MEMORANDUM

JOINT BUDGET COMMITTEE

TO	Members of the Joint Budget Committee
FROM	Eric Kurtz, JBC Staff (303-866-4952)
DATE	April 25, 2024
SUBJECT	Treatment of Health Insurance Affordability Enterprise Revenue

The Attorney General recently confirmed a finding by the State Auditor[1] that increases the expected General Fund obligation for TABOR refunds for FY 2023-24 and FY 2024-25 by a total of $66.9 million compared to what was assumed in the budget.

The issue is caused by insurance premium taxes that are diverted to the Health Insurance Affordability Enterprise (HIA) that is responsible for the State's reinsurance program for health insurance carriers and other smaller health insurance affordability programs. The reinsurance program reduces the risk for individual carriers of high cost claims, based on the premise that the carriers can then maintain lower reserves and reduce premiums.

The Office of the State Controller was treating the insurance premium taxes diverted to the HIA as exempt from TABOR, but the State Auditor concluded, and the Attorney General agreed, that the money is state TABOR revenue. When the money is counted as state TABOR revenue, it increases the General Fund obligation for a TABOR refund and reduces the amount of General Fund available for other purposes.

The table below summarizes the actual and projected TABOR refunds that should be sent to taxpayers for the insurance premium taxes diverted to the HIA. The total difference from the assumptions used in the budget is $66.9 million, with $33.9 million related to under-refunds in prior years and $33.0 million related to the projected refund obligations in FY 2023-24 and FY 2024-25.

Increase in TABOR refunds	
Attributable to Fiscal Year	Insurance Premium Taxes to HIA
FY 2020-21	$9.2
FY 2021-22	$11.6
FY 2022-23	$13.1
FY 2023-24	$15.7
FY 2024-25	$17.3
Total	**$66.9**

STAFF RECOMMENDATION

Staff recommends that the JBC introduce a bill to: (1) eliminate the insurance premium subsidy to the HIA beginning in FY 2023-24; and (2) temporarily reduce the General Fund reserve requirement in FY 2024-25 by $31.5 million.

[1] https://leg.colorado.gov/sites/default/files/documents/audits/2301f_statewide_single_audit_fy23.pdf Page II-166 to II-172

ELIMINATE THE INSURANCE PREMIUM SUBSIDY TO THE HIA

Eliminating the insurance premium subsidy to the HIA will cause the insurance premium revenue to flow to the General Fund, where it will then be available to pay for the increased TABOR refund obligation. This would fund the $33.0 million related to the projected refund obligations for FY 2023-24 and FY 2024-25, although it does not address the under-refund for prior years (discussed below).

The Division of Insurance believes the HIA has sufficient reserves to absorb the recommended reduction in FY 2023-24 without impacting program operations in calendar year 2024. For FY 2024-25 and ongoing, OSPB indicates it will submit a proposal with the November 2024 budget request for how the HIA will adapt to the lower revenue. The proposal might include an increase in the HIA fee, which would require a statutory change. Current law includes a prioritized use of HIA revenue[2] that, if unchanged, would require a reduction in revenue to come first from premium subsidies for plans purchased through the exchange by people ineligible for federal tax credits, Medicaid, Medicare, or CHP+ (the OmniSalud program), and then from premium subsidies for plans purchased through the exchange by people eligible for tax credits, and then (if necessary) from the reinsurance program. The Division of Insurance estimates that if the reduction was taken entirely from the OmniSalud program it would reduce coverage by 1,615 enrollees and if it was taken entirely from reinsurance it would increase premiums by approximately 1 percent.

TEMPORARILY REDUCE THE GENERAL FUND RESERVE

A temporary reduction in the General Fund reserve requirement would free up money to pay for the under-refunds in prior years with minimal disruption to the current budget plan. An unexpected change in the available General Fund is one of the primary reasons the General Assembly maintains a reserve. In this case, the JBC is aware of the change during the legislative session and could, theoretically, take measures to rebalance the budget to adapt to less General Fund. However, the General Assembly has already adopted the budget plan and is well down the road of making policy decisions about other legislation based on the budget plan. This would be a one-time reduction in the General Fund reserve and OSPB would need to include funds to rebuild the reserve in the FY 2025-26 request.

The total obligation for under-refunds in prior years is $33.9 million, but the required reduction in the General Fund reserve is only $31.5 million. This is because the introduced version of the ARPA swap bill will free up more General Fund than originally anticipated by the JBC.

The alternatives to reducing the reserve would be to reduce the set asides for other legislation and/or to reopen the budget and reduce the funding levels that were provided in the Long Bill.

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[2] Section 10-16-1205 (2)(d), C.R.S.