

MEMORANDUM

TO: Joint Budget Committee

FROM: Amanda Bickel, JBC Staff

SUBJECT: FY 2013-14 and FY 2014-15 General Fund Exempt Allocations for Higher Education

DATE: March 20, 2015

On March 19, 2015, the Committee approved adjustments to reduce General Fund appropriations and increase General Fund Exempt appropriations by a like amount for FY 2013-14, FY 2014-15, and FY 2015-16 in the Department of Higher Education.

FY 2013-14

There are insufficient General Fund appropriations in the Department of Higher Education operating budget to cover the GFE adjustment approved for FY 2013-14.

The table below compares current GF and GFE appropriations in the Department of Higher Education with the adjustment approved. Furthermore, pursuant to Section 24-77-104.5 (4), C.R.S., **only some operating appropriations in the Department of Higher Education may be counted in this GFE calculation.** This includes need-based aid, merit-based aid, College Opportunity Fund stipends and fee-for-service contracts, but it technically does not include grants to the local district junior colleges or area vocational schools or certain other (generally smaller) General Fund appropriations in the Department of Higher Education.

FY 2013-14 Appropriations		General Fund	General Fund Exempt
Long Bill and Supplemental LB Amendments	SB 13-230; HB 14-1336	\$76,345,815	\$582,133,333
Other Bills	HB 13-1165, HB 13-1194, 13-1230, 14-1319	628,913	0
Total Appropriations		76,974,728	582,133,333
3/19 Adjustment to GFE Approved		(84,639,619)	84,639,619
(Shortage)/Excess of GF to translate into GFE	All Bills/Appropriations	(7,664,891)	
	If Adjust Long Bill & Supplemental Only	(8,293,804)	

However, **Section 24-77-104.5 (4) does allow capital construction appropriations for higher education to be included in the General Fund Exempt amounts.** In FY 2013-14, the General Assembly appropriated \$112,542,840 from the Capital Construction Fund for higher education projects. Therefore, in lieu of further FY 2013-14 adjustments to GFE in the higher education operating budget, **staff recommends amending Sections 24-75-302 (2) (z) and 24-75-302 (2.5) (h), C.R.S., which provide for General Fund and General Fund Exempt transfers to the**

Capital Construction Fund (CCF) for FY 2013-14. These sections should be adjusted to increase the GFE transfer to the CCF by \$84,639,619 and reduce the GF transfer to the CCF by the same amount and to specify that the GFE increase is for appropriations for capital construction projects related to higher education, consistent with the provisions of Sections 24-77-104.5 (1) (b) (III) and (4) (a) (V), C.R.S. [Staff has attached the statutory sections below].

Staff also notes that some amounts currently designated as GFE for FY 2013-14 for the local district junior colleges and area vocational schools may not conform to the letter of the law (see discussion below for FY 2014-15).

FY 2014-15

Higher Education operating appropriations for FY 2014-15 will also approach the limit on General Fund available to translate into General Fund Exempt.

First, staff notes some GFE adjustments included in the FY 2014-15 Long Bill may not comply with the specific requirements in Sections 24-77-104.5 (4) (a), C.R.S. Specifically:

- It is not clear whether or not \$16,432,328 in work study appropriations currently classified as GFE conforms to the letter of the law, though it might be considered/defined as a form of need based or merit based aid, both of which are allowed.
- It is not clear whether \$14,841,981 in appropriations for the Ft. Lewis Native American Tuition Waiver currently classified as GFE conforms to the letter of the law (though it, too, could be considered/defined as need based or merit based aid.
- It is not clear whether \$12,650,325 for Local District Junior College Grants or \$8,091,845 for area vocational schools, currently appropriated as GFE fall under the requirements of the current statute since these are technically grants and not fee-for-service contracts, even though funding provided is clearly analogous to the funding provided via stipends and fee-for-service contracts with other higher education governing boards.

In light of the above:

- **Staff recommends that the JBC carry a bill to amend Section 77-104.5 (4) (a), C.R.S., to clarify that appropriations for the above purposes are considered funding for the benefit of students attending institutions of higher education and are eligible to be supported with GFE.** Staff has consulted with the Office of Legislative Legal Services about this issue, and OLLS staff concur that such a clarification is appropriate and does not raise any legal concerns.

Even if the above appropriations are considered a valid use of GFE, for FY 2014-15, adjustments to S.B. 14-001 appropriations will be required to accommodate the current FY 2014-15 changes and, after this adjustment, there will be virtually no room left for any further adjustments within the operating budget. For FY 2014-15 staff recommends:

- **Amend the appropriation clause for S.B. 14-001** to reclassify all General Fund appropriations in that bill as GFE (\$100,162,480); and

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- **Provide the remainder of the adjustment (\$2,137,520) in the Need Based Grants line item, where there remains an appropriation of \$5.9 million General Fund in H.B. 14-1336 as amended by S.B. 15-148.**
- **If further adjustments are required next year based on the end-of-year actual for FY 2014-15, staff recommends that these be addressed through a change to the capital construction appropriation for higher education, consistent with the recommendation this year for FY 2013-14.** As there was nearly \$200 million in higher education appropriations from the CCF in FY 2014-15, this should provide adequate room for any late FY 2014-15 adjustment based on actual revenue.

FY 2014-15 Appropriations		General Fund	General Fund Exempt
Long Bill and Supplemental LB Amendments	HB 14-1336, SB 15-148	\$9,131,726	\$650,733,333
S.B. 14-001	SB 14-001	100,162,480	0
Other Bills	SB 14-211, HB 14-1319, HB 14-1384	2,054,986	
Total Appropriations		111,349,192	0
3/19 Adjustment to GFE Approved		(102,300,000)	102,300,000
(Shortage)/Excess of GF to translate into GFE			
	All Bills/Appropriations	9,049,192	
	Adjust Long Bill & S.B. 14-001 only	6,994,206	

FY 2015-16

For FY 2015-16, based on JBC action to-date, there should be sufficient General Fund available to make the proposed adjustments in General Fund Exempt. However, *as GFE amounts grow over time, staff anticipates higher education GFE challenges similar to those currently faced for FY 2014-15 and FY 2013-14.*

FY 2015-16 Appropriations		General Fund	General Fund Exempt
Current Long Bill Placeholder		\$217,302,474	\$650,733,333
3/19 Adjustment Required to Achieve Total GFE Approved		(137,266,667)	137,266,667
(Shortage)/Excess of GF to translate into GFE			
	Long Bill	80,035,807	

Statutory Language

Note that the statutory language below was not part of the referred measure but was instead included in a companion bill with a contingent effective clause, so that the bill became effective based on passage of Referendum C and (if applicable) Referendum D of 2005.

24-77-104.5. General fund exempt account - appropriations to critical needs fund - specification of uses for health care and education - definitions

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(1) The moneys in the general fund exempt account created in [section 24-77-103.6 \(2\)](#) shall be appropriated or transferred in the following manner:

(a) (I) If available, the amount set forth in subparagraph (II) of this paragraph (a) shall be used as follows:

(B) If the voters of the state do not approve referendum "D", if the principal and interest on notes issued pursuant to section 24-115-110 is less than the amount set forth in subparagraph (II) of this paragraph (a), or if the general assembly elects not to appropriate moneys to the critical needs fund to repay the principal and interest on notes issued pursuant to section 24-115-110, moneys in the account shall be used in a manner consistent with [section 24-77-103.6 \(2\)](#).

(II) The amount appropriated or transferred pursuant to this subsection (1) shall be fifty-five million dollars in the state fiscal year 2005-06, ninety-five million dollars in state fiscal year 2006-07, and one hundred twenty-five million dollars in each subsequent state fiscal year.

(b) If there are any moneys in the account after the appropriations or transfers required by paragraph (a) of this subsection (1) are made, then all moneys remaining in the account shall be split equally for the following three purposes:

(I) Funding for health care, which shall be limited to the uses set forth in subsection (2) of this section;

(II) Funding for preschool through twelfth grade education, which shall be limited to the uses set forth in subsection (3) of this section; and

(III) Funding for the benefit of students attending community colleges and other institutions of higher education, which shall be limited to the uses set forth in subsection (4) of this section.

(4) (a) Funding for the benefit of students attending community colleges and other institutions of higher education, as used in subparagraph (III) of paragraph (b) of subsection (1) of this section, shall be limited to funding for:

(I) Need-based financial aid;

(II) Merit-based financial aid;

(III) The college opportunity fund program created in parts 1 and 2 of article 18 of title 23, C.R.S.;

(IV) Fee-for-service contracts authorized pursuant to [section 23-18-303, C.R.S.](#); and

(V) Capital construction projects related to higher education.

(b) All of the uses set forth in paragraph (a) of this subsection (4) are permitted under [section 24-77-103.6 \(2\) \(b\)](#). The general assembly shall not be required to

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appropriate or transfer moneys from the account for all of the programs and services set forth in paragraph (a) of this subsection (4).