

# MEMORANDUM



## JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee  
FROM Amanda Bickel, JBC Staff (303-866-4960)  
DATE February 8, 2023  
SUBJECT Figure Setting Background and Recommendations Related to Coronavirus State Fiscal Recovery Funds (ARPA Funds) and State Match Requested for federal Infrastructure and Jobs Act Funds

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This memo provides background and recommendations on three figure setting and supplemental budget questions related to federal funds.

- 1 Multiple supplemental budget requests to roll forward previously-allocated Coronavirus State Fiscal Recovery Funds (ARPA Funds) beyond FY 2022-23. Staff anticipates that the Committee will make final decisions on these items as part of staff figure setting presentations in relevant departments. However, this memorandum provides background on federal policy related to using these funds after December 31, 2024 to assist the Committee (and JBC Staff) when making these decisions.
- 2 Budget amendments to appropriate federal ARPA funds from the Revenue Loss Restoration Cash Fund in the FY 2023-24 Long Bill in lieu of General Fund appropriations and transfers. (These are described as “Prepays” in the Executive Request and letters from the Governor and OSPB.)
- 3 An Executive Request that the JBC sponsors a bill that will transfer \$91.0 million General Fund to draw down additional federal Infrastructure and Jobs Act funds and a related request in the Governor’s Office for spending authority for \$20.25 million previously transferred for this purpose but not yet appropriated to the Office.

Staff has also included an appendix with background on ARPA and legislative appropriations to-date for reference.

### SUPPLEMENTAL REQUESTS TO ROLL-FORWARD ARPA FUNDS

*REQUEST:* The January 2, 2023 supplemental package includes the following requests to roll-forward federal ARPA funds previously appropriated by the General Assembly into FY 2023-24 or beyond. The Committee has already taken action that will affect one of these requests (an \$8.0 million reduction to the OIT appropriation, in lieu of a roll-forward).

JANUARY 2, 2023 SUPPLEMENTAL ROLL-FORWARD REQUESTS			
DEPARTMENT	ROLL FORWARD AMOUNT REQUESTED	ROLL-FORWARD PERIOD	EXPLANATION
Human Services	\$6,000,000	December 31, 2024	HB 22-1380 included language that prescribed programs to have spending authority through December 2024, however the appropriations clause only includes spending authority through June 2023, limiting the programs ability

JANUARY 2, 2023 SUPPLEMENTAL ROLL-FORWARD REQUESTS			
DEPARTMENT	ROLL FORWARD AMOUNT REQUESTED	ROLL-FORWARD PERIOD	EXPLANATION
			to expand the Critical Services For Low-income Households including “Double-Up Food Bucks,” LEAP and CBMS systems integration and Work Management System Project.
Early Childhood	1,000,000	December 31, 2026	SB22-213 included language that prescribed programs to be obligated by December 2024 and fully expended by December of 2026, however, the appropriations clause of SB22-213 only included spending authority through December 2024, effectively limiting the ability of CDEC to obligate funds for the completion of programs requiring contracting authority beyond December 2024.
Health Care Policy and Financing	34,750,000	December 31, 2026	Transformation To Support Whole-Person Health Through Integrated Care Models. HB 22-1302 included language that prescribed programs to be obligated by December 2024 and fully expended by December 2026, however, the appropriations clause included spending authority through December 2024, effectively limiting the ability of HCPF to obligate funds for the completion of programs requiring contracting authority beyond December 2024.
Governor’s Office of Information Technology*	62,000,000	December 31, 2026	HB 21-1289 appropriated \$70.0M to OIT and \$5.0M to DOLA for Broadband Deployment including the creation of the Colorado Broadband Office (CBO), creating the Digital Inclusion Grant, creating the broadband stimulus grant program, and creating the interconnectivity grant program. These funds have been appropriated through June 2023. The Governor’s Office reports that it has faced delays related to staffing-up for the programs and supply-chain issues.
Human Services, Behavioral Health Administration	25,000,000	June 30, 2024	SB 21-137 transferred \$550.0M to the Behavioral and Mental Health Fund and further appropriated \$550.0M for Behavioral and Mental Health Programs. Of the total appropriation of \$46.0M, \$25.0M has been requested for roll forward in order to complete projects associated with the Statewide Care Coordination Infrastructure program, the Workforce Development Program, and the Community Mental Health Centers Program. These funds are appropriated through June 2023. The request indicates that delays are related to required IT capital investments.
Early Childhood	2,000,000	December 31, 2026	HB 22-1369 appropriated \$2.0M to CDEC for the Children’s Mental Health Program through December of 2024. HB 22-1369 requires that CDEC partner with a non-profit with experience of administering children’s mental health programs using evidence-based strategies. CDEC has identified a partner to complete the work prescribed in statute, but in order to complete the contract and fully meet the criteria set out at statute, CDEC has requested spending authority through December 2026 in order to fully complete the contract and prepare findings for the legislature.
Human Services	505,268	June 30, 2024	Roll-forward for amount in H.B. 21-1259. The Colorado Works Program requires additional time to be consistent with program development, which requires in-depth stakeholder engagement for effective implementation of this program.

\*The Committee has taken action to reduce this appropriation by \$8.0 million, reducing the amount available for roll-forward.

**RECOMMENDATION:**

- Recommendations on the specific items above will be addressed in the figure setting presentations for staff responsible for the substantive budget areas.
- No matter what the Committee’s action on these individual items, **staff recommends that the Committee include a request for information** for FY 2023-24 in its April 2023 letter to the Governor to ensure that the General Assembly receives timely information on all ARPA program spending prior to the 2024 legislative session.

N Governor-Lieutenant Governor-State Planning and Budgeting, Office of State Planning and Budgeting – The Office is requested to submit a report to the JBC by November 1, 2023, identifying actual expenditures of federal Coronavirus State Fiscal Recovery Funds (ARPA funds) and related one-time General Fund appropriations, as of the end of state FY 2022-23. The report is requested to include information by award year, bill, department, funding source, cash fund, and program and to show amounts encumbered and expended. The Office is also requested to identify any ARPA-funded programs that it believes are at risk of not expending all funds and that may require a budgetary adjustment.

The data requested is consistent with the information provided by the Governor’s Office in November 2022. As ARPA spending deadlines draw closer, staff believes formalizing the request and asking the Office to particularly highlight problem areas may be useful.

## BACKGROUND ON RELATED FEDERAL LAW AND POLICY

### ARPA FUNDS

Under the provisions of the federal American Rescue Plan Act, Colorado was awarded \$3,828,761,790 from State and Local Fiscal Recovery Funds (ARPA funds). The money was deemed to be subject to appropriation by the General Assembly, as reflected in the decision by the General Assembly to adopt legislation placing the federal funds received into state cash funds and the decision by the Governor to sign this legislation.

The federal law requires the funds to be used: a) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality; b) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers; c) For the provision of government services to the extent of the reduction in revenue due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and d) To make necessary investments in water, sewer, or broadband infrastructure. It also includes certain prohibitions, including depositing into a pension fund or using to offset a tax reduction.

The calculation of “revenue loss” (use (c)) affects the State’s flexibility in use of the federal funds. In a memo dated January 31, 2022, the State Controller informed the Joint Budget Committee that, based on a methodology outlined in the final rule, the State had calculated that its reduction in revenue due to the COVID–19 public health emergency would comprise \$3.65 billion of the \$3.8 billion in federal funds allocated to Colorado.<sup>1</sup> Because of this calculation, *almost all of the federal funds allocated to Colorado may be used “for the provision of government services to the extent of the reduction in revenue due to the COVID–19 public health emergency”.* Nonetheless, the Governor’s Office has continued to categorize expenditures under other use categories to the extent feasible.

Initial spending plans were guided by the Treasury Department’s Interim Final Rule (April 2021). Recipients are now operating under the Final Rule, issued January 6, 2022, and related guidance.

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<sup>1</sup> The Governor’s Office notified legislative staff on January 23, 2023 that there is no additional revenue loss calculated for CY 2022. However, calculations for revenue loss for CY 2020 and CY 2021 now total \$3.69 billion.

For additional information on how Colorado has allocated its ARPA funds to-date, please see the appendix.

### **TIMELINE ON USE OF ARPA FUNDS**

Provisions in the ARPA Law: As specified in the ARPA law, a state or local government may use the funds for costs incurred from March 3, 2021 through December 31, 2024. A cost is considered to be incurred if the state has an **obligation** for the cost by December 31, 2024. Obligations must be expended by December 31, 2026.

#### Provisions in Federal Rule and Treasury FAQs:

- The final federal rule reiterates the language in the law and specifies that “Obligation means an order placed for property and services and entering into contracts, subawards, *and similar transactions that require payment.*”<sup>2</sup> [emphasis added]
- Treasury’s Final Rule FAQs explains “similar transactions that require payment” as follows: “As contemplated by this definition, Treasury recognizes that recipients may obligate funds through means other than contracts or subawards, for example in the case of payroll costs. In these circumstances, recipients must follow state or local law and their own established practices and policies regarding when they are considered to have incurred an obligation and how those obligations are documented. For example, *a recipient may have incurred an obligation even though the recipient and its employee may not have entered into an employment contract.*” [emphasis added]<sup>3</sup>

The Governor’s Office notes that this rule and guidance clearly enables the State to employ staff in relevant positions between December 31, 2024 and December 31, 2026 to administer previously-selected programs. However, **as currently understood, the guidance will not allow the State to change a use of the funds after December 31, 2024 and ALSO will not allow the State to change the primary contractor expending the funds in this period.**

Staff asked the Governor’s Office to respond to various hypothetical situations. Responses are included in an appendix, and the Governor’s Office has indicated that it may issue its own FAQs for state agencies consistent with these responses. The federal government could make further changes to its guidance (as has occurred with Coronavirus Relief Funds), but this is the best information the State has now. As reflected in the appendix:

- The primary contractor (including a for profit, nonprofit, or local government) responsible for expending funds for the specified purpose **cannot** change after December 31, 2024. A subcontractor *could* change.
- A position created by a Department to administer funds for a specified purpose would be treated as an obligation for which funds could be expended through December 31, 2026. The individual filling the position *could* change.

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<sup>2</sup> Final Rule: <https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf>

Pg. 4433 Discusses Timeline of SLFRF and highlights funds must be "obligated" by December 2024 and expended by December 2026  
Pg. 4447 defines "Obligation" as shown above.

<sup>3</sup> Final Rule FAQ: <https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-FAQ.pdf> . FAQ 13.17.

- Broadly, the specified purpose/use of the money **cannot** change, although there potentially could be some changes in the details of an existing contract.

**RELEVANCE FOR ROLL-FORWARD REQUESTS**

The last opportunity during a regular legislative session for legislators to change ARPA program allocations before the funds must be obligated will be the 2024 legislative session.

- For requests that propose to roll-forward funds until December 31, 2026, **the General Assembly must have a very high level of confidence that the program will be able to fully obligate the funds (lock them into a contract with a specific contractor) by December 31, 2024 and expend the funds through that specific primary contractor by December 31, 2026.**
- Even for requests that propose to roll-forward funds through FY 2023-24, members may want a check-in during the 2024 legislative session to ensure the funds will be spent by June 30, 2024 and that the funds won't need to be reallocated.

**The State should not put itself at risk of losing the ARPA funds.** Given this, whatever the Committee's specific decisions about the supplemental requests shown, **staff recommends:**

- **A Request for Information for OSPB, due November 1, 2023 (detailed above),** asking for updates on expenditures and encumbrances of ARPA and other one-time funds (similar to the data provided November 2022).
- **The Committee should be prepared during the 2024 legislative session to make adjustments to ARPA program allocations.** Given that almost all of the State's ARPA funds can be classified as compensating for "revenue loss", the General Assembly will have options. It could move ARPA funds from one program to another. It could also "trade" ARPA and General Fund amounts, i.e., use more ARPA funds within the Long Bill, in lieu of General Fund. It could then allocate the "freed up" General Fund as desired.

**BUDGET AMENDMENTS TO TRADE OUT GENERAL FUND FOR FEDERAL ARPA FUNDS IN THE LONG BILL**

*REQUEST:* The Governor's January 2, 2023 submission includes a proposal to appropriate ARPA funds that are currently Revenue Loss Restoration Cash Fund into the Long Bill in lieu of General Fund for multiple line items/programs. It calls this request "ARPA Prepays". On January 17, 2023, OSPB provided budget schedules for individual departments to align with these proposals.

DEPARTMENT	PROGRAM	GENERAL FUND/CAPITAL CONSTRUCTION FUNDS	FEDERAL ARPA FUNDS DEPOSITED TO REVENUE LOSS RESTORATION CASH FUND
Capital Construction	Higher education capital, controlled maintenance (levels 1&2)	(\$81,000,000)	\$81,000,000*

DEPARTMENT	PROGRAM	GENERAL FUND/CAPITAL CONSTRUCTION FUNDS	FEDERAL ARPA FUNDS DEPOSITED TO REVENUE LOSS RESTORATION CASH FUND
Human Services	Mental Health Institute at Pueblo, Personal Services	(32,000,000)	\$32,000,000
	Mental Health Institute at Fort Logan, Personal Services	(28,000,000)	28,000,000
Local Affairs	Fort Lyon Supportive Residential Community	(5,000,000)	5,000,000
Public Health & Environment	Distributions to local Public Health Agencies	(10,000,000)	10,000,000
<b>TOTAL Proposed</b>		<i>(\$155,000,000)</i>	<i>\$155,000,000*</i>

\*Because this is not an operating request, no budget schedule has been submitted thus far and the total will differ due to rounding. The request references \$81.0 million for higher education controlled maintenance but also references a total of \$155.0 million. The total for higher education controlled maintenance projects included in the Executive Request (Tier 1 and 2) is \$81,770,724.

There is approximately \$305.0 million in ARPA funds that have not yet been allocated by the General Assembly. Almost all of these funds are in the Revenue Loss Restoration Cash Fund. **The Executive Branch has indicated that it would also like the General Assembly to appropriate the remaining balance in the Coronavirus State Fiscal Recovery Fund, approximately \$150.0 million, in FY 2024-25,** as reflected in the table below, which was included in the Governor’s January 2 letter.

ARPA PREPAY: Refinance ARPA-eligible base spending to close structural deficit			FY24	Save for FY25
<b>Building workforce for economic recovery</b>	DPA/CDHE	Higher education capital, controlled maintenance (levels 1&2)	\$80.6	\$0.0
<b>Improving behavioral health</b>	DHS	Mental Health Institute at Pueblo, Personal Services	\$32.1	\$108.9
	DHS	Mental Health Institute at Fort Logan, Personal Services	\$27.6	\$26.0
<b>Securing affordable housing</b>	DOLA	Fort Lyon Supportive Residential Community	\$5.0	\$5.0
<b>Supporting local public health</b>	CDPHE	Distributions to local Public Health Agencies	\$10.0	\$10.0
<b>TOTAL PREPAYS UTILIZED OVER 2 YEARS</b>			<b>\$155.3</b>	<b>\$149.9</b>

Staff assumes that the action in FY 2024-25 would exhaust the final balance in the Revenue Loss Restoration Cash Fund. Thus, beginning in FY 2025-26, approximately \$150 million General Fund would need to be restored to the base budget.

**RECOMMENDATION:** Staff recommends that the Committee make the adjustments shown in the table below. Amounts may be increased/line items added, based on further OSPB input in March.

At this time, staff does not recommend appropriating ARPA funds for higher education controlled maintenance in FY 2023-24 based on the information currently available.

Instead, staff recommends:

- increasing the adjustment in line items identified by OSPB;
- adding some adjustments in other operating line items; and
- asking OSPB to identify additional possible line items for adjustment by March 1, 2023.

**JBC STAFF RECOMMENDATION AS OF FEBRUARY 8, 2023 - USE OF ARPA IN LIEU OF GENERAL FUND IN FY 2023-24 LONG BILL**

DEPARTMENT	PROGRAM	GENERAL FUND/CAPITAL CONSTRUCTION FUNDS	FEDERAL ARPA FUNDS DEPOSITED TO REVENUE LOSS RESTORATION CASH FUND
Capital Construction	Higher education capital, controlled maintenance (levels 1&2) <sup>1</sup>	\$0/Pending	\$0/Pending
Human Services	Mental Health Institute at Pueblo, Personal Services <sup>2</sup>	(90,261,986)	90,261,986
	Mental Health Institute at Fort Logan, Personal Services <sup>2</sup>	(31,257,751)	31,257,751
	Forensics Services, Forensic Services Administration (for FTE)	(764,047)	764,047
	Forensics Services, Forensic Support Team (for FTE)	(1,441,919)	1,441,919
	Forensics Services, Court Services (for FTE)	(5,165,661)	5,165,661
	Forensic Services, Forensic Community-based Services (for FTE)	(1,237,790)	1,237,790
Local Affairs	Fort Lyon Supportive Residential Community <sup>2</sup>	(5,002,366)	5,002,366
Public Health & Environment	Distributions to local Public Health Agencies	(17,523,706)	17,523,706
<b>TOTAL Recommendation</b>		<i>(\$152,655,226)</i>	<i>\$152,655,226</i>

<sup>1</sup> Amounts for controlled maintenance could be included for specific projects, based on additional feedback.

<sup>2</sup> Amounts for personal services at the mental health institutes could be increased, if the JBC approves other decision items in these line items. This might also be an option for the Fort Lyon line item.

## ANALYSIS

### OVERALL BASIS FOR RECOMMENDATION

- Staff recommends appropriating federal funds—which are time limited and have some restrictions—in the FY 2023-24 Long Bill since this frees up state General Fund which may be saved or spent. Thus, **the staff recommendation is to proceed with adjustments in the FY 2023-24 Long Bill at the scale of the Executive Request *at a minimum*.**
- **Staff is recommending against controlled maintenance adjustments at this time in order to limit administrative complexity.**
- **Staff recommends increasing the FY 2023-24 adjustments to the extent feasible,** because options in FY 2024-25, when the funds must be obligated by December 30, 2024 (mid-year), will be more constrained. Staff recommends requesting OSPB to identify additional line items for appropriating these funds in the Long Bill, for the JBC’s consideration, no later than March 1.
- The amounts staff has recommended for specific line items is based on: (1) Line item amounts requested for MHI personal services, Fort Lyon, and Public Health distributions, less decision items; and (2) For MHI forensics services, amounts identified by OSPB, as these are program line items, and the portion used for personal services is at the discretion of the Executive Branch. OSPB indicates that federal compliance is easier to administer for personal services amounts than operating expenses.

### ISSUES AND QUESTIONS FOR COMMITTEE CONSIDERATION

- 1 **Logistical Issues for Higher Education Controlled Maintenance:** JBC Staff have a number of concerns about appropriating ARPA funds for capital construction controlled maintenance in FY 2023-24.

*Much Shorter Time-frame for Spending than Usual:* While controlled maintenance projects are expected to be completed on a shorter timeframe than other capital construction activities, funds appropriated are typically available upon passage of the Long Bill and remain available for three years. Using ARPA funds will require that all appropriations have been fully encumbered with a primary contractor by December 31, 2024, a bit more than 1.5 years after the appropriation takes effect, although they will still be available for expenditure for three years.

*Current authority for Office of State Architect/DPA to Move Funds:* Pursuant to Section 24-30-1303.7, the Executive Director of the Department of Personnel has authority to move funds among controlled maintenance projects “when the actual cost of a controlled maintenance project exceeds the amount specifically appropriated for such project”, “when the actual cost of a controlled maintenance project is less than the amount specifically appropriated for such project”, and to cover emergency project costs. How would this authority be used in light of shortened timeframes?

*Less Need to Use Federal Funds for Higher Education Capital:* Last year, a large amount of ARPA funds were appropriated for higher education capital construction projects due in part to concerns about whether higher education institutions might permanently lose their TABOR enterprise status as a



result of a state capital grants. There is no longer a risk of an institution *permanently* losing its enterprise status, based on legislative action during the 2022 legislative session.<sup>4</sup>

*Use of Federal Funds for Capital Has Had Some Challenges so Far:* Use of the federal funds for capital construction has presented some challenges, although OSPB states that these are now addressed. Fiscal Year Request for Information #3 asked OSPB “to solicit information from state agencies and institutions of higher education and indicate if any changes to appropriations or statute are required to ensure FY 2022-23 capital construction appropriations are fully expended.” The report was due January 2, 2023 but was not submitted until January 31, 2023. In the response, OSPB notes that there have been unforeseen delays in encumbering and expending the FY 2022-23 capital appropriations, because this required re-writing contracts and reporting requirements. As a result, the Executive Branch had to request that the Capital Development Committee extend the six month encumbrance deadline for the projects approved for FY 2022-23.

The Executive Branch states that it does not anticipate that the requested use of ARPA funds in FY 2023-24 would lead to the same delays or challenges, because the projects are below the \$10.0 million threshold for complying with certain federal “prevailing wage” requirements (Davis-Bacon) and because the reporting and compliance systems have now been put in place.

**The *current* staff recommendation is to not appropriate the ARPA funds for controlled maintenance.** However, if OSPB is unable to identify better options for appropriating the ARPA funds by March 1, staff may recommend using the ARPA funds for select projects where the entity implementing the project believes that the funds can be encumbered quickly and the risks of not encumbering the funds in time appears low.

2 **Should More ARPA Funds be Appropriated in FY 2023-24—rather than FY 2024-25—to limit administrative complications?** The Governor’s Office proposes that the General Assembly trade out General Fund for ARPA funds in the Long Bill over two years—FY 2023-24 and FY 2024-25. However, as discussed earlier, under federal law, ARPA funds must be obligated by December 31, 2024. Under current state law, ARPA funds that are *not* obligated by December 30, 2024 are transferred to the Unemployment Insurance Trust Fund. The Governor’s Office has expressed confidence that appropriations shown in its chart for the mental health institutes, local public health agency distributions, and the Fort Lyon Residential Community can be encumbered in FY 2024-25 before the December 2024 deadline and thus expended without difficulty. However:

- There is less money available to refinance for the mental health institutes staff than the Governor’s Office originally anticipated for FY 2024-25;
- As described above, staff believes using the funds for controlled maintenance projects, even in FY 2023-24, may be problematic;

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<sup>4</sup> Proposition 117, adopted by voters in 2020, appeared to require higher education institutions to seek a vote of the people if they lost enterprise status and wished to regain it. However, based on changes enacted in H.B. 22-1400 (Procedural Requirements for State Enterprises) this is no longer a concern. The General Assembly has modified law to clarify that institutions that have already qualified for enterprise status do not need to reapply to the voters for such status if they disqualify in a given year.

- Underexpenditures are a real concern. For FY 2021-22, the General Assembly appropriated \$10,000,000 in ARPA funds for local public health agencies, but actual expenditures were \$9,595,596. It is unclear how the State would address an underexpenditure of an appropriation that occurred after December 31, 2024.

**Given the experience so far, staff encourages the Committee to ask the Governor’s Office to identify additional options by March 1 for use of ARPA funds in FY 2023-24.**

- 3 These are One-time Funds.** Staff has consistently supported use of ARPA funds in lieu of General Fund, as a mechanism for trading time limited one-time funds with one-time amounts that are not time-limited. *However, these are one-time funds, regardless of the year in which they are used.* Last year, staff proposed that the JBC consider depositing saved General Fund amounts in a “mitigating cliff effects” cash fund, which could be spent down over an extended period. **The Governor’s Office is proposing to fully expend these funds, as well as other “prepays” set aside in FY 2021-22 and FY 2022-23, to address what it describes as a structural budget deficit in FY 2023-24 and FY 2024-25.** The Office is silent on how this structural budget deficit will be addressed in FY 2025-26.

PREPAY UTILIZATION	FY24	FY25
<b>FISCAL YEAR 2023-24</b>		
ARPA prepay: Refinance ARPA-eligible spending to close structural deficit	\$155.0	
PERA prepay (paid early to PERA in FY23)	\$155.0	
Medicaid FMAP extension	\$100.0	
FAMLI prepay reduces state obligation	\$10.0	
<b>Total prepays utilized FY24</b>	<b>\$420.0</b>	
<b>SAVE FOR FISCAL YEAR 2024-25</b>		
ARPA prepay: Refinance ARPA-eligible spending to close structural deficit		\$150.0
Controlled Maintenance prepay		\$110.0
State Education Fund (prepay to maintain BSF FY23 \$250M buydown)		\$290.0
FAMLI prepay (\$57 over 4-5 years)		\$10.0
<b>Total prepays utilized FY25</b>		<b>\$560.0</b>
<b>TOTAL PREPAYS UTILIZED OVER 2 YEARS</b>		<b>\$980.0</b>

## INFRASTRUCTURE AND JOBS ACT MATCHING FUNDS PROPOSAL

*REQUEST:* The Governor’s request includes two items related to using state appropriations to draw down federal funds from the federal Infrastructure Investment and Job Act (signed into law in November 2021).

- OSPB Request R-1 requests spending authority for \$21,250,000 cash funds in FY 2023-24 from the Infrastructure Investment and Jobs Act Cash Fund created in S.B. 22-215 (Infrastructure Investment and Jobs Act Cash Fund; a JBC Bill).
- The Governor’s November 1, 2022 budget submission letter identifies a request for an additional \$91.0 million General Fund to be transferred to the Infrastructure Investment and Jobs Act Cash

Fund through 2023 session legislation. The Governor's Office indicates that it is requesting that the JBC sponsors this legislation.

*RECOMMENDATION:*

- **Staff recommends that the Committee approve the request in the Governor's Office to provide spending authority for the \$21,250,000 cash funds currently remaining in the Infrastructure and Jobs Act Cash Fund, beginning in FY 2023-24.** A total of \$81.25 million General Fund was transferred into this cash fund in June 2022, and an FY 2021-22 appropriation of \$60,000,000 cash funds to the Governor's Office was included in the legislation, with spending authority provided through FY 2026-27. This appropriation will give the Governor's Office full access to funds previously set aside, effective July 1, 2023, through FY 2026-27. While the Office has encumbered only \$23.0 million to-date, the Office needs full access to the funds in order to encumber them for projects. Given that the General Assembly has set aside the funds to match federal funds, staff believes they should be made available for the intended purpose.
- **Staff recommends that the Committee authorize staff to begin drafting a bill to transfer additional General Fund to the Infrastructure and Jobs Act Cash Fund in FY 2023-24,** with authority to make some technical changes to the program created by the bill to enable funds to be used to match federal funds from the federal Inflation Reduction Act (signed into law in August 2022), when applicable. The Governor's Office has requested a statutory transfer so that an additional 15.0 percent is not required to meet reserve requirements. Staff believes using a transfer rather than appropriation is reasonable, given that the proposed use of funds is one-time in nature, rather than ongoing.
- The Staff Recommendation is to wait until after the March forecast to make a final decision about the amount to include in this bill. However, the Committee could choose to adopt a General Fund set-aside at the level requested (\$91.0 million) or could choose to adopt a different number. **If the Committee is confident that it wants to do a set-aside, it may make balancing easier if it identifies this initial figure now. Staff's primary concern thus far is whether there will be sufficient demand for the matching funds. Staff assumes demand will become clearer in FY 2023-24.**

ANALYSIS AND BACKGROUND

**BACKGROUND – S.B. 22-215**

Senate Bill 22-215, a JBC bill, created the "Infrastructure Investment and Jobs Act" cash fund (IIJA Cash Fund) and required the state treasurer to transfer \$80,250,000 General Fund to the fund in FY 2021-22. The money in the IIJA Cash Fund is subject to annual appropriation by the general assembly to the Office of the Governor and to departments. Money in the fund is to be used, subject to approval by the Governor, as the nonfederal matching funding necessary for the state or a local government to be eligible to receive federal approval and federal funds for certain categories of infrastructure projects allowed under the federal "Infrastructure Investment and Jobs Act". The Governor's Office must establish a process for receiving, reviewing, and approving applications and awarding and distributing money from the fund. The office, as well as state departments receiving money from the fund, are subject to annual reporting requirements.

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The bill included an appropriation of \$60,000,000 from the IIJB Cash Fund to the Governor's Office and to a department, as defined in the act, for the 2021-22 state fiscal year, and any money appropriated and not expended prior to July 1, 2022, was further appropriated through the 2026-27 state fiscal year.

### CURRENT STATUS OF SPENDING, ENCUMBRANCES

The Governor's Office submitted a report on October 1, 2022 on the processes it had established for use of the IIJA cash fund and included information on the program as part of a presentation to the JBC on November 28, 2022.<sup>5</sup>

*Estimated Federal Funds Available from the IIJA and Matching Funds Required.* The OSPB R1 identifies the following additional match amounts it seeks, based on consultation with state agencies about their needs, after accounting for: (1) \$16.9 million that has already been allocated from the IIJA cash fund and (2) match funds the agencies are able to use from their base budgets.

The request indicated that, as of November 1, 2022, the Office has already allocated:

- \$2.1 million for implementation resources
- \$3.8 million for local capacity support
- \$5.0 million for CDPHE water projects
- \$6.0 million for local direct match support

**The Office seeks an additional \$91.0 million for the cash fund, in addition to the \$80.25 previously transferred to the fund (a total of \$171.3 million) which is calculated to include the \$16.9 million already allocated at the time of the request and the \$154.3 million in the table below (a total of \$171.2 million).**

Investment Area	Estimated Agency Match Support Need(\$M)	Estimated Agency Match Estimate Includes:
Transportation	61.2	\$41.8M estimate for match need on rail projects, an additional \$10M for Front Range Rail and \$9.4M estimate for match need on transit programs.
Water	30.0	\$30.0 M for water programs to replace lead lines, increase funds for the elimination of harmful chemicals and particulates in drinking water, and other water projects.
Power & Grid	1.5	\$1.5M match needed for phase 1 of Hydrogen Hubs - a four-state partnership with neighboring states to design, construct and deliver a hydrogen hub facility for alternative energy.
Broadband (OIT)	51.6	\$51.6 M to increase broadband access hard to connect rural areas and historically left behind areas.
Local & Tribal Match Needs	10.0	\$10M in additional resources to support match needs from local agencies applying directly for projects that are not eligible for states.
<b>Total Match Need for IIJA Programs</b>	<b>154.3</b>	<b>This reflects the total remaining match need identified across the State government and the amount of Federal funding the match may unlock.</b>

*\*Note: all estimates are subject to change as federal guidance evolves.*

<sup>5</sup> <https://leg.colorado.gov/sites/default/files/apra-11-28-22.pdf>

FEBRUARY 8, 2023

In response to staff questions, the Governor’s Office reports that **as of January 2023, it has allocated an additional \$5.0 million for water projects, bringing the total to \$23.0 million. Notably, even the \$23.0 million set aside thus far is only partially related to actual approved projects.**

- The largest amounts approved thus far are for match for water quality projects (\$11.0 million);
- Amounts of \$1.0 million or less have been approved for three local direct match supports projects thus far: a cogeneration energy project in Rangely, improving a multimodal (freight train) intersection, and a broadband “middle mile” improvement project.
- The \$3.8 for local capacity support includes \$1,865,944 that has been transferred to the Office of Economic Development and International Trade to fund the Infrastructure Coordinator and 16 regional grants navigator specialists operating through COGs and local governments to support rural and small communities in identifying applicable federal funding opportunities.
- The \$2.1 million for implementation resources represents a set-aside for anticipated state implementation costs over the next five years.

The Governor’s Office has estimated that the State could receive \$4.1 to \$7.1 billion in federal funds over the next five years from the IIJA, with estimated matching funds of approximately \$1.0 billion. The table below has been presented by the Governor’s Office several times. Note that the \$1.0 billion in matching funds *includes* matching amounts that may be provided using existing state and local government funding and does not rely solely on additional funds that may be provided through the IIJA cash fund.

Investment Category	CO Estimate- Low Range (\$M)	CO Estimate- High Range (\$M)	Total Match Needs- High Range (\$M)
Airports	\$430M	\$849M	\$149.4M
Broadband	\$427M	\$712M	\$138M
Electric Vehicles and Buses	\$57M	\$220M	\$27M
Environmental	\$345M	\$372M	\$0M
Power and Grid	\$283M	\$1,239M	\$128M
Passenger and Freight Rail	\$28M	\$237M	\$42M
Public Transit	\$227M	\$247M	\$54M
Ports/Waterways	\$356M	\$356M	\$0M
Resiliency	\$121M	\$316M	\$12M
Roads, Bridges & Major Projects	\$1,000M	\$1,507M	\$378M
Safety & Research	\$16M	\$149M	\$24M
Water Infrastructure	\$856M	\$936M	\$95M
<b>Grand Total</b>	<b>\$4,145M</b>	<b>\$7,139M</b>	<b>\$1,049M</b>

Although relatively little of the total amount requested has been obligated for projects thus far, the Governor’s Office anticipates an increase in the number of federal grant opportunities in the coming year, as federal agencies continue to release grant opportunities consistent with the five year IIJA funding period. The Governor’s Office notes that grant opportunities are often open for as little as a 60 day window. The Recovery Office website provides an ongoing list of opportunities.

<https://coforward.colorado.gov/infrastructure-investment-jobs-act/upcoming-ijja-opportunities-and-milestones>

The Department of Local Affairs also provides a public-facing website and search tool on funding resources for local communities, including IJJA provisions.

<https://cdola.colorado.gov/funding-technical-assistance/local-community-funding-guide>

## APPENDICES

### ARPA BACKGROUND – COLORADO USES

During the 2021 and 2022 legislative sessions, the General Assembly deposited the ARPA funds into multiple cash funds for designated uses. For detailed information on bills and programs authorized, see Appendix D2 of the FY 2023-24 Appropriations Report.<sup>6</sup> Total amounts, by the cash fund in which the money was deposited, and the subsequent transfer or allocation of the funds is shown below. Amounts shown are solely federal funds, but some General Fund was also deposited in these cash funds.

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<sup>6</sup> <http://leg.colorado.gov/publications/appropriations-report-fiscal-year-2022-23>

**2022 LEGISLATIVE SESSION ALLOCATION OF CORONAVIRUS STATE FISCAL RECOVERY FUND  
MONEY AND BALANCES REMAINING**

	TRANSFER TO CASH FUND BASED ON 2021 AND 2022 SESSION LEGISLATION	SPENDING AUTHORITY PROVIDED IN 2021 AND 2022 LEGISLATIVE SESSION, INCLUDING CONTINUOUS APPROPRIATION	BALANCE AVAILABLE FOR FUTURE LEGISLATIVE APPROPRIATION/TRANSFER
Transportation-related Cash Funds	\$343,500,000	\$343,500,000	\$0
Revenue Loss Restoration Cash Fund	1,365,957,992	1,058,452,106	307,505,886
Economic Recovery and Relief Cash Fund <sup>1</sup>	752,324,618	752,283,144	41,474
Workers, Employers, and Workforce Centers Cash Fund	232,373,184	232,373,184	0
Behavioral and Mental Health Cash Fund	550,000,000	542,142,370	7,857,630
Affordable Housing and Home Ownership Cash Fund	214,605,996	214,605,996	0
Balance in American Rescue Plan Act of 2021 Cash Fund	370,000,000	370,000,000	0
<b>TOTAL</b>	<b>\$3,828,761,790</b>	<b>\$3,513,356,800</b>	<b>\$315,404,990</b>

\*In addition to the amount shown, there is \$10,000,000 originating as General Fund remaining in the Revenue Loss Restoration Cash Fund.

As reflected in the chart, most funds were allocated during the 2021 and 2022 legislative sessions. However, as of the end of 2022 legislative session, some funds remained. Amounts in the Behavioral and Mental Health Cash Fund and a small portion of funds in the Revenue Loss Restoration Fund were expected to be used in FY 2023-24, based on previous commitments (e.g., amounts identified in fiscal notes), but \$315.4 million in ARPA funds was unallocated, of which approximately \$305 million was uncommitted, as of the start of the 2023 legislative session.<sup>7</sup>

<sup>7</sup> Excluding the January 17, 2023 ARPA “Prepays”, the Request includes the following components from ARPA funds: Judicial: \$4,000,000 from Behavioral and Mental Health CF; \$114,368 from Revenue Loss Restoration CF; and \$71,478 from Economic Recovery and Relief CF; Public Safety: \$1,952,272 from Behavioral and Mental Health Cash Fund and \$1,881,727 from Revenue Loss Restoration Cash Fund. The fiscal note for H.B. 22-1352 anticipated a further appropriation to the Department of Public Safety of \$1,885,472 from the Revenue Loss Restoration Cash Fund in FY 2024-25. If total remaining ARPA funds are reduced by these figures, ignoring the specific cash fund in which the money was placed, a balance of \$305,499,673 remains. This excludes any reversions to the cash funds and interest on the federal ARPA funds which has been separately allocated for emergency reserves.

## HYPOTHETICALS POSED TO GOVERNOR'S OFFICE REGARDING USE OF ARPA FUNDS AFTER DECEMBER 31, 2024

- 1 Department is providing a service directly. The staff person it had hired to do the work on a time-limited basis leaves in 2025. Could the position be replaced by someone else doing the same work?

Answer: Yes. The individual can be changed.

- 2 Higher Education institution has received a capital construction or controlled maintenance grant. Its general contractor has financial problems and folds in 2025. Could it hire a new general contractor for the same work for expenditure through 2026?

Answer: No. The primary contractor cannot be replaced.

- 3 Same scenario as above, but the issue is not with the general contractor but rather a subcontractor of the general contractor. Can the general contractor switch the subcontract to another entity?

Answer: Yes. A subcontractor ("tier 2" contractor) can change, while a "tier 1" contractor (the general contractor) cannot.

- 4 The State has contracted with a nonprofit or a local government to provide housing-related services. The entity says in 2025 that it is losing money and cannot provide the service in 2026. Could the State move its contract to a different government or nonprofit entity for the same service?

Answer: No. This is analogous to the general contractor question in #2.

- 5 Same situation as #4, but the entity says it can continue to provide the service if the State makes various changes to the contract. Could the State implement such a change?

Answer: Probably, but this is not entirely clear and might depend on the nature of the change to the contract.

- 6 The State determines in 2025 that an ARPA program it thought would be effective simply is not working and will not be able to spend its funds. Could the State move the funding to some other function? Take the entire program in-house and try to do the same thing in a very different way?

Answer: No.