

Joint Budget Committee



Interim Supplemental Budget Requests FY 2025-26

Department of Public Health and Environment (Public Health Divisions)

JBC Working Document - Subject to Change

Staff Recommendation Does Not Represent Committee Decision

Prepared by:

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September 22, 2025

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Interim Supplemental Requests

ES-01 Lab Chemistry Program Emergency Supplemental

Item	Total Funds	General Fund	Cash Funds	Reapprop. Funds	Federal Funds	FTE
Request	\$2,846,075	\$2,846,075	\$0	\$0	\$0	4.0
Recommendation	0	0	0	0	0	0.0
Staff Recommendation Higher/-Lower than Request	-\$2,846,075	-\$2,846,075	\$0	\$0	\$0	-4.0

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

Explanation: The Department indicates that this request is the result of an “unforeseen contingency”, which for a 1331 request must have arisen while the General Assembly is not in session. The challenges with water quality testing in the Department have been a concern since the spring of 2024 and known for the entire 2025 session.

Request

The Department requests \$2.9 million General Fund and 4.0 FTE in FY 2025-26 in order to work towards the lab’s recertification for water quality testing by the U.S. Environmental Protection Agency (EPA). The request includes funding for:

- Three new chemistry instruments and supplies (\$571,000),
- Six staff members (\$557,970),
- A review of historical data that may have been manipulated (\$592,105),
- A risk management/quality assurance system for the entire lab (\$500,000),
- A risk management system specifically for the chemistry section (\$75,000), and
- An asset and vendor management program for the entire lab (\$550,000).

Recommendation

Staff recommends denial of the 1331 emergency supplemental request, as it does not meet supplemental criteria. As noted above, problems with the lab were known during the 2025 legislative session.

Staff believes that the challenges that the state laboratory faces related to water quality testing, asset management, risk management, and quality assurance are real and urgent – but these should involve a broader, system-level discussion that is more appropriate for the entire General Assembly and on a longer timeline than that of emergency supplemental requests.

If the JBC wishes, they may consider the following actions at this time:

- An RFI for November 1st to understand the lab's progress related to EPA corrective actions and how these actions have been funded
- Funding the review of historical data that may have been manipulated (\$592,105). Initial review has demonstrated that the data manipulation is likely within a small margin of error. However, a full-scale review is required for recertification and would clarify the full scope of potentially affected results. This review could provide additional information to formulate a long-term plan for water quality testing without committing to hiring staff and purchasing equipment.

The Committee could then consider other actions for FY 2025-26, including additional funding, through the regular supplemental process in January 2026.

Analysis

Public health laboratories monitor and detect health threats ranging from lead in water to foodborne illnesses, newborn genetic disorders, and rabies. According to the Association of Public Health Laboratories, every state, territory, and the District of Columbia has a central public health laboratory – and some entities have local laboratories.

Colorado's State Laboratory

State Lab Functions

The lab has six sections that support:

- Environmental Chemistry – chemical testing for private homes, well owners, and water providers, as well as surge capacity for chemical emergencies
- Newborn screening – tests all Colorado and Wyoming newborns (approximately 68,000 births per year) for 39 genetic disorders
- Microbiology – tests for influenza, rabies, sexually transmitted infections, foodborne illnesses, Mpox, and COVID-19, and is involved in foodborne illness outbreak investigations
- Evidential Breath Alcohol Testing Program – repairs, calibrates, and certifies 9,000 instruments used by law enforcement officers to test those suspected of driving under the influence of alcohol
- Cannabis and natural medicine – develops methods related to and tests products including marijuana, hemp, psilocybin, and psilocin
- Genomic surveillance – infectious disease molecular testing, sequencing of clinical and environmental specimens, and wastewater surveillance testing

State Lab Funding

The lab has an estimated FY 2025-26 appropriation of \$17.7 million, primarily composed of cash funds. This includes \$3.8 million General Fund, \$10.0 million cash funds (including \$5.9 from Newborn Screening and Genetic Counseling Cash Funds, \$1.8 million from the Laboratory Cash Fund, and \$1.2 million from the Marijuana Tax Cash Fund). Some spending related to the state laboratory also occurs in other areas of the Department's budget and are not reflected in the above figures.

Over the past five years, the two largest line items within the laboratory (*Chemistry and Microbiology Personal Services* and *Operating Expenses*) have reverted 7.0 to 35.5 percent of annual cash fund appropriations, with an average reversion of 24.0 percent. The Department has previously indicated that this is because not enough fee revenue is generated to support these cash fund appropriations. Laboratory fees have not been adjusted for inflation in years and are lower than many competing private labs.

This lack of cash fund revenue has resulted in a growing reliance on General Fund. For at least ten years, the state lab's General Fund appropriation remained around or less than \$1.5 million. Two actions recently doubled that number:

- In FY 2023-24, S.B. 23-290 (Natural Medicine Regulation and Legalization) added another \$0.8 million General Fund.
- In FY 2024-25, the Department's request for laboratory operating expenses and courier services was approved with an additional \$1.3 million General Fund and \$1.4 million cash funds.

Loss of EPA Certification for Water Chemistry Methods

In the spring of 2024, the lab noticed concerns with quality control within water quality testing in the lab's chemistry unit. The Department indicates that this was due to a "cumbersome calibration process performed with frequency on an old machine, with chemists cutting corners and trying to meet deadlines". In April 2024, after the lab notified the EPA of data integrity concerns, the EPA revoked certification for metals testing in drinking water and downgraded remaining lab methods to "provisional" in 2024. In December 2024, these provisional certifications expired, and water chemistry testing at the lab was suspended.

The lab is currently contracting out for water quality tests that it would have performed. The Department indicates that this has resulted in a revenue loss of \$829,586 since the partial shutdown started in FY 2024-25, which includes lost revenue from fee-for-service tests and an MOU with the Water Quality Control Division (WQCD). For WQCD, the Department indicates that sending samples to a private lab costs approximately \$100 more per sample, which is causing the Division to spend an estimated \$175,000 more this fiscal year.

Importance of EPA Certification

The loss of EPA certification is a concern for both data quality at the state lab and for state primacy. Under the federal Safe Drinking Water Act (SDWA), the EPA may delegate primary enforcement responsibility (primacy) to states so long as certain requirements are met.

According to 40 CFR Part 142, Subpart B, one of the requirements includes that the state have a laboratory that is EPA certified and capable of performing analytical measurements of all contaminants specified in State primary drinking water regulations.

Without primacy, the EPA would take over implementation of the SDWA in Colorado – which currently includes many of the duties of the Water Quality Control Division including:

- Setting standards for maximum contaminants,
- Ensuring that water systems test for contaminants and taking actions against systems that do not meet standards,
- Reviewing plans for water system improvements, and
- Conducting on-site inspections and providing technical assistance.

Primacy is also a requirement for some federal funding sources, including the Drinking Water Revolving Fund. This fund is a key source of public funding for water infrastructure improvements across the state, primarily in small to medium-sized rural communities. In 2025, the state received over \$70 million to distribute through this program.

Currently, only Wyoming and the District of Columbia do not have primacy under SDWA.

Staffing

Initial evidence suggested that data manipulation was limited to one chemist. However, upon additional review, it appears that certain methods had up to five chemists with affected quality control procedures, and ultimately two staff in the chemistry unit left the agency.

There are currently three remaining staff members that work on water chemistry. These individuals have been reassigned to different projects and are preparing potentially affected water quality data for third-party review. However, the laboratory has indicated that funding for these positions lapsed at the end of FY 2024-25 and additional funding is needed to retain these staff members.

The request includes funding for these three staff members, as well as an additional chemist for sample validation (anticipated hire April 2026), a training coordinator (anticipated recruitment in April 2026), and a microbiology program manager. The entire lab has approximately 154.0 FTE.

Short-term Corrective Actions

In order to obtain recertification, the EPA has requested¹ that the Department address all items in their corrective action plan, including (but not limited to):

- Identification of all data impacted by quality control issues (including a data review that includes all samples from 2018-2024)

¹ December 2024 letter from the EPA to the Colorado State Public Health Laboratory, which includes commentary on corrective actions not yet completed: <https://www.epa.gov/system/files/documents/2024-12/cdphe-lab-12.30.2024.pdf>.

- Implementation of a communication plan to notify EPA of major laboratory changes within 30 days
- Upgrading equipment and technology, including the Laboratory Information Management System (LIMS)
- Increasing quality control staffing and resources
- Developing a crisis response protocol
- Addressing turnaround time pressure and a culture of urgency

Since the initial quality control concerns have been identified, the Department has contracted a small-scale review of potentially affected data and a third-party review of quality control methodology across the entire lab.

The small-scale review included data since 2018 from nine different chemistry methods (representing 10 to 15 percent of affected data since 2018). According to the Department's 2025 SMART Act Hearing², this review showed that data manipulation is likely within a small margin of error (-5 to 10 percent of the expected value) and unlikely to have impacted public health outcomes.

Of 69 water systems that had test results potentially impacted, 24 needed retesting. The majority of these entities are smaller or in rural areas of the state. Many larger water systems have the ability to complete their own testing or contract out for laboratory services.

Despite these initially small-scale findings, the EPA has indicated that the scope of data quality issues at the lab has continued to expand as the investigation unfolds and therefore requests a full review of all methods performed by all analysts from 2018-2024. This review is in order to understand the full scope of impacted systems and results, and is included in the Department's 1331 request (\$592,105 for the full review).

CDPHE also hired a third-party auditor to evaluate quality management processes across the lab, and these reports were completed on November 2024 and July 2025. These analyses highlighted:

- Inadequate oversight and quality assurance processes,
- Cumbersome Standard Operating Procedures that are not always followed,
- Lack of asset management and effective control,
- Redundant and manual data transcription processes, and
- A reliance on staff knowledge as opposed to standardized procedures or documented workflows.

The results of this analysis were the reason for parts of the Department's 1331 request, including the contracted work for developing and implementing quality assurance across the lab (\$500,000), within the chemistry unit (\$75,000), and an asset and vendor management program (\$550,000).

² January 2025 SMART Act Hearing presented to the House and Senate Health and Human Services Committees: https://leg.colorado.gov/sites/default/files/images/2025_cdphe_smart_act_presentation.pdf.

Proposed Long-Term Solution

CDPHE is proposing to become recertified for a narrower suite of testing methods that cover the most commonly requested water quality tests – and to contract out for additional methods that are not performed as often. The Department indicates that the EPA has informed the lab that this hybrid model is acceptable.

This 1331 request would jump start the lab's recertification process. The Department hopes that the recertification process would take 12 to 18 months after it is initiated. Recertification would occur after all corrective actions are addressed, the Department applies for recertification, and the EPA conducts a satisfactory on-site audit.

Long-Term Systemic Challenges

Moving forward, the Department plans to submit a budget amendment in January 2026 that includes the long-term plan for water quality testing recertification *as well as* solutions to long-term issues faced by the lab.

As evidenced in this 1331 request (e.g., for a microbiology program manager that is not related to water quality chemistry testing) and the results of the third-party quality management review for the entire lab, there are a number of systemic challenges that the lab has faced for years including:

- Lack of dedicated funding for asset maintenance and replacement - the Department indicates that it has never submitted a request for lab instruments and has historically relied on one-time funds for these purchases. However, these one-time funds are often for specific purposes and have rarely applied to the chemistry unit. As a result, many instruments are used well beyond their intended lifespan.
- Capital needs that are negatively impacting lab staff well-being and day to day operations (e.g., HVAC).
- Unsustainable fund sources including the Laboratory Cash Fund that is not generating adequate fee revenue to sustain its budgetary appropriation.

Joint Budget Committee



Interim Supplemental Budget Requests FY 2025-26

Department of Public Health and Environment

Women, Infants, and Children (WIC)

JBC Working Document - Subject to Change

Staff Recommendation Does Not Represent Committee Decision

Prepared by:

Kelly Shen, JBC Staff

September 22, 2025

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Interim Supplemental Requests

ES-03 Women, Infants, and Children Shutdown

Item	Total Funds	General Fund	Cash Funds	Reapprop. Funds	Federal Funds	FTE
Request	\$7,500,000	\$7,500,000	\$0	\$0	\$0	0.0
Recommendation	0	0	0	0	0	0.0
Staff Recommendation Higher/-Lower than Request	-\$7,500,000	-\$7,500,000	\$0	\$0	\$0	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.]	NO

Explanation: The Department indicates that this request is the result of an “unforeseen circumstance”, which legislative staff (both Office of Legislative Legal Services and JBC Staff) disagree with because the circumstance, the government shutdown, has not yet occurred.

Request

The Department conditionally requests \$7.5 million General Fund in FY 2025-26 in order to fund one month of Women, Infants, and Children (WIC) food benefits that would not be distributed if the federal government were to shut down on October 1, 2025.

The Department intends to repay the General Fund that has been distributed, so long as repayment is received from the federal government. Federal partners have indicated to the Department that repayment is allowed and likely, though this is not a guarantee.

The Governor’s Office of State Planning and Budgeting has indicated that if a federal shutdown does not occur or ends more quickly than one month, they will direct the Office of the State Controller to restrict spending authority for unspent funds.

Recommendation

Staff recommends denial of the 1331 emergency supplemental request, as it does not meet supplemental criteria.

Section 24-75-111 (1)(b), C.R.S., requires the occurrence of "unforeseen circumstances arising while the general assembly is not meeting in regular or special session" for the controller to

authorize an expenditure in excess of appropriations pursuant to section 24-75-111, C.R.S. The Office of Legislative Legal Services has advised JBC staff that this requirement cannot be satisfied until an unforeseen circumstance has arisen or is objectively certain to arise. A federal government shutdown, the “unforeseen circumstance”, has not yet arisen. Also, given the frequency of averting a government shutdown at the last minute, the Office of Legislative Legal Services does not believe that a federal government shutdown is objectively certain to occur on October 1 of this year.

However, JBC staff does believe there are significant negative consequences to a lapse in WIC food benefits for the approximately 100,000 beneficiaries in Colorado. In order to minimize the impact to program participants, the Joint Budget Committee could revisit this request: (1) if/when the federal government shuts down on October 1, or (2) if/when there is certainty that the federal government will shut down and when that will occur.

Legislative staff also has concerns about whether or not the Department has statutory authority to spend state money on WIC benefits, but is still investigating relevant statutes that may cover this authority.

Analysis

Since 1975, the Women, Infants, and Children (WIC) Program has provided low-income pregnant, postpartum, and breastfeeding women and infants and children up to age five with food, education, and healthcare referrals.

The program is administered federally through the U.S. Department of Agriculture. The program operates nationally through 10,000 clinic sites as well as state health departments, tribal organizations, and territories. It is *not* an entitlement program, but is a federal grant program authorized annually by Congress.

Impacts of a Federal Government Shutdown

Timing of Benefits Lapse

The Department indicates that, if the government were to shut down at the beginning of the federal fiscal year (October 1), the WIC program will not have received any federal funds for the year and would be unable to distribute food benefits. Typically, at the end of a federal fiscal year, the prior year’s appropriations are fully spent. Appropriations for benefits distribution do not roll forward between federal fiscal years, whereas funding for administration can roll forward.

Shutdowns that occur at other points in the year are not as problematic, as they typically allow for the continuation of food benefits depending on the amount of funding that the program has already received.

Projected WIC Expenditures

Over the past six months, the WIC program averaged \$7.2 million in food purchases every month. On the high end, the largest month of expenditures was \$7.4 million. As such, the

Department is requesting \$7.5 million General Fund as a conservative estimate to ensure that the funding will fully cover WIC benefits for one month.

The Department also indicated that funding a partial month is possible, but may result in challenges for both program administrators and participants that face greater uncertainty in the timing and stability of their WIC benefits.

Currently, there is a disproportionately high amount of WIC purchases at the beginning of the month when benefits become available, as well as a smaller increase at the end of the month right before monthly benefits expire. Depending on how partial funds are administered, this piecemeal funding could result in an uneven distribution of benefits, mid-day disruptions of benefits, and changes to purchasing habits that prioritize using funds as quickly as possible instead of in the way that most benefits a participant.