

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee
FROM Amanda Bickel, JBC Staff (303-866-4960)
DATE March 18, 2022
SUBJECT General Fund Exempt in Higher Education - Legislation Recommended

- Referendum C, adopted by the voters in 2005, authorized the state to retain additional revenue above the limits originally imposed in Article X, Section 20 (Taxpayers Bill of Rights/TABOR). Moneys received in excess of the General Fund revenue limits originally imposed by TABOR are deposited in the General Fund Exempt (GFE) account. When the General Assembly adopted the referred measure that became Referendum C in 2005, it also adopted H.B. 05-1350, to provide additional definitions and computational details to the broad language included in the referred measure. **The statutory provisions added in H.B. 05-1350 require most GFE to be "split equally" for three purposes: funding for health care; funding for preschool through twelfth grade education; and funding for the benefit of students attending community colleges and other institutions of higher education.**
- The Long Bill typically includes both new appropriations and supplemental "add-on" appropriations to align General Fund Exempt appropriated with this statutory provision. Each year, the JBC votes to either increase or decrease the amount reflected in the budget from the General Fund Exempt Account and to make a corresponding adjustments to regular General Fund appropriations so that the sum of General Fund and General Fund Exempt appropriations total to overall Committee decisions about the use of General Fund. The purpose of these adjustments is to align total General Fund Exempt amounts with the most recent revenue data. Usually, these adjustments cover both the upcoming budget year (FY 2022-23 for the 2022 legislative session), the current year (FY 2021-22) and the prior year (FY 2020-21). However, **complying with this provision is not possible for FY 2020-21 because there is not sufficient General Fund appropriations available to "convert" to General Fund Exempt in the Department of Higher Education. While the Department of Higher Education received General Fund and General Fund Exempt appropriations in FY 2020-21, the amount was much lower than usual because of budget actions related to the COVID-19 pandemic. Based on final calculations of the amount of GFE available for use in FY 2020-21--a fiscal year that is now closed--higher education cannot receive its statutorily required 1/3 share.** The situation in FY 2020-21 is unusual and reflects the deep cuts in General Fund support that year. However, because an increasing share of the state budget has been allocated to K-12 and health care funding, as compared to higher education, complying with Section 24-77-104.5 (1)(b), C.R.S., as it pertains to higher education has been a challenge in prior years and may be in the future.
- The current system of making multiple adjustments to appropriations to classify portions of appropriations as coming from General Fund versus the General Fund Exempt account, including retroactive adjustments to prior years, drives **workload with uncertain benefit**. According to the State Controller, retroactive adjustments to what is classified as "General Fund" versus "General Fund Exempt" for fiscal years that have closed has no functional impact. From the Controller's perspective, the funds are already expended and the Controller makes no changes in the accounts

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based on Long Bill "add-ons" that adjust the share of funding from the General Fund versus the General Fund Exempt account in years that are already closed.

RECOMMENDATION:

Staff recommends that Joint Budget Committee introduce a bill to modify section 24-77-104.5 (1)(b), C.R.S., concerning the allocation of funds in the General Fund Exempt account. **Staff recommends striking the specific provision concerning the allocation between types of expenditures (1/3 each health care, higher education, and K-12 education) and replacing it with a general requirement, consistent with the original referred measure, that the funds be used for health care, K-12 education, and higher education. At a minimum, staff recommends that the Committee sponsor legislation that modifies this provision as it applies to years that have closed (such as FY 2020-21).** Staff would also like to see this provision modified for current year appropriations (such as FY 2021-22) and even new appropriations (FY 2022-23), if the Committee is comfortable with such a change.

In addition, since supplemental adjustments are particularly challenging, **staff requests authority to work with the Office of Legislative Legal Services, Legislative Council Staff, and the Controller's Office on identifying a legal structure that would reduce or eliminate the need to amend previous appropriations to specify the portion that originates as General Fund Exempt.** For example, staff believes it may be possible to authorize the Controller to make adjustments in specified line items so that final General Fund Exempt expenditures are consistent with the intent of the voters to spend funds for education, higher education, and health care, without running supplemental appropriation bills. Further research will be required to flesh out the best approach.

If amendments to prior year appropriations are still required based on the content of the bill, staff assumes that this bill would include the supplemental General Fund Exempt adjustments, at least for FY 2020-21, since it is not possible to comply with current law for FY 2020-21.

ADDITIONAL BACKGROUND:

Referendum C and Section 24-77-103.6, C.R.S.: Referendum C, adopted by the voters in 2005, authorized the state to retain additional revenue above the limits originally imposed in Article X, Section 20 (Taxpayers Bill of Rights/TABOR). Section 24-77-103.6, C.R.S., added by Referendum C, creates the General Fund Exempt (GFE) account to hold all moneys received in excess of the General Fund revenue limits originally imposed by TABOR and specifies that the moneys in the account shall be appropriated or transferred by the general assembly **“to fund health care; to fund education, including capital construction projects related thereto; to fund retirement plans for firefighters and police officers, so long as the General Assembly determines that such funding is necessary; and to pay for strategic transportation projects in the department of transportation...”** The term “education” in the referred measure is further defined to include **public elementary and high school education and higher education.**

H.B. 05-1350 and Section 24-77-104.5, C.R.S.: When the General Assembly adopted the referred measure that became Referendum C in 2005, **it also adopted H.B. 05-1350,** to provide additional

definitions and computational details to the broad language included in the referred measure. Section 24-77-104.5, added by this bill, specifies that the first \$125,000,000 shall be used consistent with the referred measure and states that any moneys remaining in the GFE account above this level “**shall be split equally**” for three purposes:

- funding for health care;
- funding for preschool through twelfth grade education; and
- “funding for the benefit of students attending community colleges and other institutions of higher education”.

For each of these purposes, the statute then defines the specific types of expenditures that qualify, e.g., the college opportunity fund program in higher education.

Growth of the GFE and Implications for Higher Education: Because of the large share of the General Fund budget that GFE comprises, and because an increasing share of the state budget is allocated to K-12 and (particularly) health care funding, **it has been challenging for the General Assembly to comply with Section 24-77-104.5 (1)(b) as it pertains to higher education. In order to comply with the "split equally provision" in 2015 the JBC sponsored legislation (S.B. 15-238) to increase the number of line items in the Department of Higher Education budget that are "counted" in the calculation. In some years it has had to rely on capital construction appropriations to cover the one-third share. As a result, multiple line items within the Department of Higher Education have been subject to frequent adjustment, even though in the Departments of Education and Health Care Policy and Financing only one line is ever adjusted.**

STATEWIDE GENERAL FUND EXEMPT APPROPRIATIONS AS A PERCENTAGE OF GF+GFE OPERATING APPROPRIATIONS				
FISCAL YEAR	GF	GFE	GF + GFE TOTAL	GFE AS % TOTAL
Appropriations				
FY 2004-05	\$6,026,669,077	\$0	\$6,026,669,077	n/a
FY 2005-06	5,242,175,653	1,111,134,410	6,353,310,063	17.5%
FY 2006-07	5,524,562,525	1,294,072,313	6,818,634,838	19.0%
FY 2007-08	6,115,508,373	1,150,440,321	7,265,948,694	15.8%
FY 2008-09	7,520,332,529	990,000	7,521,322,529	0.0%
FY 2009-10	6,658,357,846	900,000	6,659,257,846	0.0%
FY 2010-11	6,078,275,207	770,965,986	6,849,241,193	11.3%
FY 2011-12	5,585,471,306	1,473,821,565	7,059,292,871	20.9%
FY 2012-13	5,735,789,930	1,860,257,722	7,596,047,652	24.5%
FY 2013-14	6,307,281,234	2,041,055,836	8,348,337,070	24.4%
FY 2014-15	6,635,772,098	2,384,447,200	9,019,729,762	26.4%
FY 2015-16	7,093,914,621	2,397,155,186	9,597,112,649	25.0%
FY 2016-17	7,825,698,666	2,130,355,359	9,956,054,025	21.4%
FY 2017-18	8,153,200,945	2,482,001,784	10,635,202,729	23.3%
FY 2018-19	8,859,718,440	2,601,098,053	11,460,816,493	22.7%
FY 2019-20	9,426,637,170	2,625,050,220	12,051,687,390	21.8%

Even with previous statutory changes, however, it will not be possible to comply with the requirement for FY 2020-21. The table below shows General Fund and General Fund Exempt appropriations for higher education under Referendum C for FY 2020-21 and FY 2021-22 as they would be expected to be amended based on the LCS March 2022 forecast and existing appropriations.

As shown, there is simply not sufficient General Fund available for FY 2020-21 to "convert" the required share to General Fund Exempt.

COMPARISON REQUIRED GFE APPROPRIATION FOR HIGHER EDUCATION VERSUS AVAILABLE GENERAL FUND		
	FY 2020-21 (MILLIONS)	FY 2021-22 (MILLIONS)
Referendum C Revenue per LCS March 2022 Forecast	\$3,016	\$3,083
Share Required for Higher Education ¹	964	986
Total General Fund Appropriations in Relevant Line Items ²	629	1,179
General Fund Appropriations in Relevant Line Items above/(below) GFE Required	(\$335)	\$193

¹ Equals total revenue less \$125 million, divided by 3 (for K-12, higher education, health care)

² Equals operating budget line items historically used based on statute plus, for FY 2020-21, all higher education capital construction appropriations from the Capital Construction Fund

Additional Considerations:

- The portion of revenue classified as GFE is unpredictable, and retroactive adjustments are often large.
- While the JBC often makes large retroactive adjustments related to Referendum C once actual annual revenue is known, this apparently has no impact on actual state accounts. **The State Controller reports that no changes are made in relation to these retroactive changes.**
- The statutory requirement does not appear to have ever had a real bearing on Committee appropriation decisions about use of General Fund. The Committee makes decisions related to total General Fund and then makes allocations between the General Fund and General Fund exempt accounts after the fact. **Given the importance of K-12, higher education, and Medicaid in the State budget, the General Assembly would not be able to make appropriations for these programs anywhere near current levels in the absence of Referendum C and the General Fund Exempt Account. However the current requirement for dividing funding "equally" does not seem to have a functional impact.** Further, although the requirement for equal thirds could *potentially* have a bearing on Committee decisions related to new appropriations, it would be impractical to adjust total General Fund allocated to one department or another mid-year based on the calculation of Referendum C revenue.

Recommendation and Options: Staff recommends that the JBC introduce legislation to modify Section 24-77-104.5 (1)(b), C.R.S. Staff recognizes this could be controversial. Higher education institutions would like to receive funding consistent with the one-third share of additional revenue discussed at the time Referendum C was adopted. However, the "one-third" component was **not** included in the referred measure itself. Given current revenue and expenditure trends, the one-third requirement is simply too rigid.

Staff recommends striking the specific provision concerning the allocation between types of expenditures (1/3 each health care, higher education, and K-12 education) and replacing it with a general requirement, consistent with the original referred measure, that the funds be used for health

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care, K-12 education, and higher education. At a minimum, such a change should be applied to prior and current year appropriations (FY 2020-21 and FY 2021-22 in the current legislative session).

If the Committee does not wish to fully eliminate the provision as it applies to appropriations for the upcoming year (FY 2022-23 in the current legislative session), alternatives might include:

- A requirement that all funds above the \$125.0 million be used for these three general purposes with at least 10.0 percent (or some other figure) provided for each one.
- A requirement that two-thirds be used for education, including both K-12 and higher education, and one-third for health care.
- A change so that the language expresses the non-binding “intent” to divide moneys equally to the extent feasible.

Staff also recommends exploring other statutory changes that could eliminate the need for supplemental adjustments to prior year appropriations related to the General Fund Exempt Account.