

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



**SUPPLEMENTAL REQUEST FOR FY 2012-13 AND
BUDGET AMENDMENT FOR FY 2013-14**

**JUDICIAL BRANCH,
INDEPENDENT ETHICS COMMISSION**

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

**Prepared By:
Carolyn Kampman, JBC Staff
March 15, 2013**

For Further Information Contact:

Joint Budget Committee Staff
200 E. 14th Avenue, 3rd Floor
Denver, Colorado 80203
Telephone: (303) 866-2061
TDD: (303) 866-3472

Prioritized Supplemental and Budget Amendment

SUPPLEMENTAL REQUEST #1, RESTORATION OF FTE

| | FY 2012-13 | | FY 2013-14 | |
|--------------|-----------------------|-------------------|-------------------------|------------------------|
| | Request | Recomm. | Request | Recomm. |
| Total | <u>\$1,230</u> | <u>\$0</u> | <u>\$112,237</u> | <u>\$72,047</u> |
| FTE | 1.0 | 0.0 | 1.0 | 1.0 |
| General Fund | \$1,230 | \$0 | \$112,237 | \$72,047 |

| | |
|---|------------|
| 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 |
| JBC staff and the Department agree that this request is the result of <i>an unforeseen contingency</i> . | |

This request was submitted to JBC Staff on Friday, March 7, 2013, at 11:51 am.

IEC Request: The Independent Ethics Commission (IEC) requests funding for both FY 2012-13 and FY 2013-14 to restore staffing levels to 2.0 FTE. Due to an unexpected increase in workload since October 2012, the IEC has two pending complaints which involve a substantial amount of staff time, as well as five pending advisory opinion requests. For the first time since 2009, the IEC has a backlog and is not able to perform its constitutionally mandated responsibilities in a timely manner. The IEC thus requests restoration of the FTE that was eliminated in FY 2011-12 through the budget process.

The IEC seeks to hire an Assistant Director who can investigate complaints, assist with responding to requests for advisory opinions, and assist with training activities. The IEC has determined that it needs a licensed attorney with a minimum of five years of work experience, including at least three years of experience in a government prosecutorial or enforcement position. The IEC is also considering a revision to its Procedural Rules to allow this individual to conduct investigations in response to a complaint and present the evidence to the Commission (rather than requiring an individual complainant to do so in all cases).

Staff Recommendation: Staff recommends approving the request, with several modifications. Staff's recommendation is detailed in the following table (shaded items differ from the request).

*JBC Staff Supplemental Recommendations: FY 2012-13
Staff Working Document – Does Not Represent Committee Decision*

| Summary of Recommendation for IEC BA-1: Restoration of FTE | | |
|---|-------------------|-------------------|
| | FY 2012-13 | FY 2013-14 |
| <u>Independent Ethics Commission</u> | | |
| Personal Services (0.2 FTE for FY 2012-13 and 1.0 FTE for FY 2013-14; \$73,516 annual salary + PERA + Medicare) | \$0 | \$82,044 |
| LESS: Base budget not required for existing FTE | | (22,691) |
| Subtotal: Personal Services | | 59,353 |
| Health, Life, and Dental | 0 | 6,624 |
| Short-term Disability | 0 | 140 |
| AED | 0 | 2,622 |
| SAED | 0 | 2,359 |
| Operating Expenses (per FTE costs of \$450 for telephone and \$500 for supplies for 1.6 FTE) | 0 | 950 |
| Total | \$0 | \$72,047 |

Staff's recommendation is \$41,420 lower than the request for several reasons:

- For FY 2012-13, staff does not recommend making any appropriation changes. IEC staff indicate that it is likely that the new employee would be hired by May 2013, which would represent less than 0.2 FTE. The IEC's existing appropriations for FY 2012-13 should be sufficient to cover salary and benefit costs for the last two months of the fiscal year, as well as any one-time expenses such as a computer and software for the new employee. When the General Assembly eliminated an FTE in FY 2011-12, it did not eliminate all of the funding that was dedicated to that FTE. Instead, the General Assembly maintained a portion of the funding to allow the IEC the flexibility to address salary disparity issues and to pay for part-time administrative and other professional services.
- For FY 2013-14, staff recommends providing a full 12 months of funding for 1.0 FTE. However, consistent with Committee policy, staff has utilized the minimum salary of the range provided by the IEC for similar positions within the Judicial Department and the Department of Law (\$73,516), rather than the requested \$88,219. The salary utilized by staff is 18.5 percent above the minimum of the new salary range that will be implemented by the Department of Law on July 1, 2013, for Assistant Attorneys General.
- Staff recommends offsetting the costs of the new employee with that portion of the existing appropriation that is available for part-time administrative and professional services (\$22,691). Staff does not believe that the IEC will require additional funding for these services once a second employee is hired.

Finally, staff's recommendation does include funding to cover employee benefit expenses, which would require an exception to Committee policy. This is an independent agency within the Judicial Branch that currently employs one person, and thus has limited appropriation flexibility.

Staff's recommendations, absent the \$11,745 recommended for employee benefits, would not provide the IEC with sufficient funding to cover a full year of employee benefit expenses.

Analysis: The following table provides data related to the activities conducted by the IEC and its staff. Thus far in 2013, the IEC has received five complaints, nine CORA requests, and six requests for advisory opinions. Of the five complaints, the IEC has dismissed one as frivolous, determined that one is not frivolous, and directed staff to conduct further investigation on a third. The remaining two complaints have not yet been discussed by the IEC. Of the nine CORA requests received thus far, two were lengthy (requiring about three full days of staff time) and seven did not require much staff time for a response. The IEC has issued one advisory opinion, is working on opinions in response to three requests, and plans to respond to the remaining two requests once a related complaint is resolved.

| IEC ACTIVITIES | | | | | | | |
|----------------|--------------------|-----------------|---------------------|----------|---------------|-----------|-----------------------|
| Year | Number of Meetings | Opinions Issued | Complaints Received | Hearings | CORA Requests | Trainings | Informal Advice Calls |
| 2008 | 24 | 3 | 4 | 0 | 4 | 2 | 57 |
| 2009 | 25 | 21 | 14 | 1 | 8 | 6 | Approx. 175 |
| 2010 | 20 | 19 | 9 | 1 | 12 | 7 | Approx. 150 |
| 2011 | 13 | 12 | 12 | 1 | 9 | 34 | 82 |
| 2012 | 18 | 13 | 7 | 2 | 13 | 14 | 75 |
| 2013 YTD | 5 | 1 | 5 | 1 | 9 | 3 | 40 |

The IEC's sole employee has managed periodic fluctuations in workload since July 2011 (when the second FTE was eliminated) by working additional hours. However, the workload has recently reached a point where the employee has been unable to perform all of the required duties within a reasonable time frame.

Given that this is an independent agency within the Judicial Branch, staff believes that it is reasonable for the IEC to employ 2.0 FTE to manage periodic workload fluctuations and provide timely responses to complaints, inquiries, and requests. The second FTE can also provide coverage for the Director when she is out of the office conducting training or investigations, or on leave. The IEC's strategic plan currently includes the following goals:

- Respond to complaints in a timely manner (80% within six months of receipt)
- Respond to requests for opinions in a timely manner (resolve 85% within 60 days of receipt)
- Increase awareness of the Commission's opinions through increased and improved training (conduct 15 trainings per year, including at least three outside Denver metropolitan area)
- Be more proactive in anticipating issues (by issuing position statements)
- Review and revise complaint process to make it less burdensome on complainants (the current model requires the complainant to pursue their own allegations, and thus discourages valid complaints by member of the public – particularly those without a legal background)

This request should assist the IEC in addressing its current backlog of complaints and requests for opinions, and to address many if not all of the above goals.