

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



**INTERIM SUPPLEMENTAL REQUEST FOR FY 2010-11
and FY 2011-12**

DEPARTMENT OF PERSONNEL & ADMINISTRATION

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

**Prepared By:
Caroline Smith, JBC Staff
June 20, 2011**

For Further Information Contact:

Joint Budget Committee Staff
200 E. 14th Avenue, 3rd Floor
Denver, Colorado 80203
Telephone: (303) 866-2061
TDD: (303) 866-3472

**DEPARTMENT OF PERSONNEL & ADMINISTRATION
FY 2010-11 and FY 2011-12 INTERIM SUPPLEMENTAL REQUESTS
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| Totals for All Interim Supplementals | N.A | N.A. |

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**Interim Supplemental Request #1
 Travel Rebate Reimbursement**

| | Request | Recommendation |
|--------------------|----------|----------------|
| Total - Cash Funds | \$77,973 | \$77,973 |

| | |
|--|------------|
| Does JBC staff believe the request satisfies the interim supplemental criteria of Section 24-75-111, C.R.S.? [The Controller may authorize an overexpenditure of the existing appropriation if it: (1) Is approved in whole or in part by the JBC; (2) Is necessary due to unforeseen circumstances arising while the General Assembly is not in session; (3) Is approved by the Office of State Planning and Budgeting (except for State, Law, Treasury, Judicial, and Legislative Departments); (4) Is approved by the Capital Development Committee, if a capital request; (5) Is consistent with all statutory provisions applicable to the program, function or purpose for which the overexpenditure is made; and (6) Does not exceed the unencumbered balance of the fund from which the overexpenditure is to be made.] | YES |
| Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.] | YES |
| This request meets the interim supplemental criteria of Section 24-75-111, C.R.S., because it is the result of data that was not available when the original appropriation was made. Additionally, staff's understanding is that the Department was notified of the rebate after the General Assembly had concluded its most recent session. | |

Department Request: The Department requests an additional \$77,973 cash funds spending authority for FY 2010-11, for the Office of the State Controller, Operating Expenses line item. This amount represents the federal government's portion of a \$311,893 rebate that the State received through the State Travel Management Program. The State must reimburse the federal government for the portion of the rebate that resulted from the expenditure of federal funds.

Staff Recommendation: Staff recommends the Department's request for an additional \$77,973 cash funds spending authority for FY 2010-11.

Staff Analysis:

- Background: The State Travel Management Program is responsible for the oversight and monitoring of employee travel, including negotiating and administering contracts with airlines, rental car agencies, and other travel-related entities. It provides training, guidance, and administrative support for all state agencies and institutions of higher education. During FY 2009-10, the Department re-negotiated its travel card contract with US Bank, and became

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eligible for rebates based on factors such as purchasing volume and the timeliness of payments.

- ❑ Analysis: When the State receives rebates that are based on purchasing volume and expenditures, the federal government typically requires to be reimbursed for the portion of the rebate that is attributed to the expenditure of federal funds. The Department estimates that the federal fund participation rate for the State Travel Management Program is 25.0 percent, primarily because 83.3 percent of the total rebate was generated by institutions of higher education. The institutions typically use a significant amount of federal grants to fund their research and travel-related activities.
- ❑ FY 2010-11: The Department is eligible for the rebate during FY 2010-11, at which time the federal government will request its reimbursement. It is possible that if the Department waits to request the spending authority until the January, 2012 supplemental process, the rebate may no longer be available.

**Interim Supplemental Request #2
 Recovery Audit Spending Authority**

| | Request | Recommendation |
|--------------------|----------------|-----------------------|
| Total - Cash Funds | \$1,600,000 | \$0 |

| | |
|--|-----------|
| Does JBC staff believe the request satisfies the interim supplemental criteria of Section 24-75-111, C.R.S.? [The Controller may authorize an overexpenditure of the existing appropriation if it: (1) Is approved in whole or in part by the JBC; (2) Is necessary due to unforeseen circumstances arising while the General Assembly is not in session; (3) Is approved by the Office of State Planning and Budgeting (except for State, Law, Treasury, Judicial, and Legislative Departments); (4) Is approved by the Capital Development Committee, if a capital request; (5) Is consistent with all statutory provisions applicable to the program, function or purpose for which the overexpenditure is made; and (6) Does not exceed the unencumbered balance of the fund from which the overexpenditure is to be made.] | NO |
| Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.] | NO |
| The Department requests \$1.6 million cash funds spending authority for FY 2011-12 in order to fulfill the requirements of H.B. 10-1176. The request does not meet interim supplemental criteria because the Executive Branch had numerous opportunities during the 2010 and 2011 budget cycles to request the funds, yet it declined to do so. | |

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Department Request: The Department requests an additional \$1.6 million cash funds appropriation from the Recovery Audit Cash Fund for FY 2011-12. Although there is currently no money in the Cash Fund, the Department states that the appropriation will serve as a proxy to allow the Department to enter into a contingency-based contract with a recovery audit vendor, reimburse state agencies for costs they may incur during the recovery audit, and for any reimbursements to the federal government as required by federal rules and regulations.

Staff Recommendation: **Staff does not recommend the Department's request based on the components of the 1331 interim supplemental because:** (1) it does not meet 1331 supplemental criteria; (2) there are questions regarding the Department's interpretation of State statute; (3) staff has concerns about how the Department calculated the requested appropriation amount; and (4) it is unlikely that the cash fund will receive any funds during FY 2011-12, and therefore the appropriation represents empty spending authority. **However, staff recommends that the Committee take into account the following additional considerations, which could outweigh staff's recommendation.**

Additional Considerations: The passage of H.B. 10-1176 and H.B. 11-1307 indicate the General Assembly's intent for the Office of the State Controller to contract with a third-party vendor to conduct recovery audits. Pursuant to Section 24-30-203.5 (3) (a), C.R.S., the State Controller shall contract to conduct recovery audits for a three-year time frame, FY 2007-08 through FY 2009-10, by July 1, 2011. Given the process for issuing and approving State contracts, it is highly unlikely that the Office of the State Controller will finalize a contract by July 1. The contracting delays have impeded the implementation of H.B. 10-1176, including the benefits of transferring a portion of the recovery audit moneys to the General Fund.

Although staff does not recommend the Department's request as submitted, staff is concerned that the Office of the State Controller will not approve a recovery audit contract without the \$1.6 million cash funds appropriation. Staff inquired whether the Controller could enter into the contract if the Committee approved an appropriation for only the anticipated amount of the vendor contingency fees (such as \$320,000 instead of \$1.6 million). The Department's position is that it requires the full \$1.6 million cash funds appropriation to enter into a contract with a vendor.

If the Committee believes that the importance of conducting the recovery audits outweighs the factors in JBC staff's analysis, it should appropriate the requested \$1.6 million cash funds so that the Office of the State Controller will approve a recovery audit contract.

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Staff Analysis:

- ❑ Supplemental criteria: This request does not meet 1331 interim supplemental criteria because it is based on H.B. 10-1176, and the Department has been aware of the contracting requirements for more than a year. The Executive Branch has had numerous opportunities to request these funds through the regular budget process, but it declined to do so. It is unclear to staff why the Department postponed its request to this time, but there have been several opportunities to request the funds while the General Assembly was in session.

- ❑ Interpretation of State statute: The Department's request states that Section 24-30-202 (1), C.R.S., prohibits the State Controller from approving a contingency-based contract until it receives "sufficient spending authority to ensure that the entire contract can be paid within existing appropriations."

Staff spoke with Legislative Legal Services about whether the Department requires such an appropriation prior to entering into a contingency-based contract. Staff's understanding is that the term "disbursement" used in Section 24-30-202 (1), C.R.S., refers to an actual payment, not the signing of the contract. Furthermore, since statute specifies a fund source to pay the vendor's contingency fees, there is little risk to the vendor that the General Assembly would choose to not appropriate the moneys necessary to pay for successful audits.

- ❑ Requested appropriation amount: Staff questions whether the Department actually requires \$1.6 million cash funds to enter into the contract. Recovery audit vendors conduct "data mining" to identify which departments or divisions to audit. However, the Department assumed that the vendor will audit every potential dollar in the State. It's also unclear why the Department requests an appropriation for the maximum potential recovery amount, because the majority of the recovered funds are to be deposited into the Recovery Audit Cash Fund and transferred to the General Fund at the end of the three-year audit cycle. The vendors receive a percentage of the recovered funds, and research for H.B. 10-1176 found that the highest contingency fee amount was 20.0 percent of the recovered funds.

- ❑ Recovery Audit Cash Fund: The Cash Fund will consist of moneys that are recovered during the audit process. Based on experiences in other states, no recovery money is expected until at least 24 months after the contracting process begins. It is questionable whether the cash funds will be available during FY 2011-12, and therefore the \$1.6 million appropriation most likely represents empty spending authority. The Office of the State Controller's FY 2011-12 appropriation is \$2.8 million total funds, so the additional \$1.6 million cash funds appropriation could distort what one assumes are the Office's FY 2011-12 expenditures.

| | FY 2009-10 | FY 2010-11 | Fiscal Year 2010-11 Interim Supplemental | | |
|--|------------|---------------|--|--------------------|-------------------------------|
| | Actual | Appropriation | Requested Change | Recommended Change | New Total with Recommendation |

DEPARTMENT OF PERSONNEL & ADMINISTRATION
Executive Director - Kathy Nesbitt

Interim Supplemental #1 - Travel Rebate Reimbursement

(5) Division of Accounts and Control

(A) Office of the State Controller

| | | | | | |
|----------------------|---------------|---------------|---------------|---------------|----------------|
| Operating Expenses | <u>80,438</u> | <u>89,999</u> | <u>77,973</u> | <u>77,973</u> | <u>167,972</u> |
| General Fund | 0 | 0 | 0 | 0 | 0 |
| Cash Funds | 80,438 | 0 | 77,973 | 77,973 | 77,973 |
| Reappropriated Funds | 0 | 89,999 | 0 | 0 | 89,999 |

| Totals | | | | | |
|--|--------------|--------------|------------|------------|--------------|
| DEPARTMENT OF PERSONNEL & ADMINISTRATION | | | | | |
| TOTALS for ALL Departmental line items | 143,591,779 | 160,685,709 | 77,973 | 77,973 | 160,763,682 |
| FTE | <u>371.9</u> | <u>391.3</u> | <u>0.0</u> | <u>0.0</u> | <u>391.3</u> |
| General Fund | 5,146,961 | 5,104,155 | 0 | 0 | 5,104,155 |
| Cash Funds | 6,817,359 | 10,576,962 | 77,973 | 77,973 | 10,654,935 |
| Reappropriated Funds | 131,627,459 | 145,004,592 | 0 | 0 | 145,004,592 |
| Federal Funds | 0 | 0 | 0 | 0 | 0 |

Key:

"N.A." = Not Applicable or Not Available

1/ New line item

| | FY 2010-11 | FY 2011-12 | Fiscal Year 2011-12 Interim Supplemental | | |
|--|---------------|---------------|--|--------------------|-------------------------------|
| | Appropriation | Appropriation | Requested Change | Recommended Change | New Total with Recommendation |

DEPARTMENT OF PERSONNEL & ADMINISTRATION
Executive Director - Kathy Nesbitt

Interim Supplemental #2 - Recovery Audit Spending Authority

(5) Division of Accounts and Control

(A) Office of the State Controller

| | | | | | |
|---|-------------|-------------|------------------|----------|----------|
| RECOVERY AUDIT PROGRAM DISBURSEMENTS 1/ | <u>N.A.</u> | <u>N.A.</u> | <u>1,600,000</u> | <u>0</u> | <u>0</u> |
| General Fund | N.A. | N.A. | 0 | 0 | 0 |
| Cash Funds | N.A. | N.A. | 1,600,000 | 0 | 0 |
| Reappropriated Funds | N.A. | N.A. | 0 | 0 | 0 |

| Totals | | | | | |
|--|--------------|--------------|------------|------------|--------------|
| DEPARTMENT OF PERSONNEL & ADMINISTRATION | | | | | |
| TOTALS for ALL Departmental line items | 160,685,709 | 156,979,780 | 1,600,000 | 0 | 156,979,780 |
| FTE | <u>391.3</u> | <u>394.3</u> | <u>0.0</u> | <u>0.0</u> | <u>394.3</u> |
| General Fund | 5,104,155 | 5,079,400 | 0 | 0 | 5,079,400 |
| Cash Funds | 10,576,962 | 8,906,486 | 1,600,000 | 0 | 8,906,486 |
| Reappropriated Funds | 145,004,592 | 142,993,894 | 0 | 0 | 142,993,894 |
| Federal Funds | 0 | 0 | 0 | 0 | 0 |

Key:

"N.A." = Not Applicable or Not Available

1/ New line item