

JOINT BUDGET COMMITTEE



SUPPLEMENTAL BUDGET REQUESTS FY 2018-19

DEPARTMENT OF REGULATORY AGENCIES

JBC WORKING DOCUMENT - SUBJECT TO CHANGE
STAFF RECOMMENDATION DOES NOT REPRESENT COMMITTEE DECISION

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DEPARTMENT OF REGULATORY AGENCIES

DEPARTMENT OVERVIEW

This Joint Budget Committee staff supplemental recommendations document includes the following ten units within the Department of Regulatory Agencies (DORA):

- The **Executive Director's Office** provides administrative and technical support for the Department's divisions and programs, including functions associated with accounting, purchasing, budgeting, communications, legislative services, and human resources. Also includes the Colorado Office of Policy, Research, and Regulatory Reform.
- The **Division of Banking** regulates state-chartered commercial banks, trust companies, money transmitters, and national banks and interstate banks that maintain public deposit accounts in Colorado.
- The **Division of Civil Rights** enforces Colorado's anti-discrimination laws in the areas of employment, housing, and public accommodations.
- The **Office of Consumer Counsel** represents the public interest and the specific interests of residential, small business, and agricultural consumers in rate and rulemaking cases before the Public Utilities Commission, federal agencies, and the courts.
- The **Division Financial Services** examines and supervises state-chartered credit unions and state-chartered savings and loan associations, enforces the Savings and Loan Public Deposit Protection Act, and regulates certain financial activities of life care institutions.
- The **Division of Insurance** regulates companies and agents providing health insurance, property and liability insurance (homeowners and automobile), life insurance, and title insurance.
- The **Public Utilities Commission** regulates investor-owned electric, natural gas, telecommunications, private water utilities, and motor vehicle carriers for hire.
- The **Division of Real Estate** licenses real estate agents, appraisers, and mortgage loan originators and registers mortgage companies and homeowners associations.
- The **Division of Professions and Occupations** regulates licensees in over 30 professions and occupations to ensure a basic level of competence to protect the public welfare.
- The **Division of Securities** monitors the conduct of broker-dealers and sales representatives, investigates citizen complaints, and investigates indicators of investment fraud.

SUMMARY: FY 2018-19 APPROPRIATION AND RECOMMENDATION

DEPARTMENT OF REGULATORY AGENCIES: RECOMMENDED CHANGES FOR FY 2018-19						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
FY 2018-19 APPROPRIATION						
HB 18-1322 (Long Bill)	\$99,162,135	\$1,941,431	\$90,759,586	\$5,211,298	\$1,249,820	572.9
Other legislation	456,148	10,000	446,148	0	0	1.8
CURRENT FY 2018-19 APPROPRIATION:	\$99,618,283	\$1,951,431	\$91,205,734	\$5,211,298	\$1,249,820	574.7
RECOMMENDED CHANGES						
Current FY 2018-19 Appropriation	\$99,618,283	\$1,951,431	\$91,205,734	\$5,211,298	\$1,249,820	574.7
PRIORITIZED SUPPLEMENTAL REQUESTS						
S1 Implement HB 18-1291 (Sunset Conservation Easement Oversight Commission)	0	0	0	0	0	0.0
STATEWIDE COMMON POLICY SUPPLEMENTAL REQUESTS						
NP Annual fleet vehicle supplemental true-up (DPA S2)*	(66,334)	0	(66,334)	0	0	0.0
RECOMMENDED FY 2018-19 APPROPRIATION:	\$99,551,949	\$1,951,431	\$91,139,400	\$5,211,298	\$1,249,820	574.7
RECOMMENDED INCREASE/(DECREASE)	(\$66,334)	\$0	(\$66,334)	\$0	\$0	0.0
Percentage Change	(0.1%)	0.0%	(0.1%)	0.0%	0.0%	0.0%
FY 2018-19 EXECUTIVE REQUEST	\$99,551,949	\$1,951,431	\$91,139,400	\$5,211,298	\$1,249,820	574.7
Request Above/(Below) Recommendation	\$0	\$0	\$0	\$0	\$0	0.0

*Represents the requested appropriation change and not the staff recommendation. This request item will be addressed in a future staff supplemental recommendations presentation for the Department of Personnel.

REQUEST/RECOMMENDATION DESCRIPTIONS

PRIORITIZED SUPPLEMENTAL REQUESTS

S1 IMPLEMENT HB 18-1291 (SUNSET CONSERVATION EASEMENT OVERSIGHT COMMISSION):

The request includes a net \$0 change in cash funds spending authority to correct a technical error of omission in H.B. 18-1291 that resulted in the Division of Conservation not receiving spending authority to administer the conservation easement tax credit program consistent with the provisions of the legislation. Specifically, the request seeks an increase of \$383,734 cash funds from the Conservation Cash Fund and 4.0 FTE for the Division of Conservation to administer the program and a decrease of \$383,734 cash funds from the Division of Real Estate Cash Fund and 4.0 FTE to reduce appropriations previously used to administer the program in prior fiscal years. Staff recommends that the Committee approve this request.

STATEWIDE COMMON POLICY SUPPLEMENTAL REQUESTS

NP ANNUAL FLEET VEHICLE SUPPLEMENTAL TRUE-UP (DPA S2): The request includes a decrease of \$66,334 cash funds for an adjustment to the Office's share of expenses related to leasing fleet vehicles through the Department of Personnel. Staff's recommendation is pending. This request item

will be addressed in a separate staff supplemental recommendations presentation for the Department of Personnel on January 22nd. Staff will incorporate the Committee's action on January 22nd into the supplemental bill for the Department of Regulatory Agencies. Note, the dollar amount in the summary table represents the requested appropriation change.

PRIORITIZED SUPPLEMENTAL REQUESTS

S1 IMPLEMENT HB 18-1291 (SUNSET CONSERVATION EASEMENT OVERSIGHT COMMISSION)

	REQUEST	RECOMMENDATION
TOTAL	\$0	\$0
FTE	0.0	0.0
General Fund	0	0
Cash Funds	0	0
Federal Funds	0	0

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? **YES**

[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.]

Explanation: JBC staff and the Department agree that this request is the result of a technical error in calculating the original appropriation.

DEPARTMENT REQUEST: The request includes a net \$0 change in cash funds spending authority to correct a technical error of omission in H.B. 18-1291 that resulted in the Division of Conservation not receiving spending authority to administer the conservation easement tax credit program consistent with the provisions of the legislation. Specifically, the request seeks an increase of \$383,734 cash funds from the Conservation Cash Fund and 4.0 FTE for the Division of Conservation to administer the program and a decrease of \$383,734 cash funds from the Division of Real Estate Cash Fund and 4.0 FTE to reduce appropriations previously used to administer the program in prior fiscal years.

STAFF RECOMMENDATION: Staff recommends that the Committee approve the request.

STAFF ANALYSIS:

Background

Conservation easements are legal agreements between a landowner and a land trust or government agency that permanently limits uses of the land in order to protect scenic or agricultural open space, natural habitat, or recreational areas. Since 2000, Colorado has offered a tax incentive to encourage landowners to donate conservation easements to a certified easement holder. Landowners donating an easement may claim an income tax credit valued at 75 percent of the first \$100,000 of the fair market value of the easement and 50 percent of the easement’s value over \$100,000. In no case can a conservation easement tax credit exceed \$1.5 million per donation and the total of all tax credits issued in Colorado cannot exceed \$45.0 million per tax year.

Sunset Review

Colorado’s conservation easement tax credit program is administered by the Department of Regulatory Agencies and its Conservation Easement Oversight Commission. The laws authorizing the Department and the Commission to carry out the functions of the conservation easement tax credit program included a sunset provision of July 1, 2018. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department conducted an

analysis and evaluation of the certification of conservation easement holders and the Commission. COPRRR's subsequent written report dated October 13, 2017 recommended that the General Assembly continue the certification of conservation easement holders and the Commission for seven years, until 2025, and institute changes in the size and composition of the Oversight Commission.

Legislative Action

In response to the program's pending sunset date of July 1, 2018, the General Assembly passed H.B. 18-1291 (Sunset Conservation Easement Oversight Commission) that, among a series of policy and programmatic changes, relocated the Commission and the certification program from the Department's Division of Real Estate to a newly created Division of Conservation and extended the repeal date for the functions of the conservation easement tax credit program by one year from July 1, 2018 to July 1, 2019. The bill also transferred the cash balance from fees collected in carrying out the duties of the conservation easement tax credit program from the Division of Real Estate Cash Fund as soon as practicable after May 29, 2018 to a newly created Conservation Cash Fund to help pay for the operations of the new Division and the Commission. Note, the Conservation Cash Fund also collects revenue from new fee collections occurring in FY 2018-19. The amount of fee revenue collected is over \$200,000.

Issue

House Bill 18-1291 extended the functions of the conservation easement tax credit program through FY 2018-19, allowed for the collection of new fee revenue, and routed existing and forthcoming fee revenue into a new cash fund for the Division of Conservation, but it did not include spending authority from the Conservation Cash Fund or any other funding source for FY 2018-19 for the Department to administer the program. It is customary for a sunset reauthorization bill to include an appropriations clause providing spending authority to a Department to carry out the tasks of the program being reauthorized. The provisions of H.B. 18-1291, however, went through different iterations in the final hours of the 2018 legislative session and the addition of an appropriations clause giving the Department authority to expend cash funds was not included in the version of the bill that became law. As a result, the Department is using a variety of accounting and budgeting strategies to ensure that the program can be administered in a manner consistent with its statutory obligations through the first half of FY 2018-19 until the General Assembly is in session and able to consider a direct funding mechanism.

Requested Solution

The Department proposes increasing cash funds spending authority in the Division of Conservation by \$383,734 from the Conservation Cash Fund and 4.0 FTE for FY 2018-19 so that the unit may administer the conservation easement tax credit program. Additionally, the Department seeks to decrease cash funds spending authority by \$383,734 from the Division of Real Estate Cash Fund and 4.0 FTE for FY 2018-19 to reduce appropriations previously used to administer the program in prior fiscal years before the passage of H.B. 18-1291.

Staff Recommendation

The final version of H.B. 18-1291 signed into law included what staff would consider a technical error of omission in that it failed to include an appropriations clause mirroring the substance of the bill. In response to this error, the Department has done an admirable job of funding the program for the first half of FY 2018-19 using all the accounting and budgeting tools at its disposal. It is staff's opinion, though, that a stable and transparent appropriation is needed for FY 2018-19 to adhere to the intent of H.B. 18-1291, as exemplified through the inclusion of mechanisms for the Division to collect new

revenue, to deposit new revenue into a new cash fund, and to transfer existing money from prior revenue collections into the new cash fund. As such, staff recommends that the Committee approve the Department's proposed solution to correct this technical error and provide funding to the Division of Conservation for FY 2018-19 to administer the conservation easement tax credit program. If the General Assembly does not take action, staff is concerned that the Department's ability to carry-out the program, as required by statute, is in jeopardy.

Note, it is anticipated that the General Assembly will conduct a sunset review of the functions of the conservation easement tax credit program during the 2019 session, given that the repeal date for these tasks was extended by H.B. 18-1291 for one year, from July 1, 2018 to July 1, 2019. Staff's recommendation covers spending authority for FY 2018-19 only and is needed regardless of the outcome of any legislative action (or inaction) on this program during the 2019 legislative session. Any legislation statutorily reauthorizing the functions of the program beyond FY 2018-19 should include a corresponding appropriations clause to avoid similar funding challenges experienced with H.B. 18-1291.

STATEWIDE COMMON POLICY SUPPLEMENTAL REQUESTS

This request is not prioritized and is not analyzed in this packet. The JBC will act on this item later when it makes decisions regarding common policies.

DEPARTMENT'S PORTION OF STATEWIDE SUPPLEMENTAL REQUEST	TOTAL	GENERAL FUND	CASH FUNDS	REAPPROP. FUNDS	FEDERAL FUNDS	FTE
NP Annual fleet vehicle supplemental true-up (DPA S2)	(\$66,334)	\$0	(\$66,334)	\$0	\$0	0.0

STAFF RECOMMENDATION: The staff recommendation for this request is pending Committee action on common policy supplementals. Staff asks permission to include the corresponding appropriations in the Office's supplemental bill when the Committee acts on common policy supplementals. If staff believes there is reason to deviate from the common policy, staff will appear before the Committee at a later date to present the relevant analysis.

*JBC Staff Supplemental Recommendations - FY 2018-19
Staff Working Document - Does Not Represent Committee Decision*

Appendix A: Numbers Pages

	FY 2017-18 Actual	FY 2018-19 Appropriation	FY 2018-19 Requested Change	FY 2018-19 Rec'd Change	FY 2018-19 Total w/Rec'd Change
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DEPARTMENT OF REGULATORY AGENCIES
Patty Salazar, Executive Director

S1 Implement HB 18-1291 (Sunset Conservation Easement Oversight Commission)

(8) DIVISION OF REAL ESTATE

Personal Services	<u>3,912,484</u>	<u>4,105,209</u>	<u>(341,529)</u>	<u>(341,529)</u>	<u>3,763,680</u>
FTE	55.4	52.9	(4.0)	(4.0)	48.9
Cash Funds	3,912,484	4,105,209	(341,529)	(341,529)	3,763,680
Operating Expenses	<u>166,807</u>	<u>204,557</u>	<u>(6,078)</u>	<u>(6,078)</u>	<u>198,479</u>
Cash Funds	166,807	204,557	(6,078)	(6,078)	198,479
Commission Meeting Costs	<u>20,604</u>	<u>38,836</u>	<u>(2,504)</u>	<u>(2,504)</u>	<u>36,332</u>
Cash Funds	20,604	38,836	(2,504)	(2,504)	36,332
Indirect Cost Assessment	<u>450,951</u>	<u>472,129</u>	<u>(33,623)</u>	<u>(33,623)</u>	<u>438,506</u>
Cash Funds	450,951	472,129	(33,623)	(33,623)	438,506

(11) DIVISION OF CONSERVATION

Conservation Easement Program Costs	<u>0</u>	<u>0</u>	<u>383,734</u>	<u>383,734</u>	<u>383,734</u>
FTE	0.0	0.0	4.0	4.0	4.0
Cash Funds	0	0	383,734	383,734	383,734

Total for S1 Implement HB 18-1291 (Sunset Conservation Easement Oversight Commission)	4,550,846	4,820,731	0	0	4,820,731
FTE	<u>55.4</u>	<u>52.9</u>	<u>0.0</u>	<u>0.0</u>	<u>52.9</u>
Cash Funds	4,550,846	4,820,731	0	0	4,820,731

JBC Staff Supplemental Recommendations - FY 2018-19
Staff Working Document - Does Not Represent Committee Decision

	FY 2017-18 Actual	FY 2018-19 Appropriation	FY 2018-19 Requested Change	FY 2018-19 Rec'd Change	FY 2018-19 Total w/Rec'd Change
Totals Excluding Pending Items					
REGULATORY AGENCIES					
TOTALS for ALL Departmental line items	85,986,362	99,618,283	0	0	99,618,283
<i>FTE</i>	<u>551.7</u>	<u>574.7</u>	<u>0.0</u>	<u>0.0</u>	<u>574.7</u>
General Fund	1,789,041	1,951,431	0	0	1,951,431
Cash Funds	78,040,381	91,205,734	0	0	91,205,734
Reappropriated Funds	4,414,770	5,211,298	0	0	5,211,298
Federal Funds	1,742,170	1,249,820	0	0	1,249,820