

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



INTERIM SUPPLEMENTAL REQUEST FOR FY 2012-13

DEPARTMENT OF PERSONNEL

**JBC Working Document - Subject to Change
Staff Recommendation Does Not Represent Committee Decision**

**Prepared By:
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**Interim Supplemental Request #3
 Liability Premiums Technical True-up**

	Request	Recommendation
Total	\$2,772,882	\$0
FTE	<u>0.0</u>	<u>0.0</u>
General Fund	0	0
Cash Funds	0	0
Reappropriated Funds	2,772,882	0
Federal Funds	0	0

Does JBC staff believe the request satisfies the interim supplemental criteria of Section 24-75-111, C.R.S.? [The Controller may authorize an overexpenditure of the existing appropriation if it: (1) Is approved in whole or in part by the JBC; (2) Is necessary due to unforeseen circumstances arising while the General Assembly is not in session; (3) Is approved by the Office of State Planning and Budgeting (except for State, Law, Treasury, Judicial, and Legislative Departments); (4) Is approved by the Capital Development Committee, if a capital request; (5) Is consistent with all statutory provisions applicable to the program, function or purpose for which the overexpenditure is made; and (6) Does not exceed the unencumbered balance of the fund from which the overexpenditure is to be made.]	NO
Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [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.]	YES
<p>JBC staff and the Department disagree that (1) this request meets the interim supplemental criteria of Section 24-75-111, C.R.S., In its request, the Department states that in FY 2012-13, the State has settled a number of claims through the self-funded Liability program that is expected to drive a negative fund balance before the end of calendar year 2012. Section 24-75-111 (3) (b), C.R.S., states "No overexpenditure shall be allowed in excess of the unencumbered balance of the fund from which the overexpenditure is made as of the date of the overexpenditure." Staff reads this provision to mean that the Department can only overexpend if it has the reserve fund balance to do so and the provision does not allow for the additional allocation of liability or other common policy expenses to state agencies. The Department's request of \$2.8 million is for billing/allocation to state agencies, and therefore not allowed under interim supplemental criteria.</p> <p>JBC staff agrees that (2) this request is the result of data that was not available when the original appropriation was made. Specifically, the Department has settled a higher-than-expected dollar amount of claims in FY 2012-13.</p>	

Department Request: The Department requests an additional \$2,771,882 in common policy allocations to state agencies in the Payment to Risk Management and Property Fund line item for FY 2012-13, for the Liability Program in Risk Management Services in the Division of Human Resources. The Department estimates that \$1,635,246 of the additional allocation to state agencies

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is from General Fund. The Department's \$2.8 million total request is comprised of a projected \$2.4 million fund deficit and a \$0.4 million reserve fund balance.

Staff Recommendation: Staff recommends that the Committee deny the request on the basis that the request includes additional state agency billings/allocations in order to restore a fund balance deficit, however statute only allows interim supplementals for overexpenditures from a fund with adequate fund balance.

The rules governing interim supplementals in Section 24-75-111 (5), C.R.S., require the Committee to introduce all interim supplementals that it approves.

Staff Analysis:

Unanticipated Settlements

The Department states that it has experienced or will soon have to pay a number of unanticipated liability claims payments in FY 2012-13. The extraordinary payments include three large settlements in October that totaled \$1.2 million, a \$1.1 million payment for a single claim that was expected to be made in November, an \$800,000 payment for a single claim expected to be made in December, and a \$600,000 payment related to the Lower North Fork Fire expected to be made in February. The Department also made payments totaling \$268,000 for July through September. The Department projects an additional \$150,000 per month for the months of January, March, April, May, and June 2013, as well as an additional \$100,000 for November 2012, and an additional \$200,000 for December 2012 and February 2013.

FY 2012-13 Summary of Liability Payouts by Month (actual through October)					
July	August	September	October	November	December
\$140,292	\$64,611	\$62,931	\$1,206,765	\$1,200,000	\$1,000,000
January	February	March	April	May	June
\$150,000	\$800,000	\$150,000	\$150,000	\$150,000	\$150,000

The Department's projections for FY 2012-13 total \$5.2 million in liability payments. The figure-setting amount for the prospective losses estimate, that is actuarially determined, was \$3.9 million.

Additionally, the Department provided a fund balance detail worksheet that includes all program expenses including the following expenses that are not detailed in the budget request:

- Outside Legal Counsel of \$847,000;
- Adjusting Services TPA Fees of \$252,000; and
- CN PERA of \$11,000.

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The Department states that these legal and administrative expenses are included in the loss payout projections by the actuary and in the common policy request. Therefore these expenses that total an additional \$1.1 million need to be included as part of liability payments when comparing these figures to the budget request. This brings the total liability payment projection for FY 2012-13 to \$6.3 million, equal to \$2.4 million or 61.5 percent higher than projected at figure-setting.

Additional Liability Allocation to State Agencies

The Department proposes the following state agency allocation:

Additional Liability Allocation and Payment to Risk Management by Agency			
Agency	FY 2012-13 Payment to Risk Management and Property Funds	Requested Additional Liability Allocation	Requested FY 2012-13 Payment to Risk Management and Property Funds
Agriculture	\$ 139,215	\$ 22,876	\$ 162,091
Corrections	3,087,036	806,734	3,893,770
Education	78,918	4,265	83,183
Governor	157,246	32,579	189,825
HCPF	84,444	39,397	123,841
Higher Education	3,634,349	130,658	3,765,007
Human Services	1,392,061	300,766	1,692,827
Judicial	239,318	107,826	347,144
Labor and Employment	28,916	10,240	39,156
Law	87,949	40,207	128,156
Legislature	13,969	3,228	17,197
Local Affairs	14,752	4,595	19,347
Military and Veterans Affairs	149,905	11,177	161,082
Natural Resources	789,421	160,389	949,810
Personnel	657,049	25,261	682,310

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Public Health and Environment	93,098	15,914	109,012
Public Safety	823,432	354,385	1,177,817
Regulatory Agencies	129,422	53,611	183,033
Revenue	187,392	51,853	239,245
State	27,906	9,766	37,672
Transportation	2,900,725	586,795	3,487,520
Treasury	929	360	1,289
Total	14,717,452	2,772,882	17,490,334

The Department estimates that 59.0 percent or \$1.6 million in allocations to state agencies will be from General Fund. The Department states that it has submitted its request as an interim supplemental in order to give state agencies up to six months in order to make the additional payments for liability. As a normal supplemental state agencies would have two to three months to make the additional payments.

Staff Concerns

While staff agrees that giving state agencies five to six months instead of two to three months in order to make additional liability payments is preferable, staff does not believe the interim supplemental statutes allow for additional allocations to state agencies for the purpose of increasing fund balance as previously outlined.

Should the Committee choose to consider the Department's request and proceed on the basis that the interim supplemental criteria has been met, staff believes that the Department's projections for the remainder of FY 2012-13 may be excessive.

The Department projects an additional \$100,000 to \$200,000 per month in liability payments for November through June, while it's experience over July through September averaged \$89,000. Over the prior three fiscal years, the program experienced ten months in which it had payments of less than \$100,000; the average over those months was \$65,000. Using the figure of \$65,000 for January, March, April, May, and June, and limiting the months in which the extraordinary payments are projected to be paid to the totals known, staff projects liability payments for FY 2012-13 at \$4.3 million as compared to the Department's \$5.2 million.

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The Department's projections for outside legal counsel are projected at \$75,000 per month, while the average for July through October, a period of high liability settlement and payment activity, averaged \$62,000 per month. At \$62,000 per month, staff projects outside legal counsel at \$741,000 as compared to the Department's \$847,000.

Staff's projections total \$1.0 million less than the Department's based on these factors. Additionally, staff would recommend not including a targeted reserve fund balance, that the Department has included in its request at \$406,000.

Should the Committee choose to consider the Department's request and proceed on the basis that the interim supplemental criteria has been met, staff believes that the Department's request may be reduced by \$1.4 million or by half of the \$2.8 million request.

Recommendation

Staff recommends that the Committee deny the request on the basis that the request includes additional state agency billings/allocation in order to restore a fund balance deficit, however statute only allows interim supplementals for overexpenditures from a fund with adequate fund balance.

Should the Committee choose to consider the Department's request and proceed on the basis that the interim supplemental criteria has been met, staff recommends providing for \$1.4 million in additional allocations to state agencies, which represents 50.0% of the additional allocations shown in the Department's state agencies allocation schedule.

Additionally, staff recommends that the Committee request that the Department submit an amended common policy request for the Liability Program for FY 2013-14 to include lines that distinctly show the *prospective losses estimate* (equivalent to liability payments in its fund balance detail worksheet) and the other administrative and legal expenses that are currently included in the *prospective losses estimate* line in the Department's common policy request.

	FY 2011-12	FY 2012-13	Fiscal Year 2012-13 Interim Supplemental		
	Appropriation	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
DEPARTMENT OF PERSONNEL					
Kathy Nesbitt, Executive Director					
Interim Supplemental #3 - Liability Premiums Technical True-up					
<i>(2) Division of Human Resources</i>					
<i>(C) Risk Management Services</i>					
Liability Premiums	<u>5,115,286</u>	<u>4,674,104</u>	<u>2,772,882</u>	<u>0</u>	<u>4,674,104</u>
Reappropriated Funds	5,115,286	4,674,104	2,772,882	0	4,674,104
Totals /a					
DEPARTMENT OF PERSONNEL					
TOTALS for ALL Departmental line items	<u>157,857,935</u>	<u>160,021,572</u>	<u>2,772,882</u>	<u>0</u>	<u>160,021,572</u>
<i>FTE</i>	<i>394.3</i>	<i>394.9</i>	<i>0.0</i>	<i>0.0</i>	<i>394.9</i>
General Fund	4,118,272	6,596,233	0	0	6,596,233
Cash Funds	11,790,909	11,997,536	0	0	11,997,536
Reappropriated Funds	141,948,754	141,427,803	2,772,882	0	141,427,803
Federal Funds	0	0	0	0	0

/a FY 2012-13 Totals include 2012 session appropriations; the 1331 supplemental approved by the JBC on 6/20/12, is not included.