

JOINT BUDGET COMMITTEE



INTERIM SUPPLEMENTAL BUDGET REQUESTS FY 2020-21

DEPARTMENT OF STATE

JBC WORKING DOCUMENT - SUBJECT TO CHANGE
STAFF RECOMMENDATION DOES NOT REPRESENT COMMITTEE DECISION

PREPARED BY:
ANDREA UHL, JBC STAFF
SEPTEMBER 18, 2020

JOINT BUDGET COMMITTEE STAFF
200 E. 14TH AVENUE, 3RD FLOOR • DENVER • COLORADO • 80203
TELEPHONE: (303) 866-2061 • TDD: (303) 866-3472
<https://leg.colorado.gov/agencies/joint-budget-committee>

INTERIM SUPPLEMENTAL REQUESTS

PRESIDENTIAL PRIMARY ELECTION COUNTY REIMBURSEMENTS

	REQUEST	RECOMMENDATION
TOTAL	\$1,035,000	\$1,035,000
FTE	0.0	0.0
General Fund	0	0
Cash Funds	\$1,035,000	\$1,035,000
Federal Funds	0	0

Does JBC staff believe the request satisfies the interim supplemental criteria of Section 24-75-111, C.R.S.? **YES**
 [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.]

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? **YES**
 [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.]

Explanation: JBC staff and the Department agree that this request is the result of data that was not available when the original appropriation was made. See the “Staff Analysis” section of this document for more information.

DEPARTMENT REQUEST: The Department requests an increase of \$1,035,000 cash funds in the Elections Division, Local Election Reimbursement line item for FY 2020-21.

The Department originally submitted an interim supplemental request for \$1,035,000 General Fund for FY 2019-20 to fully reimburse all counties for their actual direct costs of conducting the March 3, 2020 Presidential Primary Election as required by statute¹. After the Department submitted the request to JBC staff on July 21st, the State Controller granted overexpenditure authority pursuant to Section 24-75-109 (1)(c), C.R.S. This portion of statute allows the State Controller to authorize overexpenditures in limited circumstances for the purpose of closing the State’s books.

The State Controller placed a corresponding restriction on the cash fund portion (as there is no current General Fund appropriation) of the Elections Division, Local Election Reimbursement line item for FY 2020-21 as required by statute². This restriction cannot be lifted until a supplemental bill increasing the FY 2019-20 General Fund appropriation by the amount of the overexpenditure is signed into law, which typically happens by early March. As a result, the Department will be unable to make required statutory reimbursements³ to counties for costs related to the November General Election in a timely manner.

In order to functionally achieve the goal of reimbursing counties for both the Presidential Primary Election and the General Election in a timely manner, the Department (with guidance from JBC staff,

¹ Section 24-21-104.5 (2), C.R.S.

² Section 24-75-109 (3), C.R.S.

³ Section 1-5-505.5 (3), C.R.S.

the Office of Legislative Legal Services, and the State Controller's Office) modified its request to an increase of \$1,035,000 from the Department of State Cash Fund in FY 2020-21 to offset the restriction put in place by the State Controller.

STAFF RECOMMENDATION: Staff recommends approving an increase of **\$1,035,000 cash funds in FY 2020-21** to compensate for the restriction that was put in place due to the FY 2019-20 General Fund overexpenditure of the same amount.

STAFF ANALYSIS:

TIMELINE

The 2020 Presidential Primary Election was conducted on March 3, 2020. County reimbursement requests were not submitted until May and June 2020, and review work was substantially completed by July 2020. At the time the original interim supplemental request was submitted to JBC staff on July 21st, the Department had issued reimbursement to 54 counties and estimated an additional need of \$1,035,000 General Fund for the ten counties that remained unpaid.

The Department sought the State Controller's approval to record this additional amount in FY 2019-20 for year-end accounting purposes and was granted overexpenditure authority under Section 24-75-109 (1)(c), C.R.S., at that time. This allowed the Department to reimburse the remaining counties prior to the Joint Budget Committee's consideration of interim supplemental funding requests on September 18th, 2020. The Department subsequently revised its estimated shortfall slightly downward to \$1,001,192, which would result in \$33,808 of unused overexpenditure authority. At the time of this writing, reimbursement requests for three counties are still under review and remain unpaid.

MODIFIED REQUEST

As a result of the overexpenditure, the State Controller placed a corresponding restriction on the cash fund portion (because there is no General Fund available to restrict) of the Elections Division, Local Election Reimbursement line item for FY 2020-21 as required by statute⁴. The Department no longer seeks Joint Budget Committee approval for the FY 2019-20 General Fund overexpenditure through the interim supplemental process. However, staff recommends, and the Department agrees, that the interim supplemental request be modified to reflect the \$1,035,000 cash funds restricted in FY 2020-21.

The statutory provisions⁵ that authorize the JBC to approve increases in spending authority during the legislative interim do not allow the JBC to direct the State Controller to release a restriction. Because this restriction cannot be lifted until a supplemental bill increasing the FY 2019-20 General Fund appropriation by \$1,035,000 is signed into law, the Department will not have enough unrestricted spending authority in the Local Election Reimbursement line item to reimburse counties for costs related to statewide ballot measures, as required by statute⁶, for the November General Election in a timely manner. The restricted funds account for approximately one-third of the Department's total \$3,200,000 cash funds appropriation in that line item.

⁴ Section 24-75-109 (3), C.R.S.

⁵ Section 24-75-111, C.R.S.

⁶ Section 1-5-505.5 (3), C.R.S.

Counties typically submit reimbursement requests for November elections in December and January. Absent approval of additional FY 2020-21 spending authority to compensate for the restriction, some counties may go unreimbursed for several weeks or longer during a time of exceptional budget fragility. Because reimbursement for the November election is limited to a specified amount per active registered voter, the Department cannot unnecessarily spend from this line item and expects the total cost of reimbursement to remain near the original \$3,200,000 appropriation.

INTERIM COMMITTEE ACTION AND 2021 SUPPLEMENTAL BILL

The interim supplemental process contemplates the JBC introducing a bill to enact the appropriation change that was authorized during the interim. However, in this case, the correct way to address this situation legislatively is for the JBC to introduce a bill that increases the FY 2019-20 General Fund appropriation to the Department by the amount of the overexpenditure that has already occurred. If such a bill were to pass, the State Controller would then release the restriction on the existing FY 2020-21 appropriation.

Thus, while staff recommends that the Committee approve this request for FY 2020-21 and send a corresponding letter to the State Controller, staff anticipates recommending next January that the JBC introduce a supplemental bill in the 2021 session to adjust the FY 2019-20 appropriation in order to make the supplemental appropriation for the fiscal year in which the overexpenditure occurred.

JBC staff has discussed this issue with the Office of Legislative Legal Services, the State Controller's Office, and the Department of State, and all parties agree that this is an appropriate path forward.

PRESIDENTIAL PRIMARY COST BACKGROUND

Proposition 107, approved by voters at the November 2016 General Election, restored the presidential primary and authorized participation by unaffiliated voters. Senate Bill 17-305 (Primary Election Clean-up) codified in statute that counties will be reimbursed from the General Fund for their actual direct costs in the preparation and conduct of a presidential primary election. Specifically, Section 24-21-104.5 (2), C.R.S. states:

For a presidential primary election, as defined in section 1-4-1202 (2), the general assembly shall appropriate money from the general fund to cover the costs of the election incurred by the state arising from the preparation and conduct of a presidential primary election in accordance with part 12 of article 4 of title 1. In addition, by means of an appropriation from the general fund, the state shall also reimburse the counties for all of the actual direct costs they incur arising from the preparation and conduct of such election in accordance with part 12 of article 4 of title 1. By rule promulgated in accordance with article 4 of this title 24, the secretary of state shall determine the type of actual direct costs for which the counties are entitled to reimbursement pursuant to section 1-4-1203 (5) and this subsection (2).

The March 3, 2020 Presidential Primary Election, which took place prior to most pandemic-related restrictions in the United States, was the first time that Colorado conducted this type of election in a manner open to the participation of all registered voters. Consequently, counties and the Department of State had no historic data on which to base their estimate of the actual direct costs of such an election.

FY 2019-20 APPROPRIATION FOR THE PRESIDENTIAL PRIMARY ELECTION

At the time of S.B. 17-305's (Primary Election Clean-up) passage, counties estimated the costs of preparing for and conducting a presidential primary election at \$5.7 million. As of the Department's

FY 2019-20 budget request submittal on November 1, 2018, the State had never conducted a presidential primary election that allowed for the participation of unaffiliated voters. Thus, there was no historical data to draw from in requesting an amount. As the only primary election previously conducted in Colorado with unaffiliated voter participation, the 2018 Primary Election was the best baseline available for estimating voter turnout and the full county costs of a presidential primary election.

In preparing the FY 2019-20 budget request, the Department surveyed counties on their 2018 Primary Election costs in June 2018 to update the original S.B. 17-305 (Primary Election Clean-up) estimate. As a result, S.B. 19-207 (Long Bill) provided \$6.3 million in General Fund for the purpose of reimbursing counties for the Presidential Primary Election. House Bill 19-1278 (Modifications to Uniform Election Code) increased this amount by \$22,590 to account for additional ballot costs as a result of allowing pre-registered 17 year olds to participate in the Presidential Primary Election. Thus, the current FY 2019-20 appropriation is \$6,322,590.

REVIEW PROCESS AND REASONS FOR OVEREXPENDITURE

The Department conducted a thorough review of county Presidential Primary Election reimbursement requests for reasonableness and accuracy. Specifically, the Department compared counties' requests for reimbursements with their reported costs for conducting the 2018 Primary Election for material variances. For each increasing material variance, the Department requested supporting documentation and explanation from the county. In the case of material decreases in costs, the Department asked counties to confirm the decrease. County documentation and explanations are reviewed for allowability and reasonableness by a senior member of the Elections Division and a member of the Department's Finance Unit before reimbursement is issued. In general, county costs have been greater than anticipated for several reasons:

- **More voters:** Colorado saw an increase of more than 160,000 active voters from June 2018 to March 2020, resulting in an increased number of ballot packets mailed for the Presidential Primary Election.
- **Higher participation:** Approximately 1.8 million Coloradans (approximately 46 percent of registered voters) cast ballots in the Presidential Primary Election, a significant increase from the 2018 Primary Election (in which approximately 30 percent of registered voters participated) that was used as a basis for estimating county costs.
- **Vendor changes:** Many counties switched vendors or were otherwise under new contracts for the 2020 Presidential Primary Election from the 2018 Primary Election. In general, these new contracts carried greater costs.
- **Cost of living:** For some counties, such as Boulder, election judges (poll workers) are paid a living wage as required by local law; there was a living wage increase following the 2018 Primary Election.
- **Additional locations:** Several counties were required by H.B. 19-1278 (Modifications to Uniform Election Code) to open more Voter Service and Polling Centers (VSPCs) and secure ballot drop boxes for the Presidential Primary than they were required to deploy in the 2018 Primary Election. The funding provided to counties under that legislation only covers a portion of counties' costs (equipment) of operating additional VSPCs. For example, many counties cited additional election judge costs as a result of the additional VSPCs.

The authorized overexpenditure is in addition to the original FY 2019-20 appropriation of \$6,322,590, bringing the total authorized expenditure for Presidential Primary Election reimbursement to \$7,357,590 General Fund.

STATE OF COLORADO

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JOINT BUDGET COMMITTEE
LEGISLATIVE SERVICES BUILDING
200 EAST 14TH AVENUE, 3RD FLOOR
DENVER, CO 80203
TELEPHONE 303-866-2061
<http://leg.colorado.gov/agencies/joint-budget-committee>

September 18, 2020
Robert Jaros, State Controller
Office of State Controller
1525 Sherman Street
Denver, CO 80203

Dear Mr. Jaros:

The Joint Budget Committee has considered an interim supplemental request submitted by the Department of State under the provisions of H.B. 98-1331. This request concerns the overexpenditure for presidential primarily election reimbursements and a subsequent restriction of funds. Pursuant to Section 24-75-111 (1), C.R.S., the Committee authorizes the overexpenditure listed below, and will sponsor a supplemental appropriations bill during the 2021 legislative session that reflects an adjustment for the fiscal year in which the overexpenditure occurred.

DEPARTMENT OF STATE		
JBC APPROVED ADJUSTMENT TO FY 2020-21 APPROPRIATION		
	TOTAL	CASH FUNDS
Elections Division, Local Election Reimbursement	\$1,035,000	\$1,035,000

The additional cash funds shall be from the Department of State Cash Fund created in Section 24-21-104 (3)(b).

If you have any questions or concerns, please contact Andrea Uhl of our staff at 303-866-4956.

Sincerely,

Representative Daneya Esgar, Chair
Joint Budget Committee

cc: Mrs. Carolyn Kampman, Staff Director, Joint Budget Committee
Lauren Larson, Executive Director, Office of State Planning and Budgeting
Secretary Jena Griswold, Secretary of State
Mr. Brad Lang, Controller and Budget Director, Department of State