

# MEMORANDUM



## JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee  
FROM Abby Magnus, JBC Staff (303-866-2149) and Andrew Forbes, JBC Staff (303-866-2062)  
DATE June 20, 2023  
SUBJECT Cash Fund Waivers for the Department of Public Health and Environment

---

The Colorado Department of Public Health and Environment (CDPHE) requests two cash fund waivers for the Newborn Screening and Genetic Counseling Cash Fund and the Hazardous Substance Response Fund. The Hazardous Substance Response Fund was identified in the Office of the State Auditor (OSA) 2022 Cash Funds Uncommitted Reserves report as a cash fund with excess uncommitted reserves. The report also stated that H.B. 18-1006 provided for an exemption from Section 24-75-402, C.R.S. for the Newborn Genetics Fund through FY 2022.

Section 24-75-402, C.R.S., requires that the uncommitted reserves of a cash fund at the conclusion of a given fiscal year shall not exceed 16.5 percent of the amount expended from the fund for that fiscal year, except for funds exempted by statute or receiving a waiver from the JBC. The JBC may waive the maximum reserve requirement or establish an alternative reserve for a fund for up to three years for an entity that demonstrates a specific purpose for which the entity needs to maintain an uncommitted reserve greater than the maximum reserve otherwise allowed.

### NEWBORN SCREENING AND GENETIC COUNSELING CASH FUNDS

*REQUEST:* The Department requests a one year waiver for FY 2022-23 for the Newborn Screening and Genetic Counseling Cash Fund to address excess uncommitted reserves.

*RECOMMENDATION:* **Staff recommends approval of the request** for a one year waiver for the Newborn Screening and Genetic Counseling Fund, created in Section 25-4-1006(1), C.R.S.

*ANALYSIS:* The Newborn Screening and Genetic Counseling Cash Fund is used for newborn screening and testing for disorders, follow-up care, and genetic counseling and education programs and functions. The cash fund receives revenue primarily from fees received to cover the costs of testing blood samples of newborn children in Colorado and Wyoming. The Newborn Screening and Genetic Counseling Cash Fund has been out of compliance since FY 2021-22, and is projected to be out of compliance in FY 2022-23. The Department states this cash fund needs to be able to accumulate cash reserves for unpredictable and large capital expenditures.

NEWBORN SCREENING AND GENETIC COUNSELING CASH FUNDS REPORT					
	FY21-22	FY22-23	FY23-24	FY24-25	FY25-26
Uncommitted Reserve Balance	\$3,079,844	\$2,822,310	\$2,761,826	\$2,676,708	\$2,363,466
Target Reserve Balance	1,393,373	1,264,421	1,246,330	1,266,895	1,304,535
<b>Excess Uncommitted Reserve Balance</b>	<b>\$1,686,471</b>	<b>\$1,557,890</b>	<b>\$1,515,496</b>	<b>\$1,409,813</b>	<b>\$1,058,931</b>

### NEWBORN DISEASE SCREENING

When an infant is born in Colorado, samples are collected as part of a blood panel and sent to CDPHE, which tests for rare genetic and metabolic conditions. In the event of a positive result, a specialist reaches out to the family of the infant to arrange for follow-up services and/or additional

JUNE 20, 2023

testing. These costs for newborn disease screening are paid from the Newborn Genetics Cash Fund. Hospitals pay the testing fees which are then charged to health insurance companies or the patient.

**HOUSE BILL 18-1006 (INFANT NEWBORN SCREENING):**

- Expanded newborn screening for genetic and metabolic diseases and increased access to follow-up services for families;
- Specified that CDPHE may add newborn screening for new conditions listed on the recommended uniform screening panel created by the federal Department of Health and Human Services;
- Expanded the authority of CDPHE to set fees to cover the direct and indirect costs of newborn screening, including follow-up services; and
- Exempted the Newborn Screening and Genetic Counseling Cash Fund from the maximum reserve requirements in Section 24-75-402, C.R.S. through July 1, 2021.

The Department has been working on implementing H.B. 18-1006, and the addition of new condition screenings. This has necessitated large capital expenditures on a new LIMS (Laboratory Information Management System), generator acquisition, and mass spectrometer room project.

**NEWBORN SCREENING AND GENETIC COUNSELING CASH FUND**

The Department states that in order for it to be able to continue to work on the addition of new conditions to the blood panel, the cash fund needs to have the ability to accumulate cash reserves for large expenditures associated with the added conditions. As new conditions are added to the screening panel, the Department states this requires expenditures on large equipment, capital projects, and LIMS upgrades. The Department states that the primary driver of the fund being out of compliance is that the emergence of new conditions is continually evolving, and as new conditions are added to the Colorado newborn screening panel, this requires large expenditures and reserves in the fund. The Department expects that already approved capital expenditures will help draw down the excess reserve and will allow the fund to come into compliance.

Statute dictates that “if the department deems that new conditions for which an infant must be tested should be added, the department shall report the added conditions to the general assembly during its presentation in accordance with the ‘State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act’. The Department shall also notify the joint budget committee and the health and human services committee of the senate and the health, insurance, and environment committee and the public health care and human services committee of the house of representatives, or their successor committees, within sixty days after the department recommends a new condition and include the added conditions in the department’s annual budget request submitted to the general assembly each November 1.”

Staff recommends approval of the request. If the Committee approves a one-year waiver for the fund, the fund would be exempt from uncommitted reserve requirements for FY 2022-23, and then would have an additional three years before OSA would limit expenditures from the fund if it remains out of compliance. While staff does not believe it makes sense to limit spending from the fund right now as capital projects are being completed, staff also does not see a long-term plan to bring the fund into compliance, as shown in the cash fund report. In three years, the Department may have increased expenditures from the fund and have a better plan for long-term compliance.

JUNE 20, 2023

## HAZARDOUS SUBSTANCE RESPONSE FUND

*REQUEST:* The Department requests a one year waiver for FY 2022-23 for the Hazardous Substance Response Fund, which is projected to be in compliance with the 16.5 percent reserve requirement by the end of FY 2023-24.

*RECOMMENDATION:* **Staff recommends approval of the request** for a one-year waiver for the Hazardous Substance Response Fund (HSRF), created in Section 25-16-104.6 (1)(a), C.R.S.,

*ANALYSIS:* The fact that the Hazardous Substance Response Fund is in need of a waiver for uncommitted reserves is slightly misleading. The FY 2022-23 uncommitted fund balance is project to be \$612,000 over the maximum reserve amount of \$1,133,868, which will be the third year in a row the fund is out of compliance and lead to restrictions on spending from the State Controller (the Department was \$4.9 million over the limit FY 20-21 and \$3.6 million over in FY 21-22). However, the fund is actually in danger of insolvency and required a \$1.8 million cash fund transfer from the Hazardous Substance Site Response Fund into the HSRF to pay for projected obligations in FY 2023-24.

The HSRF was created to pay for activities related to Colorado's responsibilities for implementing the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly referred to as Superfund. This includes the state's share of site remediation costs for Superfund sites when there is no financially viable responsible party. Revenue into the HSRF is generated from solid waste fees (also known as tipping fees), which are capped at 50 cents per cubic yard into a solid waste disposal site, such as a landfill, and reimbursed settlement dollars if there is a responsible party determined at a later time.

For many Superfund sites, after remediation is complete, long-term operation and maintenance activities must be performed to ensure that the previous remedies are properly maintained and performing as intended. Generally, long-term activities are the responsibility of either the responsible parties or the state. These efforts vary, based on the specific site, but often include: personnel and equipment costs; operation and maintenance of water treatment plants and groundwater treatment systems; landfill cap monitoring and maintenance; maintenance of surface water diversions and groundwater containment systems; institutional control inspections and administration; and other similar activities. The HSRF pays for these activities at sites where long-term activities are the state's responsibility (currently 12).

Due to the increased state responsibility for superfund sites expenditures have been outpacing revenue in the HSRF for several years (as illustrated in the graph below), which is partially why the fund will naturally come into compliance with the 16.5 percent maximum reserve naturally, without the need for a compliance plan. Staff recommends approval of the cash fund waiver, and also recommends that the Department share a sustainability plan for the cash fund with the JBC during the Department's hearing next budget cycle.

