

MEMORANDUM

TO: Joint Budget Committee Members

FROM: John Ziegler, JBC Staff

SUBJECT: Summary of Potential JBC Bills Discussed During the FY 2010-11 Briefing and Hearing Process

DATE: January 11, 2010

Attached for your consideration is a list of potential legislation that was discussed during the FY 2010-11 briefing and hearing process. This potential legislation may have been requested by the department, recommended by the staff, or suggested by a JBC member. Pursuant to the Joint Budget Committee rules, a unanimous vote of the JBC is necessary for a bill to be considered a JBC bill.

Please note that this list only includes items discussed during the briefing and hearing process. There may be other bills requested or recommended during the supplemental and figure setting processes upon which the JBC will take action.

List of Legislation Recommended or Suggested During FY 2010-11 Budget Briefings and Hearings

Agriculture:

1. Staff recommends the Committee sponsor legislation to remove all statutory caps on indirect costs for the Brand Board, Alternative Livestock, Chemigation Program, and the Agricultural Product Program. Staff also recommends that the legislation eliminating indirect cost caps, also eliminate the General Fund subsidy to the Agricultural Products Program.

Education:

2. *[Note: JBC is scheduled to act on supplemental requests on 1/8/10, including adjustments to total program funding, and staff is planning to prepare the Education supplemental bill for introduction on 1/13/10]* As soon as possible, the Joint Budget Committee should introduce a negative supplemental appropriation bill requiring a public school finance total program funding recision of \$110 million, as contemplated in S.B. 09-256. If this bill is not enacted and does not become law prior to January 29, 2010, school districts will be authorized to spend the \$110 million that has been set aside in a fiscal emergency restricted reserve. Further, absent a recision, the State Education Fund balance will be depleted by the end of FY 2009-10 and may even prove insufficient to support existing appropriations should income tax revenues fall short of projections.
3. If the Committee intends to include the Governor's proposal to reduce General Fund appropriations for public school finance by \$223 million in FY 2010-11 as part of its budget balancing plan for the General Assembly's consideration, the Committee should discuss this plan with leadership and members of the Education Committees to ensure that the necessary statutory changes can be enacted in a timely manner. Does the Committee plan to sponsor this bill?
4. The Committee sponsored S.B. 09-260, which temporarily transfers certain revenues to the State Public School Fund rather than to the Public School "Permanent" Fund. This bill required these transfers for FY 2008-09 and FY 2009-10 only, making about \$27 million available in each fiscal year to provide a portion of the state funding for school finance and reducing State Education Fund expenditures. The Committee could consider extending this bill for one more year to mitigate reductions in total program funding for FY 2010-11.
5. Staff recommends that the General Assembly consider eliminating the statutory provision that requires that each school district receive a minimum amount of state funding per pupil through the School Finance Act, notwithstanding the application of the statutory formula. If the General Assembly elects to maintain the minimum state aid provision, it should statutorily clarify its intent concerning the annual calculation of this amount.
6. *[This recommendation was included as part of staff's 1/8/10 recommendations related to supplemental requests for Education.]* Staff recommends that the Committee introduce legislation to repeal the Comprehensive Health Education Fund, effective July 1, 2010. This fund no longer serves the purpose for which it was created, and it unnecessarily complicates the process of making appropriations for categorical programs and fiscal year-end accounting procedures.

7. Staff recommends that the JBC sponsor legislation which would modify statute by adding permissive language such that if the JBC does not approve a salary survey or performance-based pay increase common policies, or both, teacher compensation at the Colorado School for the Deaf and Blind would be set by the General Assembly and not harmonized with the salary schedule set in the previous year by the school board of El Paso School District 11 (Colorado Springs), as is the current requirement.

Governor:

8. Staff recommends that the Committee consider eliminating the transfer of moneys from the Operational Account of the Severance Tax Trust Fund to the GEO's Low-Income Energy Assistance Fund for FY 2010-11 and FY 2011-12. Moneys needed to support the Department's weatherization program can be supplemented with federal funds made available to the State through the passage of ARRA. Staff also recommends that statute be amended to eliminate the \$1.625 million Severance Tax allocation for the Low Income Energy Assistance Program (LEAP) for FY 2009-10, in light of additional Temporary Assistance to Needy Families funding for the LEAP program and a reduced need to transfer LEAP funds to weatherization programs in FY 2009-10.
9. Staff recommends that the Committee pursue the elimination of the FY 2009-10 and FY 2010-11 transfers to the Clean Energy Fund. The programs supported by the Clean Energy Fund in the Governor's Energy Office (GEO) can be supplemented with federal funds received after the passage of the American Reinvestment and Recovery Act of 2009 (ARRA). Staff recommends that the Committee discuss the proposed decreases in transfers to the economic development funds with the Department at the hearing to determine the impact such decreases would have on achieving programmatic goals.

Health Care Policy and Finance:

FY 2009-10 Only Issue

10. Staff recommends that the Committee sponsor legislation that amends S.B. 09-271 as follows: (1) allow for the transfer of \$1.0 million from the Health Disparities Fund to offset General Fund appropriations in the Medical Services Premiums line item (this was included in the Governor's August Supplemental package); (2) increases the transfer from the Primary Care Fund from \$15.0 million to \$19.4 million to offset appropriations in the Medical Services Premiums line item (this is in lieu of an item in the Governor's August Supplemental Package -- see item #13 below); and (3) clarify that the Health Care Expansion Fund can also be transferred to offset General Fund expenditures in the Medical Services Premiums line item (see staff's Supplemental presentation for more detail on a possible amount, etc. -- this item is not addressed by the Governor).

Please note, staff also recommends that *an additional* \$7.0 million from the Tobacco Education Fund and *an additional* \$7.0 million from the Prevention, Early Detection and Treatment Fund be transferred to offset General Fund appropriations in the Medical Services Premiums line item. Senate Bill 09-271 did not cap the amount of funds that could be transferred from these two funds. Therefore, no statutory change is necessary for these transfers -- they can be done in the regular supplemental bill. However, staff mentions these items here because they were part of the Governor's August Supplemental package related to the recommendation above.

This recommendation was discussed in item #1 on page 34 of the JBC Staff HCPF Briefing document. This issue as it relates to the Health Care Expansion Fund was discussed beginning on page 58 of the JBC Staff HCPF Briefing document.

FY 2009-10 and FY 2010-11 Issues

11. Staff recommends that the Committee sponsor legislation that makes the following changes to the Health Care Services (HCS) Fund: (1) change to the funding source from Referendum C General Fund to General Fund; (2) change the distribution formula; and (3) extend the Fund through FY 2010-11 (contingent on an emergency resolution -- see number 21 below).

Currently, the HCS Fund is appropriated \$11.9 million in FY 2009-10 but will expire in FY 2010-11. This fund is eligible for federal match (thus, the total FY 2009-10 appropriation for this program is \$30.0 million). Staff's recommendation is that the HCS Fund retain a \$11.9 million General Fund appropriation in FY 2009-10 (the total fund impact is \$30.0 million) and an amount to be determined for FY 2010-11. This funding will be distributed to indigent care clinics to mitigate the loss of funding from the Primary Care Fund in item # 12 above. Staff is working with the Department and advocates on the distribution formula to make sure "no more harm" is done to specific clinics than what the Governor's Office proposed in August 2009. As discussed at briefing, staff's recommendation reduces General Fund expenditures by the same amount as the Governor's August Supplemental package but mitigates the budget reductions to indigent care clinics by cutting a state-only program instead of a program that receives federal match. This item was discussed on page 63 of the JBC Staff HCPF Briefing document.

12. Staff recommends eliminating the statutory requirement for the telehealth disease management program. This saves \$158,750 General Fund in FY 2009-10 and \$190,500 in FY 2010-11. This was part of the Governor's August Supplemental package. This was discussed as item #5 on page 36 of the JBC Staff HCPF Briefing document.
13. Staff recommends eliminating the statutory requirement for the school-based Medical Assistance Sites Pilot Project pending verification from the Centers of Medicare and Medicaid Services that eliminating these eligibility assistance sites would not put ARRA funding at risk. Staff will discuss further in her HCPF Supplemental presentation. This proposal saves approximately \$100,000 in state funds in FY 2009-10 and \$112,000 in FY 2010-11. This was discussed as item #6 on page 37 of the JBC Staff HCPF Briefing document.
14. Staff recommends amending S.B. 09-210 to transfer Tobacco Master Settlement Funding from the Comprehensive Primary and Preventative Grant Program and the Comprehensive Primary and Preventative Care Rural and Public Hospitals Payment program to offset General Fund. Staff recommends the Department's request to transfer \$2.6 million in FY 2009-10 and \$3.0 million in FY 2010-11 from these programs. This was part of the Governor's August supplemental package. This issue was discussed as item #7 on page 37 of the JBC Staff HCPF Briefing document.
15. Staff recommends legislation that imposes a 1.5 percent per diem rate reduction to nursing facilities beginning April 1, 2010 and extending through June 30, 2011. This legislation reduces General Fund expenditures by approximately \$900,000 in FY 2009-10 and by \$3.7 million in FY 2010-11. This

proposal was part of the Governor's August supplemental package. This issue was discussed as item # 4 on page 35 of the JBC Staff HCPF Briefing document.

16. Staff is pending her recommendation on reducing the General Fund growth for nursing homes reimbursement to zero percent in FY 2010-11. This proposal would increase the provider fee paid by nursing facilities to offset the loss of General Fund. The amount of the increase to the provider fee would be impacted if ARRA is extended for the entire FY 2010-11 as is being currently debated in Congress. Staff will make a recommendation on this issue during figure setting in March. This issue was also discussed as item #4 on page 35 of the JBC Staff HCPF Briefing document.
17. Staff recommends the Committee sponsor legislation to offset \$41.4 million General Fund in FY 2009-10 and \$20.7 million General Fund in FY 2010-11 with the hospital provider fee (the amount in FY 2010-11 could increase if ARRA is extended). When HB 09-1293 passed, it reduced the amount of saving available from SB 09-264. This legislation will restore some of the savings the Committee was counting on from SB 09-264. Staff discusses this item in greater detail in her supplemental recommendation package.
18. Staff's is pending her recommendation on delaying Medicaid payments in both FY 2009-10 and FY 2010-11 until the March supplemental and figure setting presentation. This item was discussed on page 53 of the JBC Staff HCPF Briefing document.

FY 2010-11 Issues Only

19. Staff recommends the Committee sponsor a resolution that declares FY 2010-11 a fiscal emergency. This will allow Amendment 35 tobacco taxes to be used to offset General Fund appropriations. The JBC sponsored a similar resolution last session, S.J.R. 09-035. This recommendation is needed to implement portions of the Governor's FY 2010-11 budget balancing package. This resolution could be introduced with the Long Bill Budget Balancing Package. This item was discussed as item #1 on page 34 of the JBC Staff HCPF Briefing document.
20. Staff recommends Committee sponsor legislation that allows certain amount of Amendment 35 Funds to be used to offset General Fund. The amounts can be determined during figure setting. This recommendation is needed to implement portions of the Governor's FY 2010-11 budget balancing package. This item was discussed as item #1 on page 34 of the JBC Staff HCPF Briefing document.
21. Staff recommends that the General Assembly consider a Referendum that would allow the Primary Care Fund to be used as the State match for any initiative or requirement that expands eligibility for public medical assistance programs. This broad language would allow the Primary Care Fund to partially backfill the Health Care Expansion Fund deficit (and thus, would reduce the amount the Hospital Provider Fee) or to be the state match for any federal health care reform legislation requirements. The Primary Care Fund grant program could be gradually phased-out as more individuals become insured.

Human Services:

22. Staff recommends legislation to change eligibility for the Old Age Pension (OAP) Program. The effective date for certain components should be contingent upon whether federal stimulus (ARRA)

provisions related to Medicaid are extended through the second half of FY 2010-11. Moneys not required for the OAP Cash Fund are deposited to the General Fund.

- a. Regardless of whether or not ARRA is extended, new legislation should institute a five year bar on the OAP program for new immigrants, effective July 1, 2010. This is estimated to yield \$14.9 million in OAP cash fund savings for FY 2010-11, with no impact on Medicaid.
- b. In addition, the legislation should exclude sponsored legal immigrants, consistent with a Department proposal. To maximize savings, this portion of the legislation should be effective effective January 1, 2011 if ARRA is NOT extended six months or July 1, 2011 if ARRA is extended. This change should provide additional savings of approximately \$7 million in FY 2010-11 if the January 1, 2011 date is used. The Department of Human Services has estimated that instituting both the five year bar and the exclusion on sponsored legal immigrants would provide \$28.9 million in OAP cash fund savings when both provisions became effective for a full year in FY 2011-12.

[The Department's proposal was to implement both the 5 year bar and sponsored legal immigrant proposals effective January 1, 2011, thus providing \$14.4 million in savings in FY 2010-11; the staff recommendation is a variation on this, given the likelihood of an ARRA extension].

23. Staff recommends the Committee sponsor legislation to modify Section 26-1-126 (1.5), C.R.S., which governs County Tax Base Relief, to more narrowly target funding to "Tier 1" counties. Staff also recommends that \$1-\$2 million be retained in funding for the program to target those counties that qualify under Tier 1 (counties with a very low tax base compared to their social services funding needs).

Law:

24. Staff recommends that the Committee sponsor legislation to increase the \$425 fee imposed on insurance carriers by Section 10-3-207 (1)(e), C.R.S. The added revenue will support the Department of Law's Insurance Fraud Unit and will eliminate approximately \$200,000 of annual support that the unit receives indirectly from the General Fund.
25. Staff recommends that the Committee introduce a bill similar to S.B. 03-280 that would increase solid waste disposal fees by 3¢ per cubic yard of waste to pay for the Department of Law's CERCLA work, thus reducing General Fund appropriations by approximately \$483,000 annually.

Local Affairs:

26. Staff recommends the JBC sponsor legislation to revise fees for property tax exemption applications, annual reports, and delinquent reports. Staff recommends the JBC include the following provisions in the bill:
 - a. Authorizes the General Assembly to annually appropriate moneys from the Property Tax Exemption Fund to the Division of Property Taxation to fully cover program expenditures;
 - b. Authorizes the Property Tax Administrator to annually fix fees to pay for the direct and indirect costs to administer the program and reasonable reserves for contingencies;

- c. Authorizes the Property Tax Administrator to promulgate rules which would permit them to waive late filing fees when warranted (approximately 24 waivers);
- d. Applies staff's recommended fee structure as the new minimum fee level in statute; and
- e. Makes the fee structure more punitive towards delinquent filers and at the same time reduces the burden to timely annual report filers and application fees, thus creating more equity within the fee schedule.

Natural Resources:

- 27. The **Department requests** to refinance \$2.1 million General Fund in FY 2009-10 and FY 2010-11 State Parks Operating expenses with cash funds from the Operational Account of the Severance Tax Trust Fund. S.B. 08-13 allowed State Parks to receive up to five percent of the available funds in the Operational Account for programs within the Division of Parks and Outdoor Recreation to operate, maintain or improve state parks in regions of the state where production activity is occurring. The request would increase maximum allowable allocations to State Parks from 5 percent to 10 percent of available funds in the Operational Account. At the same time, the proposal reduces the maximum allocation to the Oil and Gas Conservation Commission from 40 percent to 35 percent.
- 28. Staff recommends the Committee consider sponsoring legislation to cash fund the Water Resources Division Ground Water Management Program. This proposal is similar to what the Committee attempted to do in S.B. 09-216 (deemed lost).

Public Health:

- 29. Staff recommends that the Committee consider sponsoring legislation to cash fund the WQCD in FY 2010-11, that the Committee discuss the issue with the Department at the upcoming hearing, and that the Committee give the Department as much notice as possible if the Committee intends to pursue such legislation in order to allow the Department to develop a legislative proposal.
- 30. Staff recommends that the JBC carry a bill similar to S.B. 09-269 during the upcoming legislative session to provide additional revenue support for the General Fund.

Public Safety:

- 31. Staff recommends the Committee consider sponsoring legislation during the 2010 Session to change the salary survey process for state troopers so that statute is not in violation with the Sherman Anti-Trust Act.

Regulatory Agencies:

- 32. Staff recommends the Committee sponsor legislation requiring the performance of all the functions listed in Section 10-3-209 (1) (b) (I) (B), C.R.S. if a company/office is designated as a home or regional home office. Additionally, staff recommends the Committee consider adding language prohibiting insurance companies from passing the added cost of the insurance premium tax on to the policy holders.

33. Staff recommends the Committee sponsor legislation to require Pinnacol Assurance to pay the insurance premium tax on 94.0 percent of the written premiums. Staff also recommends the Committee provide Pinnacol Assurance with the opportunity, if Pinnacol Assurance disputes the amount of premiums attributable to providing insurance of last resort, to provide the Committee with data and explanations detailing the amount of premiums attributable to being the insurance of last resort.

State:

34. The Department is requesting that the JBC sponsor legislation to transfer the Disaster Recovery Facility (E-for³t) to the Office of Information Technology (OIT). There are several specific components of the transfer:
- a. Create explicit statutory authority for the statewide disaster recovery facility
 - b. Transfer management responsibilities from the Department of State to the Office of Information Technology (OIT)
 - c. Develop a time line to gradually transfer funding for the facility to a shared cost model
 - d. Develop a time line to gradually transfer funding from the Department to OIT. The Department proposes to continue funding at 100.0 percent for FY 2010-11, to fund the facility at 67.0 percent for FY 2011-12, and to fund the facility at 33.0 percent for FY 2012-13. By the fourth year, OIT and other user agencies will fund 100.0 percent of the facility.