities.

Unregistered Charities

To protect the public’s interest in making informed choices about its charitable investment decisions, the Department must first ensure that all charities required to register actually do so. Unless all applicable charities are registered, the charities will not file their public disclosure statements, limiting the financial and operational information available to the public. This, in turn, erodes the purpose and intent of the Colorado Charitable Solicitations Act.

We reviewed the Department's database of charities and compared it with the IRS' database of tax-exempt organizations to determine whether all applicable charities in the State have registered with the Department as required by statute. We found evidence suggesting that a significant number of charities are not complying with registration requirements.

First, we compared the IRS' list of Colorado-based tax-exempt organizations that filed for fiscal years ending in Calendar Year 2006 and which had income over \$25,000 to the Department's list of charities with approved registrations in Calendar Year 2006. We identified more than 1,500 independent charities that had filed with the IRS, but not with the Department. Not all of these 1,500-plus charities would have necessarily been required to register with the Department. Of these more than 1,500 organizations, we identified 190 with annual incomes totaling more than \$1 million. We reviewed a sample of 25 of these 190 organizations and found that 21 (84 percent) were either soliciting donations on their Web site or had reported to the IRS in the prior year that they received direct or indirect contributions in excess of \$25,000. In other words, it appears that these 21 charities may have been soliciting and receiving contributions of more than \$25,000 annually and thus, should have been registered with the Department, but were not.

Second, we compared the 1,500-plus charities identified above that filed with the IRS in Calendar Year 2006 with charities registered with the Department during Calendar Years 2006 and 2007. We identified about 130 charities that filed as charities with the IRS during Calendar Year 2006, but did not register with the Department until Calendar Year 2007, suggesting that these charities were out of compliance with the State's registration requirement in Calendar Year 2006.

On the basis of our analysis, we concluded that it is likely that a significant number of charities in Colorado are not registered with the Department, as required by law. Therefore, these unregistered charities are also not filing disclosure statements, a key requirement of the Charitable Solicitations Act. As discussed previously, one important purpose for the filing requirement is to help ensure that the public has the information it needs to decide whether to contribute to a specific charity. Without this information, the public may inadvertently support charities that spend a disproportionate amount of their donations on administration or other non-service-related activities or invest in charities that misrepresent their purpose.

The Department has also identified concerns that some Colorado charities are soliciting and accepting contributions without registering. In 2007, the Department convened a Taskforce on Charitable Giving (Taskforce) to increase charities' compliance with the Colorado Charitable Solicitations Act. The Taskforce included representatives from non-profit organizations, former legislators, and Department staff. In its November 2007 final report, the Taskforce reported that according to a Department estimate, "there is only a 65% - 85% compliance rate with . . . registration requirements." The Department arrived at this estimate by performing a data match similar to the one we performed during this audit.

Currently the Department does not actively look for and investigate unregistered charities to determine if they should be registered. While the Department conducted a data match as part of the Taskforce, it does not routinely conduct the type of data match we performed to identify charities that are potentially noncompliant with the registration requirement. The Department does investigate complaints against unregistered charities. There were 11 such complaints altogether in Fiscal Years 2006 and 2007. As a result of these complaints, 2 unregistered charities were brought into compliance, six complaints were dismissed, and three cases were still pending at the time of our audit.

According to the staff, the Department lacks sufficient enforcement mechanisms to bring unregistered charities into compliance, even if it improves its efforts to identify them. Specifically, the only penalty available to the Department has been to file an injunction against the unregistered charity in district court to prevent it from soliciting donations in the State. However, the Department has found it difficult to pursue injunctions against unregistered charities because, at the time of the audit, the Department lacked statutory authority to demand financial records from unregistered charities. Financial records are needed to establish that the charity received more than \$25,000 in charitable donations within one year and, thus, was required to register.

During the 2008 Legislative Session, the Department initiated and supported, and the General Assembly passed, House Bill 08-1109. This legislation provides the Department with specific authority to investigate potential violations of the Charitable Solicitations Act and to demand from a charity any records deemed relevant for the investigation. This legislation also authorized the Department to set and levy fines against unregistered charities.

With the enactment of House Bill 08-1109, signed by the Governor on May 14, 2008, the Department is better positioned to implement procedures for actively identifying unregistered charities and bringing them into compliance. To systematically identify unregistered charities, the Department should perform an annual data match between its database of registered charities and other appropriate databases. The Taskforce on Charitable Giving made a similar recommendation in its November 2007 report and the Department agreed with the Taskforce's recommendation. The Department will need to determine which databases are most suitable for the data match. Options include the IRS data we used for our comparison, business registrations filed with the Department, and membership lists from nonprofit associations in the State. Once the Department identifies potentially unregistered charities, it will need to: contact the charities; verify that the charities are, in fact, required to register; advise the charities of the registration requirement; and follow up to ensure that those charities required to register actually do so. The Department will also need to follow up with enforcement actions against charities that fail to register, as appropriate.

The Department should also develop procedures for implementing the expanded enforcement authority granted by House Bill 08-1109. This should include establishing fines through rulemaking and determining the criteria for applying those fines. The Department should also create policies for determining when it will investigate charities for noncompliance with the registration requirement and when it will seek injunctions against those charities that fail to comply, yet continue to solicit contributions in the State. The Department does not currently have the resources to investigate every noncompliant charity, so it is important that staff develop an approach for identifying the most serious violators and ensure that these charities are either brought into compliance or prevented from continuing to solicit donations in Colorado.

Recommendation No. 1:

The Department of State should improve its oversight of unregistered charities in Colorado by:

- a. Identifying appropriate databases for matching with its database of registered charities and conducting a data match annually to identify potentially unregistered charities.
- b. Following up on all potentially unregistered charities and ensuring that those that are required to be registered do so.
- c. Implementing the new enforcement powers authorized by House Bill 08-1109 through rules and procedures. This should include setting criteria for determining the circumstances under which the Department should impose fines or seek injunctive relief to bring unregistered charities into compliance.

Department of State's Response:

- a. and b. Agree. Implementation Date: Implemented.

The Department compared the two databases and identified the likelihood of significant non-compliance prior to the audit and the Taskforce. It brought this information to the attention of the Taskforce and the auditors as an area of concern that would become part of a routine enforcement initiative in the near future. The Department's Information Technology Division recently produced a list of charities that are included in the IRS Business Master File and appear to be subject to the state registration requirement, but are not registered with the Department. We recently sent an inquiry letter to 3,777 charities and will be following up with the nonresponsive charities. This will be an annual project from this year forward.

It should be noted that many of these charities have in all probability dissolved, merged, or ceased operations. So, this number should be seen as indicative of a compliance problem rather than as a hard number with which one could calculate a ratio of compliant versus noncompliant public charities. Recent changes in federal law will improve the accuracy of the IRS Business Master File gradually over the next three to four years, which will enable us to make more definitive statements about the rate of noncompliance among charities soliciting in Colorado.

The data match mentioned in part (a) has been implemented and all leads that help the Department implement part (b) are being followed up on.

c. Agree. Implementation Date: September 2008.

The Department will work with the lobbyist registration and campaign finance programs to emulate the procedures they have put in place around fines and waivers and not attempt to reinvent the wheel. The “bona fide personal emergency” standard is appropriate for charities registration, as is a procedure whereby charities would not be permitted to renew a registration until its fines were paid.

We agree that it is useful to identify the criteria for when to seek injunctive relief in any situation, and the Department has done so. Factors that will be considered include the nature and extent or the harm, the deterrent value, the characteristics of the victims, the significance of the violation, whether the defendant has a prior history of misconduct, whether the defendant intended to violate the law, the cost to the Department, the likelihood of success on the legal issues, whether or not other states are pursuing an action, and whether there is public demand or public pressure for our office to take action.

Criteria for when to seek injunctive relief were identified in the course of developing complaint-handling procedures for the section. Rules for imposing and appealing fines will be effective as of September 1, 2008.

Delinquent Filings

As noted previously, statute requires charities, professional fundraising consultants, and paid solicitors to file financial disclosure information with the Department regularly. Like registration, these filings provide valuable information that the public can use to make informed choices about which charities to support. When charities, professional fundraising consultants, and paid solicitors are delinquent filing a required report, the Department sends out a delinquency notice. If the recipient does not comply with filing requirements after the first notice, up to two more notices are sent. If the recipient is still not responsive, the Department will suspend the delinquent individual or company.

A significant number of charities file their annual financial reports late and receive delinquency notices and/or suspensions. Specifically, according to the Department, during each year of Calendar Years 2004 through 2007, between 65 percent and 79 percent of all registered charities received at least one delinquency notice. Furthermore, according to the Department, between 425 and 521 charities were suspended each year during the same period, or between about 10 percent and 14 percent of all registered charities each year during the period. The Department also reported that 10 paid solicitors and five professional fundraising consultants were suspended in Calendar Year 2006 and that 12 paid solicitors and five professional fundraising consultants were suspended in Calendar Year 2007. Thus, between 12 percent and 14 percent of all paid solicitors and between 17 percent and 22 percent of all professional fundraising consultants were suspended in Calendar Years 2006 and 2007.

We evaluated the Department's oversight of required financial disclosures filed by charities, professional fundraising consultants, and paid solicitors and found that Department enforcement practices need to be strengthened to improve the timeliness of required filings. We identified several ways the Department can improve the timeliness of the submissions, as discussed below.

Untimely delinquency/suspension notices. According to staff, it is their informal policy that the first delinquency notice is sent the day after the disclosure's due date. If the delinquent entity still does not comply with filing requirements, the Department sends up to two additional delinquency notices followed by a suspension notice, if necessary, with each notice occurring at a 15-day interval. We tested the timeliness of delinquency and suspension notices for a sample of 59 charities out of the population of 422 that were still suspended at the time of our review (October 2007). These 59 charities had received a total of 236 delinquency and suspension notices. We found the Department sent out 35 (15 percent) of the 236 notices late. In four cases, the initial delinquency notice was sent between 94 and 204 days after the charity became delinquent. Additionally, from the list of 58 currently delinquent charities (as of October 2007), 3 (five percent) charities had not received all required delinquency notices and were not suspended, even though they had not complied with filing requirements since Fiscal Year 2006. However, we noted that the Department appears to be improving—with the exception of one initial delinquency notice sent 94 days after the charity became delinquent, and four others being sent four days late, all of the untimely notices occurred prior to Calendar Year 2006.

Additionally, we tested the timeliness of delinquency and suspension notices for professional fundraising consultants and paid solicitors and found six (13 percent) of 48 notices to the professional fundraising consultants and four (seven percent) of 60 notices to the paid solicitors were not sent in a timely manner. Again, we noted that with the exception of two notices sent one day late for professional fundraising consultants and one notice sent one day late for paid solicitors, all of the untimely notices occurred prior to Calendar Year 2007.

Department staff attributed the late delinquency and suspension notices to the manual process that generates the notices. Specifically, if staff responsible for sending out the notices are on annual or sick leave, then the notices may not be processed timely. However, this does not fully explain the extremely late examples identified above. The Department could improve the timeliness of its delinquency and suspension notices by developing a tracking mechanism or automated system that would flag delinquent entities and automatically print the delinquency or suspension notices when required. It also needs to develop processes for ensuring that notices go out timely during staffing fluctuations.

Lack of enforcement tools. At the time of the audit, we found that the Department did not have enforcement mechanisms to effectively deter charities, professional fundraising consultants, and paid solicitors from filing delinquent reports. Statute allowed the Department to suspend, deny or revoke registrations for violations of the law, but did not let the Department impose other penalties, such as fines. As discussed above, the Department regularly suspends charities, professional fundraising consultants, and paid solicitors, but has never denied or revoked a registration for noncompliance with filing requirements. Also, as noted before, House Bill 08-1109 was enacted on May 14, 2008. This legislation gives the Department the authority to levy fines ranging from \$100 to \$1,000 annually on charities, professional fundraising consultants, and paid solicitors for not meeting filing requirements. In addition, the bill made it clear that suspended charities, professional fundraising consultants, and paid solicitors are not allowed to solicit contributions in Colorado until the suspension is cleared.

With the enactment of House Bill 08-1109, the Department now has a wider range of penalties to apply to charities, professional fundraising consultants, and paid solicitors that do not file financial disclosures on time. To use these penalties effectively, the Department will need to develop policies and procedures for determining whether fines, suspensions, denials or revocations are the most appropriate enforcement tool for a particular case. The Department will also need better information to make these determinations. For example, currently the Department is unable to generate reports that would identify charities, professional fundraising consultants, and paid solicitors that are chronically delinquent in filing reports, determine the average time it takes these entities to resolve their delinquencies or to identify charities that have been suspended and later reinstated. This type of data would allow the Department to make informed decisions about the appropriate penalty for noncompliant charities, professional fundraising consultants, and paid solicitors. For example, those that are repeatedly late in their filings could receive harsher penalties than first-time violators. Department staff reported that it is working with its Information Technology Division on developing additional monitoring reports.

In addition, the Department needs to ensure that suspended charities, professional fundraising consultants, and paid solicitors do not solicit funds while suspended. We identified 10 suspended charities that filed financial reports with the IRS while suspended by the Department, which could indicate that they were soliciting

funds in Colorado. However, the Department would need access to the charities' records in order to verify that they should indeed have registered with the Department. The Department should establish procedures for identifying suspended entities that continue to solicit funds and take appropriate action, including seeking an injunction against the entity.

The financial disclosure reports are the primary means by which the public can determine if a charity is worthy of its donations and how those donations will be spent. For example, the annual financial statements for charities disclose the amount of funds that will be spent on program costs versus administration, which is a key indicator of how well the charity is run. When the reports are filed late or the Department is late sending delinquency and suspension notices, the public loses timely access to accurate information to use in making decisions about which charities to support. The Department should take the steps outlined above to better ensure the timeliness of these reports.

Recommendation No. 2:

The Department of State should improve the timeliness of financial disclosure reports submitted by charities, professional fundraising consultants, and paid solicitors by:

- a. Implementing procedures to ensure that delinquency and suspension notices are sent out timely. This could include the use of automated procedures or a tracking mechanism to identify all instances of noncompliance with financial disclosure requirements.
- b. Periodically reviewing the list of delinquent filers to ensure that all charities that should have been suspended were in fact suspended.
- c. Developing monitoring reports, including aging reports that will enable it to identify chronically late charities, professional fundraising consultants, and paid solicitors.
- d. Establishing and implementing criteria and procedures for determining when charities, professional fundraising consultants, and paid solicitors should be subject to fines, suspensions, denials and/or revocations.
- e. Establishing procedures for identifying suspended charities, professional fundraising consultants, and paid solicitors that continue to solicit funds and ensuring that they discontinue solicitations until the suspension has been cleared.

Department of State's Response:

a. and b. Agree. Implementation Date: Implemented.

The Information Technology Division has developed a procedure for verifying that the delinquency program is running every day. It earlier had taken steps to ensure that the delinquency program would run automatically Monday through Friday, so there is now an automated batch program as well as verification of the proper functioning of the batch job. This program automatically generates both the delinquency and the suspension notices.

c. Agree. Implementation Date: August 2008.

Work has begun on a detailed, accurate, and flexible delinquency report that will enable administrators to examine the delinquency problem as of the moment and over time, and to identify chronically late filers. The recommendation is expected to be implemented by August 2008, per agreement with the Information Technology Division.

d. Agree. Implementation Date: September 2008.

The charities registration program will develop criteria and procedures that specifically identify the reasons an organization may have its registration revoked, suspended, denied, or be subject to fines, and will include a pattern of late filing as one factor the Department will consider. The Legislature imposed a cap on the fines we could impose in statute, so if those modest amounts prove to be of little deterrent value, it will take new legislation to increase the penalty.

Any additional criteria and procedures necessitated by the passage by House Bill 08-1109 will be established and implemented through the rulemaking process to be effective September 2008.

e. Agree. Implementation Date: August 2008.

The Department will utilize the IRS Business Master File to identify organizations that were demonstrably soliciting contributions while their registrations were either suspended or revoked by the Department. The Department will work with the Information Technology Division to design a report that can elicit that information.

The recommendation is expected to be implemented by August 2008 per agreement with the Information Technology Division, and in conjunction with part (c) above.

Lobbyists

Chapter 2

Background

As noted in the Overview, the intent of the Colorado Sunshine Act [Section 24-6-101, et seq., C.R.S.] was to open the State’s political process to scrutiny in part by regulating lobbying activities. As defined in the Colorado Sunshine Act, lobbying involves attempts to influence the drafting or passage of legislation or regulations by public officials and public board or commission members. The Colorado Sunshine Act classifies lobbyists into three categories: professional; volunteer; and state employees responsible for lobbying by a state official or employee on behalf of an agency (designated state employee). The Department is responsible for the oversight of lobbying activities in Colorado. Similar to charities, the Department’s oversight of lobbyists by the Department focuses on registration, disclosure statements, and enforcement, as described below:

- **Registration.** Statute [Section 24-6-303, C.R.S.] requires professional lobbyists to register with the Department before engaging in lobbying. The registration statement must include the name and address of the lobbyist, the lobbyist’s employer, any person for whom the lobbyist will be lobbying, and any person who will be paying the lobbyists for lobbying. Professional lobbyists must also update their registration before July 15 of each year, as long as they act as a professional lobbyist.

Statute [Section 24-6-303.5, C.R.S.] also requires designated state employees to register with the Department. Specifically, each “principal department of state government” shall designate one person responsible for lobbying on behalf of that state agency and that person must register with the Department by January 15 of each year. Registration information includes the designee’s name and work address and the name, title, and address of any other person within the agency that will lobby on the agency’s behalf.

Statute does not require volunteer lobbyists to register with the Department. Instead, the House and Senate rules of the General Assembly require volunteer lobbyists to register with the Chief Clerk of the House. To register, volunteer lobbyists are asked to provide their name, the name of the organization they represent, an address (home or office) and a phone number (home or office).

- **Required disclosures.** Professional lobbyists must file monthly disclosure statements with the Department if they spend \$200 or more annually on gifts or entertainment for the benefit of public officials. Information in these

disclosure statements includes (1) the lobbyist's income and expenditures, (2) the public officials being lobbied, (3) the bills on which they are lobbying and their positions on those bills, and (4) any direct business association the lobbyist has with pending legislation. Professional lobbyists must also file a cumulative disclosure statement for each fiscal year that contains the total gross income received for lobbying in that year.

Statute also requires designated state employees to file monthly disclosure statements with the Department. These disclosure statements must include (1) the bills on which the state employee's department is lobbying, (2) the amount of any expenditure of public funds used for lobbying, and (3) an estimate of the time spent lobbying either by the agency's designated state employee or any other agency employee. Volunteer lobbyists are not required to file any disclosure statements.

- **Enforcement.** Statute [Section 24-6-305, C.R.S.] allows the Department to revoke, suspend for up to one year or bar for up to one year a lobbyist's registration for not filing monthly disclosure statements or not allowing the Department to examine the lobbyist's records. Statute also allows the Department to investigate any person who may be in violation of the lobbyist laws and issue a cease and desist order against those found in violation. Statute also requires the Department to inform the President of the Senate and the Speaker of the House of Representatives whenever it believes an individual has "substantially" violated the professional lobbyist's registration and disclosure requirements. Finally, statute [Section 24-6-302(7), C.R.S.] requires the Department to fine professional lobbyists \$10 per day if the lobbyist fails to file a required disclosure statement timely.

We examined the Department's processes for registering lobbyists and ensuring that lobbyists file required disclosure statements. We also reviewed the Department's enforcement activities related to lobbyists. We found that the Department could improve its methods for ensuring that lobbyists file disclosure statements timely. We also identified ways in which the Department can better use its enforcement powers to provide more effective oversight of lobbyists. Finally, we found that the Department has no means to ensure that all lobbyists are appropriately registered and discuss options for enforcing the lobbyist registration requirement.

Delinquent Lobbyist Filings

Lobbyist disclosure statements are intended to inform the public about the efforts of lobbyists that are actively working to affect the political process. To address this intention, the Department must ensure that all lobbyists are filing required disclosure statements on time. If disclosure statements are not filed timely, the public may not be aware that corporations, associations, non-profit groups or other parties are meeting with and/or providing gifts or entertainment to legislators who will be voting on bills important to their interests.

As noted above, statute requires professional lobbyists and designated state employees to file monthly disclosure reports that provide valuable information about their lobbying activities. We analyzed the timeliness of these disclosure statements and found that a significant percentage of professional lobbyists and designated state employees file their statements late. Specifically, we calculated that 52 percent (320 of 611) of registered professional lobbyists in Fiscal Year 2006 and 42 percent (264 of 635) of registered professional lobbyists in Fiscal Year 2007 filed at least one disclosure statement late. Further, we identified that 13 percent of lobbyists in Fiscal Year 2006 and 8 percent in Fiscal Year 2007 were chronically late, which we defined as submitting 25 percent or more of the disclosure statements late. Overall, between eight and nine percent of all required statements were filed late. Although most of the delinquencies were remedied within a month, 53 of the 1,055 untimely statements (5 percent) were filed more than one month late. Total late lobbyist disclosure statement filings for Fiscal Years 2006 and 2007, categorized by days overdue, are shown in the following table.

Department of State Lobbyist Disclosure Statement Filings Fiscal Years 2006 Through 2007			
Days Overdue	Fiscal Year 2006	Fiscal Year 2007	Total
1-30	568	434	1,002
31-60	13	24	37
61-90	2	6	8
91-180	0	4	4
181-360	1	2	3
>360	1	0	1
Total Late Reports	585	470	1,055
Total Reports Submitted	6,365	6,092	12,457
% of Reports Submitted Late	9%	8%	8%

Source: The Department of State's databases of lobbyists' registrations and disclosure statements.

We also identified six lobbyists who had still not filed 11 disclosure statements, originally due in Fiscal Years 2006 and 2007, as of October 2007, as shown in the following table:

Department of State Lobbyist Disclosure Statements Unfiled Statements as of October 30, 2007			
Days Overdue	Fiscal Year 2006	Fiscal Year 2007	Total
91-120		4	4
121-180		3	3
181-360		2	2
361-720	1		1
> 720	1		1
Total	2	9	11

Source: The Department of State's database of lobbyists' registrations and disclosure statements.

For designated state employees, we found that 14 (47 percent) of the 30 designated state employees registered with the Department in Calendar Year 2006 filed at least one disclosure statement late, with 22 of 293 disclosure statements filed between one and 22 days late. In Calendar Year 2007, 11 (30 percent) of the 37 designated state employees filed at least one disclosure report late with the Department, with 20 of 233 disclosure statements filed between one and 63 days late.

The large number of delinquent filings by professional lobbyists and designated state employees is concerning because the disclosure reports provide time-sensitive information about activities that can affect the legislative and regulatory process. Even statements that are a few days late could impair transparency, particularly if those statements contain information about lobbying activities related to bills or rules that have just been passed or blocked.

The Department needs to increase lobbyist compliance with filing requirements by improving its enforcement mechanisms. We provide specific steps the Department can take to improve these mechanisms:

Conduct analysis. Staff currently do not conduct any analysis to determine (1) which lobbyists are filing repeatedly late and (2) if the aging of the delinquent statements is significant. The Department should perform this type of analysis to determine which lobbyists should be the focus of its enforcement efforts.

Fines. As noted previously, statute requires the Department to levy a fine of \$10 for each day that a professional lobbyist's disclosure statement is late. We identified three concerns about the Department's fining authority and processes. First, we found that the Department is waiving lobbyist fines inappropriately. Statute [Section 24-6-302(7), C.R.S.] allows the Department to waive fines for untimely disclosure reports for "bona fide personal emergencies." We reviewed the Department's waiver log from July through October 2007 (the Department could not provide logs from previous fiscal years), which contained 16 waivers totaling about \$4,200 in fines. We identified 15 (94 percent) waivers totaling about \$2,300 in fines that were not granted for "bona fide personal emergencies." Specifically:

- Eleven lobbyists cited difficulties using the lobbyist online system as the reason for the delay.
- Two lobbyists claimed they were not familiar with filing guidelines.
- One lobbyist claimed that a reduction in staff caused the filing delay.
- One lobbyist did not give a reason for the filing delay.

In addition, we noted that the Department has not granted waivers consistently. For example, two lobbyists were assessed penalties of \$290 each for late filings. Both lobbyists reported difficulties using the online system. The Department reduced the penalties for both lobbyists. However, the Department reduced the penalty for one lobbyist by an amount that was \$100 greater than the reduction the other lobbyist received. Granting waivers for reasons other than specified in statute and inconsistent application of waivers creates the perception of inequities in the treatment of lobbyists and significantly reduces the effectiveness of fines in deterring late filing reports.

At the time of our audit, the Department had not defined the circumstances that would constitute a “bona fide personal emergency.” The Department should establish policies and procedures for ensuring that waivers are only granted for bona fide personal emergencies and are supported by adequate documentation.

Second, the Department does not have procedures to ensure that all penalties for delinquent filings are billed, and thus collected, in a timely manner. Currently the Department sends a delinquency notice when a professional lobbyist fails to file a monthly statement on time. However, the Department does not bill the lobbyist for the penalties until the lobbyist files the delinquent statement. Lobbyists who never submit their late statement are never billed for the accrued fines. As of October 2007, we identified unbilled penalties totaling more than \$27,000, dating back to September 2005.

Currently the Department’s automated system is not programmed to bill lobbyists for delinquent statements until the statement is filed. The Department should either modify its system so that penalties are billed automatically, even if the lobbyist never files the delinquent report, or develop a manual process for billing lobbyists for delinquent filings.

Third, the amount of the fine for delinquent filing may be insufficient to encourage lobbyists to file timely. We noted that the fine has been set at \$10 since 1996. The following table compares Colorado’s late filing fees to similar fees charged by other states.

Comparison of States’ Lobbyist Late Filing Fees for Financial Statements	
State	Fee Amount
Colorado	\$10 per day
New York	\$10 per day first-time; \$25 per day all others
New Mexico	\$50 per business day, not to exceed \$5,000
Florida	\$50 per day not to exceed \$5,000
Utah	\$50 per day
Source: Colorado Sunshine Act, New York State Lobbying Act, New York State Commission on Public Integrity, New Mexico’s statute Chapter 2, Article 11, Florida’s Legislative Branch Lobbying: Florida Statutes Title III, Section 11.045 and Title X 112.3215, and Utah Code Title 36, Chapter 11.	

If fines are not set high enough, they may not act as an effective deterrent. The Department should evaluate whether Colorado's fines are an effective deterrent for late filing and consider seeking statutory change to increase the fines if appropriate. One option the Department should consider in its evaluation is whether a graduated penalty system in which repeat offenders face higher fines would be a more effective deterrent. As noted previously, we identified about 13 percent of lobbyists in Fiscal Year 2006 and 8 percent in Fiscal Year 2007 that chronically filed disclosure statements late. Further, we calculated that these chronic late filers were responsible for 47 percent of all late filings in Fiscal Year 2006 and 45 percent in Fiscal Year 2007. A graduated system of fines would allow the Department to more effectively target those lobbyists who repeatedly file the disclosures late.

Suspensions and revocations. As noted previously, statute allows the Department to suspend, revoke or bar the registration of any lobbyist that fails to file required disclosure reports. The Department has not suspended or revoked any lobbyist registrations in the past three fiscal years. Staff reported that the Department's informal internal policy is to not allow lobbyists with outstanding delinquencies to register the next fiscal year, but the Department does not have controls to prevent this. For example, the Department allowed two lobbyists with outstanding delinquent statements from Fiscal Year 2006 to register in both Fiscal Years 2007 and 2008. We also found that the Department does not have policies and procedures that outline the criteria staff should use to determine when suspending or revoking a lobbyist's registration is appropriate. Criteria the Department could consider when deciding whether to proceed with suspension or revocation include (1) how frequently the lobbyist files late disclosure statements or (2) the length of time a disclosure statement is overdue (e.g., late by more than three months).

Other enforcement tools. As noted previously, statute requires the Department to notify the President of the Senate and the Speaker of the House of Representatives when "substantial" violations of the professional lobbyist's registration and disclosure report requirements occur. However, the Department has not defined what a substantial violation is and does not inform the General Assembly when violations have occurred. Reporting these violations to the General Assembly could be a useful deterrent. The Department should define the term "substantial" violation and then implement procedures for reporting any such violations regularly to the General Assembly.

Statute does not prescribe any specific remedies when designated state employees file late disclosure statements. However, statute does allow the Department to adopt rules to enforce the Colorado Sunshine Act. To date, the Department has not promulgated rules to address late filings by designated state employees. The Department should determine if there are remedies that would deter late filings by designated state employees. Options could include reporting designated state employees that repeatedly violate filing requirements to their respective executive directors.

When lobbyists do not file their disclosure statements on time, information is not available to the public regarding the activities and individuals affecting the legislative process, limiting public scrutiny of that process. Better enforcement of the filing requirements should encourage lobbyists to file their disclosure statements in a timelier manner and help preserve the transparency of State's political system.

Recommendation No. 3:

The Department of State should improve the timeliness of lobbyists' monthly disclosure filings by:

- a. Conducting routine analysis to identify lobbyists that file late repeatedly and statistics on the age of delinquent reports. The Department should use this information to target enforcement actions.
- b. Modifying its automated system, or alternatively developing a manual process, to fine and bill lobbyists timely for late reports.
- c. Determining whether current statutory fines are adequate for deterring delinquent filings and considering seeking statutory change to implement a new, graduated system of fines.
- d. Defining "bona fide personal emergency" and ensuring that penalty waivers for late disclosure reports are only granted in cases that meet this definition. Adequate documentation of the waiver logs and requests should be maintained.
- e. Establishing criteria for determining when suspending, revoking or barring the registration of a lobbyist is an appropriate penalty for failing to file disclosure reports timely and applying those criteria in applicable cases.
- f. Defining when a lobbyist has committed a "substantial" violation of the Colorado Sunshine Act by not filing disclosure reports timely and reporting those violations to the President of the Senate and Speaker of the House of Representatives, as required by statute.
- g. Implementing rules that create reasonable remedies addressing designated state employees that do not file their disclosure reports timely.

Department of State's Response:

- a. Agree. Implementation Date: Implemented.

The Elections Division has implemented a process by which delinquent or outstanding professional lobbyist disclosures are identified. Invoices are issued at least monthly and include all outstanding penalties, regardless of age and whether or not the professional lobbyist has actually filed a disclosure report. Further, the Division has modified its online disclosure system to preclude registration for a new fiscal year if any imposed fines are outstanding.

- b. Agree. Implementation Date: Implemented.

As mentioned above, the Elections Division has instituted a process by which monthly reports are generated identifying all outstanding fines for professional lobbyists. Invoices are issued to delinquent professional lobbyist no less than monthly regardless of whether or not a disclosure report has actually been filed.

- c. Agree. Implementation Date: May 2009

The Elections Division agrees that the current statutory fine of ten dollars per day for delinquently filed reports is an insufficient deterrent for timely disclosure. This issue has been identified and added to the Department's log of recommended statutory changes. However, unless and until legislation is enacted, the Department does not have the ability to alter the structure for imposed fines.

- d. Agree. Implementation Date: Implemented.

Prior to the commencement of the audit, the Elections Division had identified the need to standardize the process by which waivers of imposed fines are considered. The Division drafted a lobbyist waiver policy that became official on January 10, 2008. This policy includes examples of a "bona fide personal emergency" and outlines the procedures for handling requests for waiver of imposed fines. The Department will maintain waiver logs in accordance with the Department's records retention policy.

- e. Agree. Implementation Date: December 2008

Due to the lack of statutory guidance, the Division proposes to establish criteria by Rule, in accordance with the Administrative Procedures Act, defining when suspension, revocation, or other action is appropriate.

Further, the Division has already modified its online disclosure system to preclude registration for a new fiscal year if a professional lobbyist has outstanding fines.

f. Agree. Implementation Date: December 2008

Due to the lack of statutory guidance defining a “substantial” violation, the Elections Division proposes to establish criteria by Rule, in accordance with the Administrative Procedures Act, for determining when the President of the Senate and Speaker of the House of Representatives are notified. Until such rules are promulgated, beginning in May 2008 the Division will provide on a monthly basis both to the President of the Senate and the Speaker of the House of Representatives, a list of professional lobbyists who have filed delinquent reports or have not yet filed a necessary disclosure report.

g. Agree. Implementation Date: May 2008.

Beginning in May 2008, the Elections Division will notify both the designated state employee and the executive director of the applicable agency that a disclosure report is either outstanding or was filed delinquently. Moreover, in order to further encourage timely compliance the Department will continue to offer training to designated state employees on an annual basis.

Unregistered Lobbyists

As noted earlier, professional lobbyists and designated state employees are required to register annually with the Department, and volunteer lobbyists are required to register annually with the Chief Clerk of the House. Lobbyist registration helps to ensure openness and transparency in the political process by identifying those individuals who seek to affect the political process. In addition, lobbyist registration enables the Department to identify those individuals subject to the monthly disclosure requirements described in the previous section. These disclosures facilitate public scrutiny of the political process by identifying who is lobbying public officials on specific legislation. We reviewed the Department’s efforts to ensure that professional lobbyists properly register and found that the Department has limited ability to enforce the registration requirement because it lacks statutory mechanisms and resources to determine whether all individuals who should register as lobbyists do so.

Currently the primary means the Department has to identify and pursue unregistered lobbyists is investigating complaints. The Department received two complaints against lobbyists from July 2005 through October 2007. Each complaint involved an accusation against an unregistered lobbyist. One of the complaints was still open at the time of our audit and the other complaint was dismissed on the basis of the evidence. Members of the General Assembly may also file complaints with legislative leadership under the Joint Rules of the Senate and the House of Representatives. According to the Speaker of the House, there has been only one complaint filed with the legislative leadership in the last three legislative sessions, and it did not involve an accusation of an unregistered

lobbyist. According to the Chief Clerk of the House, if a complaint is made that an individual is acting as a volunteer lobbyist without registering, the Sergeant-at-Arms will approach the individual to notify the person of the requirement to register. The Chief Clerk does not maintain data on how often the Sergeant-at-Arms notifies individuals about the registration requirements for volunteer lobbyists.

We also interviewed legislators, legislative staff, and lobbyists to determine whether they had concerns with unregistered lobbyists. During our interviews, these individuals generally indicated that they were very familiar with the individuals employed by professional lobbying firms or working as individual lobbyist practitioners, and they did not believe any of these lobbyists were unregistered. However, the legislators, staff and lobbyists we interviewed also indicated that they were not as familiar with the lobbyists working for non-lobbying firms (e.g., a transportation company, a utility, or a charity), and believed there was more potential that some of these lobbyists might be unregistered. In addition, legislative staff indicated that it is easier to recognize professional lobbyists than to discern which private citizens should be registered as a volunteer lobbyist.

Finally, we analyzed testimony records for a sample of 30 of the 642 legislative bills introduced in the 2007 legislative session. We identified 160 individuals that provided testimony and found that 32 percent were registered as either a professional or a volunteer lobbyist and 11 percent stated they were representing themselves. The remaining 57 percent were neither registered as lobbyists nor representing themselves. Of this latter group, about 30 percent stated that they were representing companies and utilities, 40 percent represented associations and non-profit organizations, and 30 percent represented state, local, or quasi-governmental entities. While this indicates a variety of individuals testify in front of the General Assembly, it was impossible to determine from the testimony records whether any of the individuals in the 57 percent group should have been registered as lobbyists.

As mentioned previously, statute does not require individuals to register as lobbyists if they limit their activities to simply testifying before legislative committees. However, if an individual contacts a legislator and attempts to influence him or her outside of public testimony, such contact meets the definition of “lobbyist” under statute, and that individual would be required to register. If the Department becomes aware of unregistered lobbyists, legal and administrative action is required to enforce registration requirements. Statute authorizes the Department to conduct investigations of unregistered lobbyists and demand, through court order, the records of an unregistered individual to aid in the investigation. If the evidence is sufficient, the Department may hold a hearing and issue a cease and desist order to stop an unregistered person from lobbying. Since enforcement through the legal and administrative process is time-consuming and expensive, the Department’s enforcement mechanisms are not appropriate for addressing every instance in which a question is raised about a potentially unregistered lobbyist.

To raise awareness and promote compliance with the lobbyist registration requirement, the Department provides training to lobbyists. For example, it held two sessions at the beginning of the 2008 legislative session – one for professional lobbyists and one for designated state employees. The training covers topics such as who should register, how to file electronically, and what information to include in disclosure reports. Staff report that although the trainings have not been continuously offered every year in the past, the Department now plans to offer these trainings annually in the future. The Department could also consider working with Legislative Council to provide training on lobbyist requirements to new legislators during the orientation after each election.

On the basis of our review, there is no clear evidence that there is a problem with unregistered lobbyists or that the Department’s authority over lobbyists needs to be strengthened in this area. While the Department’s ability to identify unregistered lobbyists and enforce the registration requirement is limited, there were few documented complaints against lobbyists during the period of our review. On the other hand, the Department should take steps to enforce existing disclosure requirements, as discussed in the previous section of this report.

There are no recommendations in this area.

Notaries Public

Chapter 3

Background

State law requires the services of notaries public in many areas including elections, adoptions and criminal proceedings. Under the Notaries Public Act [Section 12-55-101, et seq., C.R.S.], the Department commissions (i.e., licenses) individuals to perform notarial duties for four-year terms, which can be renewed. As noted in the Overview, these duties include taking sworn and unsworn testimony, administering oaths and affirmations, and acting as an unbiased, disinterested and official witness to the identity of a person who signs a document. Statute requires the Department to enforce the standards of professional practice for notaries, which include (1) how to properly notarize documents, (2) when notaries must keep records of notarizations and return notary seals and journals to the Department, (3) transactions to which a notary may not be a party, and (4) limitations on advertising.

We examined the Department's processes for commissioning notaries and for enforcing the Notaries Public Act. We identified areas for improvement with respect to enforcing notary standards and controls over notary seals and journals. Additionally, we noted several areas in which the Department could consider pursuing statutory change to strengthen the commissioning process and its ability to enforce the Notaries Public Act.

Enforcement of Notary Standards

Statute [Section 12-55-107, C.R.S.] requires the Department to revoke the commission of a notary public if the notary notarizes a blank document, falsely advertises that the notary has powers not authorized by the law, or otherwise fails to perform the duties of a notary as outlined in the Notaries Public Act. Failure to properly perform the duties of a notary includes, but is not limited to, notarizing an incomplete document, notarizing a document signed without the presence of the notary, notarizing a document for oneself or failing to verify the identity of the signer through allowable identification methods (i.e., an identification card issued by either the federal or state government). Statute also requires that the Department follow the Administrative Procedures Act [Section 24-4-101, et seq., C.R.S.] when disciplining a licensee. However, statute is unclear as to whether the Department is authorized to impose intermediate sanctions against notaries, such as training, temporary suspensions, or fines for these types of violations.

The Department becomes aware of potential violations of the law through its formal complaint system, which we discuss in more detail in Chapter 4. The Department received 149 complaints about notaries during Fiscal Years 2006 and 2007 and revoked a total of four notary commissions in Fiscal Years 2006 and 2007. We reviewed a sample of 45 closed complaints to determine the corrective action taken by the Department and identified 11 (24 percent) cases where the Department took enforcement actions not explicitly authorized by statute or inappropriately dismissed the complaints, as described below:

- Five cases were settled by having the notary attend mandatory training classes. The complaints in these cases included allegations, which were confirmed by the Department, that the notary notarized documents with blank fields, notarized documents that the notary did not witness being signed, accepted a foreign identification card, and failed to change his or her address with the Department.
- Two notaries were given a choice of penalties (e.g., training, suspension, revocation) as a result of the complaints filed against them and both chose to have their licenses suspended for several months. Both of these notaries notarized documents for themselves.
- Four cases were dismissed. In three cases, the notaries admitted to the allegations in the complaint, which included notarizing without witnessing the signature, failure to use the required language in an advertisement, failure to change the notary's address with the Department, and failure to use the notary's official signature. In the fourth case, the investigation found that the notary notarized a document related to a real estate transaction to which the notary was a party, which is a disqualifying interest under the law. None of the notaries involved in these complaints received enforcement action.

According to the Department, the State Administrative Procedure Act (Section 24-4-101, et seq., C.R.S), which sets forth the process that each agency must use when disciplining a licensee, gives the Department flexibility in determining when to revoke commissions. For example, Section 24-4-104(3)(a), C.R.S., states that "No revocation . . . shall be lawful unless . . . [the Department has] given the licensee a reasonable opportunity to comply with all lawful requirements." Statute provides an exception to this requirement and allows for immediate revocation in "cases of deliberate and willful violation or of substantial danger to public health and safety."

The complaint files did not include a determination by the Department regarding whether the violations were deliberate and willful. Additionally, the files did not contain documentation to indicate why the Department did not pursue a revocation hearing. The Department has also not developed guidelines or policies and procedures for determining circumstances under which intermediate sanctions would be appropriate. Such guidelines are necessary to promote consistent and equitable enforcement outcomes.

We also found two cases in which the notaries resigned their commissions upon notification of a complaint against them. Both of these notaries notarized a document they did not witness being signed. According to Department staff, at the time they believed that these two notaries were no longer subject to the Department's enforcement powers once they resigned. If this were the case, this could allow notaries to violate the law (such as not witnessing the signature of document they are notarizing), resign their commissions once a complaint has been filed, and then apply for reappointment at some future date without any record of the prior violation. The Department has since determined that it does have the jurisdiction to pursue investigation and revocation even if the notary resigns.

Department staff also indicated that some of the violations contained in the complaints in our sample were not serious enough to warrant revocation and could be remediated with alternative enforcement actions, such as attending mandatory training, suspending their licenses for a few months, or resigning the notary's commission. Staff indicated that applying alternative enforcement actions for less serious violations can be more cost-effective for the Department, since revocation hearings are labor-intensive and require significant resources. Examples of less serious violations which the Department considered appropriate for alternative enforcement actions included a notary failing to change his or her address with the Department or the notary's overlaying notary seals and signatures.

However, we found that the Department did not limit application of alternative enforcement actions to less serious violations. As described in the examples above, the Department gave notaries the option to choose alternative enforcement actions for serious violations, including a notary notarizing documents for his or herself or notarizing documents for which the notary did not witness the signing. Furthermore, we found that the Department appeared to apply the alternative enforcement actions inconsistently. For the notaries in our sample that notarized documents without witnessing the signing, the Department applied a range of enforcement actions including (1) requiring the notary to receive training, (2) accepting the notary's resignation without penalty, or (3) dismissing the complaint against the notary.

The Department's enforcement practices have, in some cases, allowed notaries that have committed serious violations to continue practicing. These notaries' actions could aid in the commission of fraud (with or without the notary's knowledge), since notaries act as both witnesses to identity and transactions. For example, in one case where the notary's commission was revoked for notarizing a document without the signer's presence, the signature of the absent person was forged by a third-party on a quit claim deed for the signer's house, allowing the third-party to take claim to the absent signer's house.

The Department should seek a statutory change to clarify its authority to establish an enforcement system with intermediate sanctions. To implement such a system, the Department would need to establish guidelines, policies and procedures ensuring that staff apply these additional sanctions consistently and appropriately, including discontinuing the practice of allowing notaries to determine their own penalties.

In addition, the Department should ensure that notaries who resign their commissions do not avoid penalties for violating the law, as two notaries in our sample were able to do. Specifically, the Department should complete investigations of notaries and pursue revocation as applicable, even if notaries resign their commissions or if their commissions expire.

Recommendation No. 4:

The Department of State should improve its enforcement of the Notaries Public Act by:

- a. Working as necessary with the General Assembly to clarify its authority to impose intermediate sanctions, rather than revocation, for lesser violations of the Act.
- b. Establishing guidelines, policies, and procedures to identify the violations subject to intermediate sanctions or revocation and the types of sanctions that may be applied when these violations occur.
- c. Documenting all enforcement decisions in case files, including a determination regarding when a revocation hearing should or should not be pursued.
- d. Discontinuing enforcement remedies that allow notaries to choose their own penalties for violating the Notaries Public Act.
- e. Completing investigations and pursuing revocation of commissions as appropriate, even if notaries under investigation resign their commissions or if their commissions expire during the investigation.

Department of State's Response:

- a. Agree. Implementation Date: May 2009.

The statutory remedy provided in this recommendation would make clear that the Department may exercise discretion in implementing corrective action. The requirement that a notary commission be revoked for even minor transgressions of the law would appear to be an oppressive standard and place an undue hardship of this office to implement. Modifying the statutory language to clearly grant the Department the ability to take remedial corrective action for minor transgressions of the Notaries Public Act would alleviate this hardship.

- b. Agree. Implementation Date: May 2009.

If the General Assembly takes action on (a), then policies will be created that provide predictable outcomes for violations of the Notaries Public Act.

c. Agree. Implementation Date: July 2008.

The Department agrees that well documented case files lend credibility to the administrative outcome and make final administrative actions more likely to withstand juridical review by a District Court. The notary program is presently drafting procedures that provide a step-by-step analysis for determining when a revocation hearing should or should not be pursued.

d. Agree. Implementation Date: July 2008.

The Department has updated corrective procedures and actions in accordance with the findings of the audit report. Accordingly, the Department is in the process of developing procedures which enable predictable outcomes for proven violations of the Notaries Public Act.

e. Agree. Implementation Date: Implemented.

The Department has determined that it has the ability to pursue notaries after resignation for violations of the Notaries Public Act. State law makes clear that notaries that fall under the governance of the Department and who commit an improper act while under such governance are subject to discipline if the State begins revocation proceedings before the notary resigns their commission. Furthermore, if a notary resigns before revocation proceedings are instituted, the Department still has jurisdiction over the notary by virtue of the plain language of the statute and in particular, the use of the word “anyone” codified in Section 12-55-107, C.R.S.

The Department will conduct investigations and implement corrective action, as appropriate, against notaries that resign their commissions or whose commissions have expired during the course of an investigation. Procedures have been drafted to reflect the statutory grant and supporting case law to take this action.

Notary Public Seals and Journals

Statute [12-55-112, C.R.S.] requires that a notary public signs his or her official signature on every notary certificate and to rubber stamp or emboss clearly and legibly his or her official seal under or near the signature or use an electronic signature. Statute [12-55-111, C.R.S.] also requires notaries to maintain a journal of every acknowledgement taken that affects the title of real property, but not other acts performed by the notary. When notaries resign or die, statute [Section 12-55-117, C.R.S.] requires notaries or their representatives to return their seals and journals to the Department. Returning the seals ensures that the resigned notaries can no longer practice, and returning the journal could allow the Department to verify notarial acts related to disputed real estate transactions.

We found that the Department's controls over the seals and journals of notaries that resign, die or choose not to renew their commissions are not sufficient. For example, the Department allows notaries to destroy their own seals when resigning their commissions, rather than requiring the notaries to send in the seals as mandated by statute. Instead, the Department requires the notary to submit a signed statement with his or her resignation letter attesting that the seal has been destroyed. In addition, the Department collects journals from notaries that resign or die. However, staff reported that they are unable to determine if a notary should return a journal because the Department does not have a method for determining whether notaries that resign, die or do not renew have been involved in the real property transactions that require the notary to keep a journal. Finally, the Department does not have any procedures for ensuring that the seals and journals of those notaries that do not renew their commission are returned to the Department or destroyed as appropriate.

The Department needs to take several steps to improve its controls over notary seals and journals. First, the Department should track those notaries whose commissions expire to ensure that they either renew their commissions or officially resign. As part of this effort, the Department should consider seeking statutory change to define the non-renewal of a commission as a resignation. Changing statute in this way would allow the Department to require notaries that allow their commissions to expire without resigning or renewing them to return their notary seals and journals to the Department, as appropriate.

Second, the Department should consider options for ensuring that notaries or their representatives return journals as necessary upon the notary's resignation or death. For example, the Department could require the notary to either return a journal or provide an affidavit stating that the notary did not perform notarial acts related to real property transactions. Another option would be to require that notaries maintain a journal for all notarial acts performed, which would require the Department to obtain a journal from every notary upon resignation or death. The Model Notary Act, published by the National Notary Association in 2002, recommends that notaries maintain a journal for all transactions, if sufficient privacy protections over the journals are in place, and states that "such data can be extremely useful in answering any future questions that may arise concerning the document or its signer." California requires that all transactions be recorded in the notary's journal, with a thumbprint of the signer for all real property transactions. Wyoming and Utah recommend, but do not require, that notaries keep a journal. The Department should consider whether notaries should maintain journals for all transactions and seek statutory change as necessary to implement this change.

Third, the Department needs to seek statutory change that would allow notaries or their representatives to destroy their seals upon resignation or death. Since notaries are entrusted with administering oaths and affirmations, taking various sworn and unsworn statements, and serving as a witness to identify, it seems reasonable for the Department to trust notaries to destroy their own seals if they provide an attestation to that effect. If the statute is not revised, then the Department should enforce the current statutory requirement that the seals be returned to the Department.

Finally, regardless of whether there are statutory changes affecting the return of notary seals and journals, the Department should institute reconciliation procedures to ensure that all the required seals and journals are returned or accounted for by the Department. For example, a field could be added to the Department's notary database noting the date of return or attestation to the non-existence of seals and journals. Then, a report could be run periodically to ascertain whether there were any notaries public that failed to return their seals and journals in accordance with statute, enabling the Department to follow-up with those notaries.

Recommendation No. 5:

The Department of State should improve the controls over notary seals and journals by:

- a. Tracking those notaries public whose commissions expire to ensure that they either renew their commissions or resign.
- b. Considering seeking a statutory change to define the expiration and non-renewal of a commission as a resignation.
- c. Requiring that, upon resignation, a notary either submit a journal of notarial acts or attest to the Department that he or she did not perform acts related to real estate transactions and did not keep a journal.
- d. Considering seeking a statutory change to require that notaries public record all notarial acts in a journal.
- e. Considering seeking a statutory change that would allow notaries public or their representatives to submit an affidavit attesting to the destruction of the notary's seal upon the notary's resignation or death. If statute is not changed, then the Department should ensure that it collects all notary seals required by statute.
- f. Performing a periodic reconciliation of seals and journals returned or destroyed against those notaries that are no longer commissioned and following up on any identified discrepancies.

Department of State's Response:

- a. Agree. Implementation Date. December 2008.

The Secretary of State has directed the Department's Information Technology Division to develop an automatic e-mail notice to notaries that are obligated to return their seal and notary memoranda in accordance with Section 12-55-115, C.R.S. Furthermore, the Information Technology Division is adding a data field to the present notary system that permits the Department to track and run a report of notaries that may have returned their seal and notary memoranda.

b. Agree. Implementation Date. May 2009.

The notary program is presently under sunset review. The Department has made the recommendation to the Department of Regulatory Agencies' (DORA) sunset reviewer that this statutory change be proposed in the sunset bill during the 2009 legislative session.

c. Agree. Implementation Date: August 2008.

Part one of this recommendation is resolved in the remedy articulated above in part (a). Part two of this recommendation (attest to the Department that he or she did not perform acts related to real estate transactions) appears to be a common sense method for achieving the statutory directive of retrieving a notary's journal. An affidavit stating "no real property transactions notarized" will be posted to the notarial website by August 2008.

d. Agree. Implementation Date: May 2009.

The notary program is presently under sunset review. The Department has made the recommendation to the Department of Regulatory Agencies' (DORA) sunset reviewer that this statutory change be included in the sunset bill during the 2009 legislative session.

e. Agree. Implementation Date: December 2008.

The Department agrees that an affidavit ensuring destruction of the notary's seal is an efficient method for fulfilling the spirit and purpose of Section 12-55-115, C.R.S. In the event that the Legislature does not agree that this is an appropriate method for discarding seals, the Department is taking steps to ensure that notary seals are collected by this office (see response to part (a) above).

The Department is presently sending letters to notaries who do not renew their commission to remind them to return their seals to the Department. Beginning in December 2008, the Department will be able to run a report cataloging all notaries who have not returned their seal. In addition, the Department will recommend to the DORA sunset reviewer that the affidavit provision be added to the statute.

f. Agree. Implementation Date: December 2008.

The Department is taking steps to remedy this issue by adding a data field to the present notary system that will permit it to run reports to reconcile which notaries are still required to return memoranda and notary seals to the office.

Commissioning Requirements

As noted previously, statute authorizes a notary public to administer oaths and affirmations and take acknowledgements. The Department's Notary Handbook further describes a notary public as a person of integrity that acts as an agent of the State by notarizing documents and, consequently, helps to prevent fraud and forgery. To ensure that individuals can fulfill these duties, the Notaries Public Act requires that notary applicants in Colorado must:

- Be a resident of Colorado.
- Be at least 18 years old.
- Be able to read and write English.
- Be familiar with Colorado notary law.
- Not have been convicted of a misdemeanor involving dishonesty, as defined in statute, within the last five years and never have been convicted of a felony.
- Never have had a notary commission revoked.

Individuals submit an application to the Department to become a notary. The application must include a signed affidavit stating that the applicant is either a United States citizen, permanent resident of the United States or is lawfully present in the United States. In addition, applicants must provide identification such as a Colorado driver's license. If approved, individuals are commissioned as notaries for four years and may apply for reappointment by submitting the same information required for the initial appointment. As of October 2007, there were about 106,000 commissioned notaries in Colorado.

We compared Colorado's requirements for becoming a notary public with a national benchmark and with practices in other states and found that Colorado's requirements are generally less rigorous. Specifically, the Model Notary Act, published by the National Notary Association in 2002, includes several requirements not found in Colorado law, such as:

- Completing at least three hours of mandatory training.
- Passing a written examination prior to licensure.
- Obtaining a \$25,000 bond.
- Submitting to a fingerprint-based background check.
- Disclosing criminal convictions and claims pending and disposed against a notary bond.

We also compared Colorado’s commissioning requirements with practices in five other western states, as shown in the following table.

Department of State Notary Public Commissioning Requirements in Colorado Compared to Five Other Western States						
	Colorado	California	New Mexico	Utah	Washington	Wyoming
Is passing a course of instruction and/or an examination required?	No	Yes	No	Yes	No	No – test is encouraged but not required.
If course or exam, what is required?	N/A	6 hr. course and exam	N/A	Online exam	N/A	N/A
Is bonding required?	No	Yes	Yes	Yes	Yes	Yes
Bond amount if required?	N/A	\$15,000	\$10,000	\$5,000	\$10,000	\$500
Is submission of fingerprints for background check required?	No	Yes	No	No	No	No
Is disclosure of prior convictions required?	No	Yes	No	Yes	Yes	No
Is disclosure of prior bond claims required?	No	No	No	No	No	No
Source: Colorado Notaries Public Act, California Government Code Section 8200-8230, New Mexico’s “Notary Public Act”, Chapter 286, Laws of 2003, Utah Code, Title 46, Chapter 01, Washington’s Chapter 42.22 RCW, Wyoming’s W.S. 32-1-101, et. al.						

Colorado’s requirements are less stringent than the recommendations in the Model Notary Act and are less stringent overall than each of the other five states in the comparison, as shown in the table. For example, all five states have a bonding requirement, three of the five states (California, Utah, and Washington) require disclosure of prior convictions, and two of the five states (California and Utah) mandate that applicants pass an exam before being commissioned as a notary. Currently about 2.2 percent of Coloradans are commissioned as notaries, compared to 0.82 percent in California, 0.89 percent in Utah and 1.95 percent in Wyoming.

As we previously discussed, the Department has found that notaries in Colorado sometimes violate basic notary standards such as notarizing documents for his or herself or notarizing documents without the signer’s presence. These actions can increase the risk of fraud and forgeries, a risk that could be mitigated by mandatory training or exams that help ensure that notaries perform their job correctly. In addition, if notaries were required to be bonded, it would be easier for victims of improper notarization to recoup a portion of their loss and might help protect notaries from undue pressure to improperly notarize documents. Finally, disclosure of a notary’s history of prior convictions and the submission of fingerprints for a background check may deter individuals that lack integrity from attempting to become notaries

The Department has previously attempted to strengthen commissioning requirements. For example, House Bill 05-1007 would have required notary applicants to pass an approved course and exam to become notaries. The Governor vetoed the bill. In addition, the General Assembly removed a statutory bonding requirement for notaries in 1992.

The Department should evaluate the Model Notary Act and commissioning requirements from other states and determine whether Colorado's commissioning requirements should be strengthened. Specific requirements to consider include, but are not limited to, (1) minimum training, (2) examinations, (3) bonding, (4) criminal background checks, and (5) disclosure of criminal convictions and claims pending and disposed against a notary bond. If the Department identifies additional commissioning requirements are necessary to ensure that notaries perform their duties properly, it should work with the General Assembly as appropriate to enact the new requirements. As part of this process, the Department could consider implementing new commissioning requirements incrementally. For example, bonding and disclosure of claims against bonds could be required first to better establish overall risk before requiring background checks. Other options could be to perform background checks on a sample basis after commissioning to ensure that a notary's status has not changed since commissioning.

Recommendation No. 6:

The Department of State should consider strengthening commissioning requirements for notaries public in Colorado by:

- a. Evaluating the Model Notary Act and other states' commissioning requirements and identifying additional commissioning requirements as necessary to ensure that only individuals who can be entrusted with the important responsibilities of a notary are commissioned as notaries.
- b. Working with the General Assembly as necessary to implement additional commissioning requirements for notaries.

Department of State's Response:

- a. Agree. Implementation Date: May 2009.

The Department refers to the Model Notary Act and other state's notary statutes to guide modifications to Colorado's Notaries Public Act. The Department has proposed several bills that are in line with provisions articulated in the Model Act including: requiring a notary journal for all notarizations, requiring training, meaning of disqualifying interest, etc.

The notary program is presently under sunset review. The Department has made recommendations to the DORA sunset reviewer that it propose several of the provisions outlined in the Model Notary Act.

b. Agree. Implementation Date: May 2009.

The Department has brought this issue to the attention of DORA's sunset reviewer and has requested that DORA make a recommendation for required training in the sunset bill that it will be proposing in the 2009 legislative session.

Administration

Chapter 4

Background

In addition to the specific issues we reviewed related to charitable solicitations, lobbyists, and notaries public, we looked at two administrative areas that cut across all of these programs: complaints and funding. We reviewed the Department's processes for monitoring and resolving complaints against charities, lobbyists and notaries and for managing the fees in these programs. This chapter describes ways in which the Department can improve these processes.

Complaints

Complaints are the primary mechanism by which the Department identifies potential problems with charities, lobbyists and notaries. For example, statute [Sections 12-55-107(1.5) and 24-6-305(2)(b), C.R.S.] allows the Department to investigate potential violations of the Notaries Public Act and Colorado Sunshine Act upon receiving a complaint. In addition, statute [Section 6-16-111(6)(a), C.R.S.] allows the Department to deny, revoke or suspend the registrations of charities that violate the Charitable Solicitations Act. Once a complaint has been filed, staff within each program (i.e., charities, lobbyists or notaries) determine whether the complaints can be substantiated and, if so, the appropriate remedy. For Fiscal Years 2006 and 2007, the Department reported receiving 149 complaints related to notaries, 108 related to charities, and 2 related to lobbyists.

In general, an effective complaint handling system usually contains the following elements:

- A log of complaints received, including the date the complaint was opened and closed, the name of the complainant, the target of the complaint, the dates of actions taken, and the final resolution of the complaint.
- A file (electronic or paper) that contains copies of the complaint, copies of relevant correspondence, notes of any meetings or conversations related to the complaint, investigative notes, and documentation explaining the final disposition.
- Standard policies and procedures that outline the steps to be taken to ensure complaints are handled timely and equitably, the limits of the Department's authority under the law or agency policy, and the corrective measures to be taken if the complaint is substantiated.

- A process for periodically analyzing complaint data, such as logs and complaint data, to determine whether staff are handling complaints appropriately. A supervisor, or other staff not connected with investigating complaints, should conduct this analysis.

We reviewed the Department's complaint files for charities, lobbyists and notaries to determine whether the Department had adequate complaint handling systems and if it handled the complaints properly. Overall, we found that the Department lacks such a system in each of these three programs.

First, we found that the Department does not maintain complaint logs for lobbyists and notaries. As a result, the Department lacks key information on the type and severity of complaints received or how the complaints were resolved. Second, we found the Department lacked documentation for the charity and notary complaints we reviewed. Specifically, we reviewed the files for complaints made against 41 charities in fiscal years 2006 and 2007 and found that for 32 (78 percent) complaints, the files were missing key documentation that would allow a reviewer to determine:

- The date and nature of the complaint.
- The date that inquiries were sent to the target of the complaint.
- The resolution of the case and the date resolved.
- The timeliness, equitability and appropriateness of the case's resolution.

Because of the overall lack of documentation in these 32 charity complaint files, we could not perform the tests necessary to conclude whether or not the Department handled these complaints appropriately. For the remaining nine cases that contained sufficient documentation to conduct testing, we determined that the Department resolved them reasonably, although we could not determine if five of these nine complaints were resolved timely.

For notaries, we tested a sample of 45 complaint files from Calendar Years 2006 and 2007 and noted problems related to timeliness and missing documentation, as discussed below.

- **Timeliness.** We found 6 (13 percent) of the 45 complaints were not handled in a timely manner. The untimely notary investigations involved delays in sending initial and follow-up inquiries to the notary named in the complaint. Specifically, for four cases, the Department did not send out the initial inquiry letter to the notary for more than two months, including one case in which the Department did not send the initial inquiry letter for seven months. For three cases the Department did not send a second inquiry letter when the notary failed to respond to the initial letter for more than three months. We discussed these complaints with the Department staff, who agreed that the complaints were not handled timely. We also noted that five of the six untimely complaints occurred in early Fiscal Year 2006.

- **Lack of documentation.** We also found that six (13 percent) of the 45 complaints in our sample lacked sufficient documentation in key areas. Specifically, for five cases we could not determine if the case was handled timely because there was no documentation to identify when the complaint was received, when an inquiry was sent by the Department or when actions were taken by the Department to resolve the complaints. In addition, for two cases, the Department did not maintain documentation on how these cases were resolved, so we could not determine if the resolution of the complaint was reasonable. Finally, for one case, the complaint file contained no documentation. We noted that at least four of these six complaints with insufficient documentation occurred in early Fiscal Year 2006.

We found sufficient documentation of both the lobbyist complaints and the actions taken to investigate and resolve those complaints. We concluded that the complaints against lobbyists had been handled properly.

Third, we found that the Department has not implemented comprehensive policies and procedures addressing how staff should handle the complaints against charities, lobbyists and notaries. Specifically, the Department does not have policies identifying the documents staff need to maintain in the complaint files or setting deadlines for responding to and resolving complaints. Department policy does require that these complaints be submitted in writing and the Department has developed standard forms for filing written complaints against charities and notaries, which are available on its Web site. However, the Department has not developed standard complaint forms for lobbyists. The Department does not have any other formal policies and procedures for handling complaints against lobbyists, charities and notaries.

Finally, we did not find evidence that the Department conducts any type of analysis or supervisory review to determine whether staff are handling complaints appropriately.

Without an adequate complaint system, including logs, documentation, established timeframes, and policies and procedures, the Department cannot ensure that staff settle the complaints timely, equitably and appropriately. In addition, management cannot perform an effective supervisory review to ensure that actions taken by staff are appropriate. The lack of these basic controls significantly weakens the Department's accountability for handling complaints properly and for responding to concerns if its handling of a particular complaint is challenged.

The exceptions from our testing of charity and notary complaints are concerning. If the Department does not investigate and resolve complaints timely, it raises the risk that unscrupulous charities will continue to solicit donations from the public and that notaries not acting in accordance with the law will continue to practice. For example, cases in our sample included serious allegations such as the misappropriation of funds, false reporting by charities, and notarization of blank

documents or documents without the signer present. Given that the purpose of the Charitable Solicitations Act is to protect the public's interest and that notaries public are agents of the State, it is important that all these complaints are investigated appropriately and that the investigations are documented adequately.

Recommendation No. 7:

The Department of State should create an effective complaint handling system for the charity, lobbyist and notary programs by:

- a. Creating and maintaining a complaint log for each program. The log should include a summary of the complaint, the individual or business named in the complaint, the complainant, dates that the complaints and related responses are received, actions taken by the Department, and the outcome of the complaint.
- b. Developing and implementing policies and procedures for handling complaints across all three programs. The policies and procedures should include, but not be limited to: requirements for logging complaints; maintaining documentation on each complaint; deadlines for staff to make initial and follow-up inquiries regarding complaints; and guidance on steps to take and applicable penalties to impose in resolving the complaints.
- c. Analyzing complaint data (e.g., logs and complaint files) on a periodic basis to determine whether complaints are being handled appropriately. Staff not involved in the investigation of the complaints should conduct this analysis.

Department of State's Response:

- a. Agree. Implementation Date: October 2008.

The Licensing Division has developed detailed complaint logs for notary complaints, lobbyist complaints, and charitable solicitations complaints. In addition, the Department is studying the feasibility of establishing a uniform complaints log for each division, which could replace the various program complaint logs. That analysis is expected to be completed by July 1, 2008. Further, the Department is exploring the viability of developing a department-wide electronic complaint tracking system.

- b. Agree. Implementation Date: September 2008.

The Department will develop comprehensive policies on complaint handling procedures for each division. The policies will include the items identified in this recommendation and will be reviewed and approved by the Administrative Division prior to implementation. At present, each division handles complaints differently. Some complaints require a formal investigation that requires months, while others can be handled with a phone call.

c. Agree. Implementation Date: September 2008.

Each division director will be responsible for reviewing and analyzing complaint data no less than monthly, but more often as needed. Division Directors will be accountable for ensuring that all complaints within their division are properly and timely resolved.

Program Fees and Funding

Statute [Section 24-21-104(3)] requires the Department to adjust all of the fees it charges to reflect the direct and indirect costs of the related programs. Further, Sections 6-16-104(7), 6-16-104.3(12), and 6-16-104.6(12), C.R.S., require the filing fees for the annual registration (and any associated amendments) of charities, professional fundraising consultants, and paid solicitors to be established by the Department in an amount that reflects the costs of administering the Charitable Solicitations Act. Finally, Section 24-6-303(1.3)(a), C.R.S., requires the Department to set the fees charged to lobbyists for registration and filing reports to be sufficient to offset the Department's costs of providing electronic access to lobbyist information and to process and maintain the required disclosure information.

As noted previously, statute requires that all fees charged by the Department reflect its direct and indirect costs. In addition, statute requires the fees for charities and lobbyists to reflect the costs of administering these programs (i.e., the programs must be self-supporting). Fees for the lobbyist and charity programs are deposited into the Department's Secretary of State Fees Cash Fund, which the Department also uses for other programs such as business licensing. Fees and expenditures for the notary program are tracked in the separate Notary Administration Cash Fund. We reviewed the revenues and expenditures associated with the Department's charity, lobbyist and notary programs for Fiscal Years 2005 through 2007 and found that the Department's fees do not appear to reflect the costs of administering these programs, as described below.

Lobbyists. For the period Fiscal Years 2005 through 2007, we found that the lobbyist program reported an average annual deficit of about \$24,650 on average revenue of about \$24,000. The deficit figure does not include an allocation for the staff supervisor and division director's salary and benefits, which we estimated to be an additional \$17,000 in Fiscal Year 2007. Therefore, the total revenue shortfall for Fiscal Year 2007 was about \$39,000. As noted in the Office of the State Auditor's *Cash Funds Uncommitted Reserves Report For the Fiscal Year Ended June 30, 2007* (October 2007), the Secretary of State Fees Cash Fund, in which the lobbyists fees are held, had excess reserves of between \$700,000 and \$2.8 million during Fiscal Years 2005 through 2007, which indicates that other Department programs are subsidizing the lobbyist program.

We identified several specific ways in which the Department could ensure that the lobbyist program meets its statutory mandate to be self-supporting. First, it should analyze the costs of the lobbyist program and determine whether they can be reduced. Second, the Department could improve its collection of penalties levied against lobbyists. As we discussed in Chapter 2, we identified about \$2,300 in lobbyist penalties that were waived inappropriately during the first four months of Fiscal Year 2008. In addition, we found that the Department collects a small percentage of the penalties assessed against lobbyists. For example, lobbyist penalties for Fiscal Years 2006 and 2007 totaled about \$97,700 while collections totaled about \$25,800 (26 percent) for the same period, leaving about \$71,900 (74 percent), or about \$36,000 annually, in unpaid penalties. If the Department had been more successful in collecting these penalties and only granted penalty waivers for reasons allowed under statute, the lobbyist program would have been significantly closer to being self-supporting.

We recommended improvements to the penalty waiver process in Chapter 2. The Department should also consider ways to improve its collection of lobbyist penalties. Department staff indicated that about \$16,800 of uncollected penalties for Fiscal Years 2006 and 2007 were turned over to the Department of Personnel and Administration's Central Collection Service in September 2007, resulting in additional collections remitted to the Department of about \$700 (4 percent). Other options the Department should consider are not allowing lobbyists to renew their registration if they have outstanding penalties and notifying the legislative leadership about lobbyists with outstanding penalties. These are steps the Department had not taken at the time of our audit.

Finally, the Department should evaluate whether its fees are set appropriately. For example, statute [Section 24-6-303(1.3)(a), C.R.S.] caps the lobbyist registration fee at \$50 annually. However, the Department only charges \$25 if the lobbyist files electronically (which most lobbyists do) and has not changed this fee since October 2001.

Increasing fees could help the Department reduce the deficit in its lobbyist program. We previously recommended in Chapter 2 that the Department also consider increasing penalties when lobbyists file their monthly disclosure statements late. The Department should evaluate the options we have presented (e.g., reducing costs, improving collections, and raising fees and penalties) and determine the most cost-effective and equitable approach for reducing the deficits we identified.

Charitable solicitations. We found that the charitable solicitations program is not self-supporting either, even though it is required to be by statute. Although the program broke even in Fiscal Year 2005, it reported a net deficit of about \$14,600 in Fiscal Year 2006 on about \$85,400 revenue and a deficit of about \$17,800 in Fiscal Year 2007 on about \$88,900 revenue. Similar to the lobbyist program, the Department did not allocate a proportionate share of the Director's salary and benefits to the charity program, which we estimated to be about an additional

\$10,000 in Fiscal Year 2007. Therefore, the total shortfall for Fiscal Year 2007 was about \$27,800. As with the lobbyist program, other Department programs are effectively subsidizing the deficits in the charity program.

The Department should reevaluate its costs in the charities program to identify potential reductions or efficiencies that could be gained. The Department could also consider adjusting the fees it charges charities to register, which have not changed since 2002. Statute [Section 6-16-104(7), C.R.S.] allows the Department to set this fee, and currently charities pay \$10 for initial and renewal registrations. We found that other states charge higher registration fees. For example, Utah charges \$100, Oregon charges a sliding fee of \$10 to \$200 based on the amount of contributions received by the charity, and Pennsylvania charges a sliding fee of \$15 to \$250 based on contributions. As part of this reevaluation, the Department will need to consider whether its new power to fine charities, professional fundraising consultants, and paid solicitors will make up the charity program's deficit without raising fees. As discussed in Chapter 1, House Bill 08-1109 authorizes the Department to charge fines ranging from \$100 to \$1,000 annually for not meeting various filing requirements.

Notaries public. In contrast to the lobbyist and charity programs, the notary program collects fees in excess of costs. For example, Fiscal Year 2005 revenues of about \$351,000 exceeded expenditures by about \$85,000 and Fiscal Year 2007 revenues of about \$321,000 exceeded expenditures by about \$88,000. Also, as noted in the Office of the State Auditor's *Cash Funds Uncommitted Reserves Report For the Fiscal Year Ended June 30, 2007* (October 2007), the Notary Administration Cash Fund had excess reserves of between \$427,000 and \$718,000 during Fiscal Years 2005 through 2007. In its response, the Department indicated that it would be increasing the use of investigators, providing more training, and examining the current fees being charged in the notary program as ways to reduce the cash fund balance.

In addition to the remedies mentioned above for each program, the Department should improve the tracking within the Secretary of State Fees Cash Fund to better ensure that the lobbyist and charity programs are self-supporting. Specifically, the Department should establish cost centers within this cash fund and appropriately allocate all revenue and expenditures to the cost centers, including applicable indirect costs such as a portion of management's salary and benefits. Establishing these cost centers will help the Department assess the appropriateness of fees and ensure the lobbyist and charity programs are not relying on fees from other programs administered by the Department.

Recommendation No. 8:

The Department should improve its management of funds in the charitable solicitations, lobbyist and notary programs by:

- a. Establishing an adequate tracking system and cost centers within the Secretary of State Fees Cash Fund for the lobbyist and charitable solicitations programs and appropriately allocating all revenue and expenditures, including indirect costs such as management's salary and benefits, to the cost centers.
- b. Identifying and implementing ways to improve the collection of assessed penalties against lobbyists, such as not allowing delinquent lobbyists to renew their registrations and notifying the General Assembly about delinquent lobbyists. The Department should also analyze all program costs to identify potential cost savings or efficiencies.
- c. Routinely monitoring whether revenue is covering the expenditures in each of these programs. If deficits or surpluses are incurred in any of the three programs, expenditures and fees should be adjusted accordingly. In the case of the lobbyist program, statutory change may be necessary to increase fees or penalties for lobbyists.

Department of State's Response:

- a. Agree. Implementation Date: July 2008

We are currently developing a process of identifying organizational units for each program. This will enable the finance unit to effectively track revenue and expenditures. In addition we are working with the appropriate programs to identify the amount of time that management spends on the associated programs to come up with an expense that can indirectly be charged against the program.

- b. Agree. Implementation Date: Implemented.

The Elections Division has implemented a process by which delinquent or outstanding professional lobbyist disclosures are identified. Invoices are issued at least monthly and include all outstanding penalties, regardless of whether the professional lobbyist has actually filed a report. Further, the Elections Division has modified its online disclosure system to preclude registration for a new fiscal year if any imposed fines are outstanding.

As mentioned above, the Elections Division has instituted a process where monthly reports are generated identifying all outstanding fines for professional lobbyists. Invoices are issued to delinquent professional lobbyist, no less than monthly, regardless of whether or not a disclosure report has actually been filed.

c. Agree. Implementation Date: July 2008.

We already have a process in place for monitoring revenue and expenditures by division. We will add an organizational unit that will specifically identify Charitable Solicitations and Lobbyists. We currently track this type of information for the Notary Program. We will communicate monthly to program management the revenue received vs. expenditures. This information will be useful as it relates to fee changes in the future.

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