

MEMORANDUM



JOINT BUDGET COMMITTEE

TO JBC Members
FROM JBC Staff
DATE March 18, 2021
SUBJECT Comeback Packet 3

Included in this packet are staff comeback memos for the following items:

Governor, page 1 – OEDIT (Scott Thompson): RFI on use of gifts, grants, and donations (*New Item*)

Public Safety, page 2 (Justin Brakke): R5 Restructuring EPIC to promote equity (*Tabled Item*)

Education, page 5 (Craig Harper): B.E.S.T. Cash Grants (*Additional Information*)

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Joint Budget Committee
FROM Scott Thompson, JBC Staff (303-866-4957)
DATE March 17, 2021
SUBJECT Request for Information for the Governor's Office

This memo responds to a request from Senator Hansen to draft a request for information to be submitted with the Long Bill to the Governor's Office to discover more detail on the use of funds in the Governor's Office that originate as gifts, grants, or donations. JBC Staff created a draft RFI for the Committee to consider:

- 1 Governor – Lieutenant Governor – State Planning and Budgeting – The Office is requested to provide on November 1, 2022, a report on initiatives or expenditures that rely on gifts, grants, and donations. For each initiative or project, the report should include the name, a description, the amount, the source, and the number of FTE supported.

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee
FROM Justin Brakke, JBC Staff (303-866-4958)
DATE March 18, 2021
SUBJECT JBC Staff Comebacks-Division of Criminal Justice Figure Setting FY 2021-22

TABLED DECISION ITEMS

→ R05 RESTRUCTURING EPIC TO PROMOTE EQUITY

REASON FOR COMEBACK

The Committee wanted to wait for the bill draft on evidence-based policy that it requested before taking action on this decision item.

ORIGINAL REQUEST AND RECOMMENDATION

REQUEST: The Department requested the transfer of \$313,958 General Fund and 3.0 FTE from the Evidence-based Practices and Implementation Capacity (EPIC) team in DCJ to the Executive Director's Office (EDO). These transferred funds and FTE would help the Department address evidence-based policies related to equity, diversity and inclusion (EDI). This part of the request was driven entirely by a related Executive Order. The Department also requested an additional reduction of \$323,090 General Fund and 3.0 FTE to the EPIC line item. This would leave 3.0 FTE on the EPIC team.

RECOMMENDATION: Staff recommended a total reduction of \$703,315 General Fund and 6.0 FTE to the EPIC Resource Center line item and centrally appropriated line items in the EDO because staff concluded that EPIC's work did not align with the statutory purpose of EPIC. Staff did not recommend transferring any FTE to the EDO because of a lack of statutory guidance on the EDI work the Department wants to pursue, which is driven entirely by Executive Order. The recommendation retained 3.0 FTE in EPIC to continue work with existing clients.

REVISED RECOMMENDATION #1A

Staff recommended a total reduction of \$1,118,865 General Fund and 9.0 FTE to the EPIC Resource Center line item and centrally appropriated line items in the EDO. Staff requests permission to adjust the affected line items accordingly.

ANALYSIS: During figure setting, there was a discussion about defunding EPIC entirely. At the time of the original figure setting, staff opted for a conservative recommendation that retained 3.0 FTE for work with existing clients because staff could not determine the impact of removing those last 3.0 FTE. Upon further review, staff concludes that EPIC's work with existing clients is largely beyond its statutory mandate. Existing clients can acquire their own specialists or seek consulting assistance. Staff now recommends defunding EPIC entirely.

The following table shows a list of selected EPIC clients as derived from the EPIC website.

SELECTED LIST OF EPIC CLIENTS				
CLIENT	START DATE	OUTCOMES DEFINED?	SERVICE PROVIDED	SOURCE
Division of Homeland Security and Emergency Management	Nov-19	Yes	Implementation support for Preventing Targeted Violence campaign	August 2020 report
Volunteers of America	Oct-18	No	Implementation support, motivational interviewing training	August 2020 report
1st Judicial District Colorado Youth Detention Continuum	Apr-18	No	Implementation support, motivational interviewing training	August 2020 report
Department of Human Services' Colorado Community Response	Aug-18	No	Implementation support	August 2020 report
Colorado ComCor, Inc.	2018	Yes	Implementation support for Fierce Conversations	August 2020 report
2nd Judicial District Colorado Youth Detention Continuum	Aug-17	No	Implementation support, case planning	August 2020 report

First, EPIC’s work with two of these clients in the table above is largely focused on Motivational Interviewing. Staff argued in the original figure setting document that this kind of work is outside of EPIC’s statutory purview. Staff therefore concludes that EPIC’s work with these clients should no longer continue.

Second, the August 2020 report for the 2nd Judicial District said EPIC’s work with the 2nd Judicial had been temporarily halted. Given that EPIC had been working with the 2nd Judicial since 2017, it is staff’s view that the 2nd Judicial should be on solid ground if it wants to continue implementing the project for which it initially sought EPIC’s help.

Third, the work with the Division of Homeland Security and Emergency Management is technical assistance for a Preventing Targeted Violence campaign. In staff’s view, the Department can do this work without EPIC’s help and should be prepared for that contingency given the Department’s original request to remove two-thirds of EPIC’s FTE.

Staff is aware of other work, not listed in the table above, that is outside of EPIC’s statutory mandate. For example, EPIC has been helping the Mental Health Disorders in the Criminal Justice System (MHDCJS) Task Force with, among other things, “developing infographics, white paper, fact sheet necessary to bill creation and advocacy” and “[engaging] or re-[engaging] essential committee representation to move issues forward drawing on the expertise from a breadth of perspectives.” Staff does not see how this relates to EPIC’s statutory mandate to “develop and sustain effective implementation frameworks to support the use of evidence-based practices.” (See Appendix B)

In sum, staff’s original figure setting analysis argued that EPIC’s work is largely inconsistent with its statutory mandate. Further review of existing clients yielded the same conclusion, hence the revised recommendation. If existing clients still need help with program implementation, staff believes they should hire their own implementation specialist or contract for outside help.

OTHER INFORMATION

① COGNITIVE BEHAVIORAL THERAPY PILOT IN COMMUNITY CORRECTIONS

The Committee asked whether it was necessary to retain funding in FY 2021-22 for the Cognitive Behavioral Therapy (CBT) pilot program, which was slated to conclude at the end of FY 2020-21. Given recent turnover in management of the program, DCJ and Denver community corrections would like to pursue the program for at least one more year. Staff believes this is reasonable. The Department should submit a decision item for FY 2022-23 if it would like to seek an extension for the CBT program or make funding for it permanent.

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee
FROM Craig Harper, JBC Staff (303-866-3481)
DATE March 18, 2021
SUBJECT JBC Staff Comeback: B.E.S.T. Cash Grants

During figure setting for the Department of Education for FY 2021-22, the Committee approved a continuation appropriation of \$60.0 million cash funds from the Public School Capital Construction Assistance Fund (Assistance Fund) for cash grants provided under the Building Excellent Schools Today (BEST) Program in FY 2021-22. That amount is unchanged from the FY 2020-21 appropriation (as reduced in H.B. 20-1418) and \$3.0 million above the department's request for FY 2021-22.

The Committee requested a JBC Staff comeback providing additional detail on the anticipated fund balance in the Assistance Fund in relation to the recommended appropriation for cash grants.

RECOMMENDATION: Staff recommends maintaining the BEST-related appropriations that the Committee approved during figure setting, including the \$60.0 million for cash grants. Staff's current projections indicate that the Assistance Fund will end FY 2020-21 with a balance of \$235.8 million (\$90.8 million above the BEST Board's target minimum of \$145.0 million) and that the balance would increase to \$263.9 million at the end of FY 2021-22 (\$118.9 million above the minimum). Thus, current projections indicate that the fund could support additional appropriations for FY 2021-22. However, staff notes the following:

- There is significant uncertainty in the revenue projections for both the State Land Board and marijuana excise tax revenues for the foreseeable future (whether revenues will remain at current levels beyond the current status of the pandemic).
- Staff is aware that the Department and the BEST Board are considering potential emergency grants for FY 2020-21 (above the appropriated amounts for this year).¹ The magnitude of those grants is uncertain and staff's projected balances do not account for any emergency grants. It is also staff's understanding that the proposed stimulus package includes an additional \$10.0 million in grants for the current year (not accounted for in staff's current projections).
- Finally, if the Committee wishes to increase funding available for the BEST program in FY 2021-22 (or FY 2020-21) then staff would recommend that the Committee consider the newly available federal funds as a potential fund source before appropriating additional amounts from the Assistance Fund.

ANALYSIS:

Background Information. House Bill 08-1335 created the B.E.S.T. program to increase the amount of state financial assistance provided for school construction and to allow projects to be completed more quickly. The program receives no General Fund appropriations. Rather, the General Assembly has dedicated a variety of other revenue streams to support it, with the majority of funds coming from royalty and rental income earned on state trust lands and marijuana excise taxes. Smaller amounts

¹ Sec. 22-43.7-109 (8), C.R.S., authorizes the BEST Board and the State Board to make emergency grants in response to "public school emergencies" that make "all or a significant portion of a public school facility unusable for educational purposes or threatens the health or safety of persons using the public school facility."

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come from interest earned on the Public School (Permanent) Fund and spillover from lottery proceeds. Current law annually credits the following funds to the Assistance Fund:

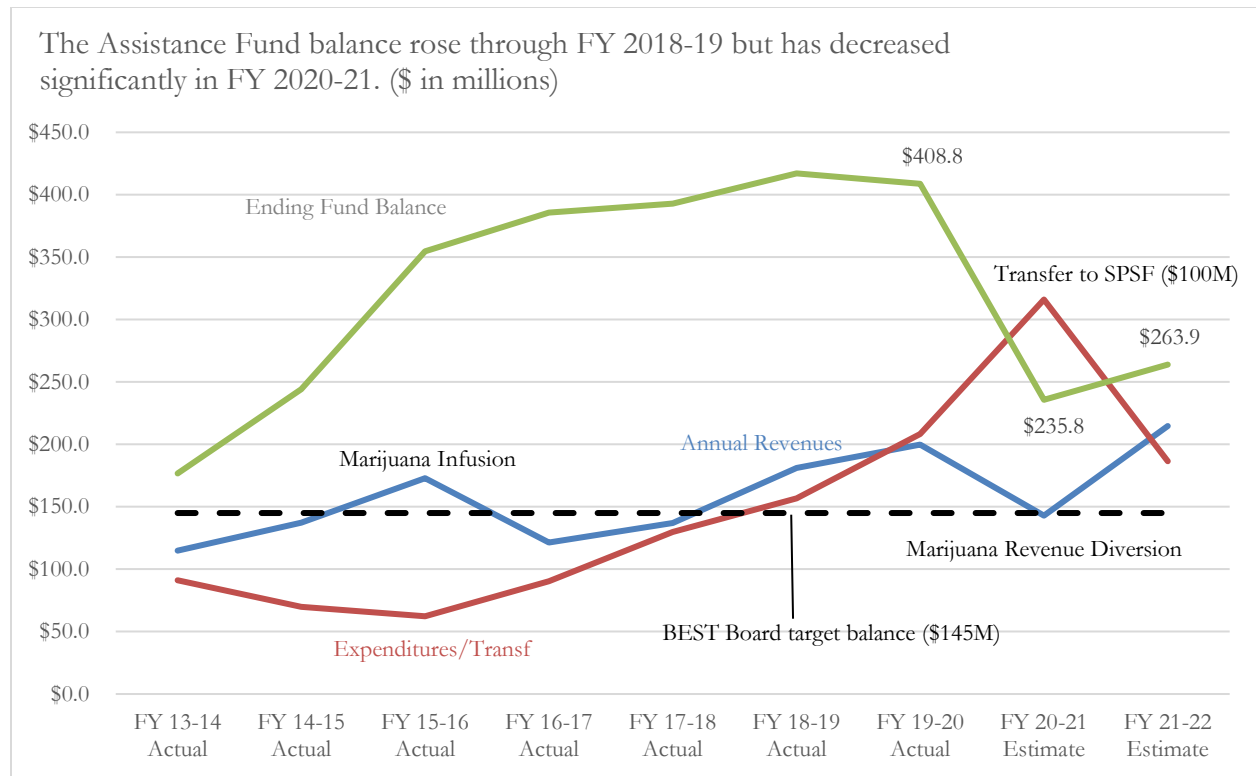
- 50 percent of the gross amount of revenues from income and mineral royalties derived from state public school lands, or more if required to make lease payments under the terms of the program's lease-purchase agreements (\$77.8 million in FY 2019-20).
- Recreational marijuana excise tax revenues (\$89.8 million in FY 2019-20). Pursuant to H.B. 19-1055 (Public School Capital Construction Financial Assistance), statute credited *all* marijuana excise tax revenues to the Assistance Fund (previous legislation had increased the share of excise taxes going to the fund from the first \$40.0 million to 90.0 percent in FY 2018-19). As a one-time adjustment, H.B. 20-1418 (School Finance) credits the first \$40.0 million in excise tax revenues to the fund in FY 2020-21 and diverts any revenues above that amount to the State Public School Fund as a budget balancing measure.
- A portion of the interest and income earned on investment of the Public School (Permanent) Fund (\$0.7 million in FY 2019-20). Under S.B. 16-035 (The Public School Fund), interest and income earned on the Permanent Fund over and above the \$21.0 million already distributed under current law is deposited into the Assistance Fund, up to a limit of \$10.0 million in FY 2017-18 and \$20.0 million in FY 2018-19 and subsequent years.
- Local matching moneys for COP projects (\$28.5 million in FY 2019-20).
- Lottery proceeds that would otherwise be transferred to the General Fund (\$0.8 million in FY 2019-20).
- Interest and investment income earned on the Assistance Fund (\$8.7 million in FY 2019-20).

Money in the fund is subject to appropriation for: (a) direct and indirect administrative costs incurred by the PSCCA Division and Board (including the financial assistance priority assessment); (b) lease payments required for lease-purchase agreements; and (c) cash grants to support construction projects.

STATUS OF THE ASSISTANCE FUND

The Committee requested updated information on the status of the Assistance Fund and its ability to support additional cash grants in FY 2021-22. The Assistance Fund ended FY 2019-20 with a balance of \$408.8 million, having accumulated that balance over time because annual revenues exceeded expenditures from the fund in most years. However, based on current estimates of revenues and expenditures, staff projects that the fund will end FY 2020-21 with a balance of \$235.8 million, a decrease of \$173.0 million below the prior year (see graph on the following page). The General Assembly took two significant budget balancing actions for FY 2020-21 that explain much of the reduced fund balance, both of which were enacted in H.B. 20-1418:

- First, the General Assembly transferred \$100.0 million from the Assistance Fund to the State Public School Fund. Please note that this action also included a \$100.0 million reduction to the appropriation for cash grants for FY 2020-21. As a result, much or all of that amount would have been obligated in FY 2020-21 *even without the transfer*. However, the transfer clearly reduced the amount available for cash grants by \$100.0 million.
- Second, the bill included a one-time diversion of a portion of marijuana excise tax revenues (specifically any revenues after the first \$40.0 million in collections) away from the Assistance Fund and to the State Public School Fund. Based on the December 2020 OSPB revenue forecast, staff estimates that this provision will divert \$63.5 million to the State Public School Fund which will be available to support school finance in FY 2021-22.



LOOKING TOWARD FY 2021-22

As discussed above, staff is currently projecting that the Assistance Fund will end FY 2020-21 with a balance of \$235.8 million (based on updated State Land Board revenue estimates from the Department of Natural Resources and the OSPB December 2020 revenue forecast of marijuana excise tax revenues). Based on the Committee-approved appropriations for FY 2021-22, staff expects the balance to grow to \$263.9 million at the end of FY 2021-22, \$118.9 million above the BEST Board’s minimum balance of \$145.0 million (see table below).

PUBLIC SCHOOL CAPITAL CONSTRUCTION ASSISTANCE FUND				
	FY 18-19 Actual	FY 19-20 Actual	FY 20-21 Estimate	FY 21-22 Estimate
Beginning Fund Balance	\$392,759,943	\$417,106,758	\$408,800,653	\$235,781,169
New Revenues	180,981,812	199,873,276	143,022,883	214,694,652
Transfer to the State Public School Fund	0	0	(100,000,000)	0
Program Expenditures	(156,634,997)	(208,179,381)	(216,042,367)	(186,579,298)
Ending Fund Balance	\$417,106,758	\$408,800,653	\$235,781,169	\$263,896,523
Required Reserve for Next Year's COP Payments	\$48,547,849	\$54,996,289	\$53,933,204	\$53,935,013
Emergency Reserve Requirement	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
Additional Reserve for BEST Board Target of \$145 million	\$95,452,151	\$89,003,711	\$90,066,796	\$90,064,987
Available Balance Above Reserve Requirements	\$272,106,758	\$263,800,653	\$90,781,169	\$118,896,523

Based on that information, the Committee could certainly consider increasing the appropriation for cash grants for FY 2021-22. However, staff recommends maintaining the appropriations as approved

during figure setting, at least for the time being. The staff recommendation is based on the following points:

- *Revenue Uncertainty:* There is significant uncertainty in the revenue projections for both of the program's major revenue sources for the foreseeable future. If oil and gas prices remain low then staff would expect State Land Board (School Trust) revenues to decrease below current levels. Similarly, if marijuana consumption declines as the impact of the pandemic decreases, marijuana excise tax collections will also fall. Staff recommends maintaining an additional fund balance until there is improved certainty related to the program's revenues.
- *Expenditure Uncertainty:* In addition, staff is aware that the Department and the BEST Board are considering providing emergency grants for FY 2020-21 (above the appropriated amounts for this year) for indoor air quality and ventilation issues related to COVID-19. The magnitude of those grants is uncertain and the projected balances discussed above do not account for the potential expenditures. It is also staff's understanding that the proposed state stimulus package includes an additional \$10.0 million in grants for the current year (not accounted for in staff's current projections).
- *Federal Funds:* Finally, if the Committee wishes to increase funding available for the BEST program in FY 2021-22 (or FY 2020-21) then staff would recommend that the Committee consider the newly available federal funds as a potential fund source. Use of the federal funds (where applicable) would maintain the state fund balance during the period of increased uncertainty related to the program's major revenue sources.

ORIGINAL FIGURE SETTING DOCUMENT MATERIAL

PUBLIC SCHOOL CAPITAL CONSTRUCTION ASSISTANCE BOARD – CASH GRANTS

The General Assembly added this line item to the FY 2014-15 Long Bill to appropriate funds to support the B.E.S.T. Program's cash grants. As discussed above, prior to FY 2014-15, moneys for B.E.S.T. cash grants were continuously appropriated to the Department. However, the enactment of S.B. 14-112 made the program's cash grants subject to annual appropriation by the General Assembly.

The FY 2019-20 Long Bill included an appropriation of \$85.0 million cash funds from the PSCCA Fund for cash grants. However, H.B. 19-1055 added \$50.0 million for FY 2019-20 (for a total appropriation of \$135.0 million). The 2019 bill also called for an appropriation of \$160.0 million for FY 2020-21. However, in response to the revenue challenges created by the pandemic, the General Assembly reduced that requirement by \$100.0 million and appropriated \$60.0 million for cash grants in FY 2020-21.

STATUTORY AUTHORITY: Section 22-43.7-104, C.R.S.

REQUEST: The Department requests an appropriation of \$57.0 million cash funds from the Public School Capital Construction Assistance Fund for FY 2021-22. Request R7 (Reduce Capital Construction Assistance, discussed above) proposes a reduction of \$3.0 million below the FY 2020-21 appropriation of \$60.0 million (and a related transfer of those funds to support school finance).

RECOMMENDATION: Staff recommends approving a continuation appropriation of \$60.0 million for the *Long Bill* appropriation for cash grants with no change from the FY 2020-21 appropriation. If significant additional reductions are necessary during budget balancing, then staff would recommend that the General Assembly consider reducing appropriations for cash grants to make resources available. However, as any transfer from the program's cash fund would require separate legislation to make the funds available for other uses such as school finance, staff recommends that the Committee approve a continuation appropriation for the Long Bill and adjust the appropriation as necessary in separate legislation making the transfer (such as the School Finance Bill). Doing so will allow the General Assembly to assess the tradeoffs between programs in that legislation.