



Memorandum

To: Joint Budget Committee Members
From: Craig Harper, JBC Staff (303-866-3481)
Date: February 20, 2026
Subject: Statewide Request R2 – TABOR Over-refund Correction

Statewide R2 Summary

Statewide request R2 is one of the Governor's budget balancing proposals for FY 2026-27. The request seeks to make an additional \$296.1 million General Fund available over a two-year period (\$148.0 million per year in FY 2026-27 and FY 2027-28). The request asserts that the \$296.1 million by which state revenue exceeded the TABOR limit for FY 2024-25 (being paid in FY 2025-26) results in an over-refund and should be recouped by reducing TABOR refunds for FY 2026-27 and FY 2027-28.

In September 2025, the State Controller (OSC) certified the \$296.1 million TABOR surplus, though the amount has increased to \$309.8 million in the [Annual Comprehensive Financial Report](#) (ACFR) for FY 2024-25.¹ Based on the ACFR, staff is assuming a necessary TABOR refund of \$306.1 million for FY 2024-25, representing the net impact of the \$309.8 million surplus and a \$3.7 million adjustment for prior year over-refunds.

Request R2 argues that the entire amount of the FY 2024-25 refund is an "over-refund" because the calculations of FY 2024-25 revenue and the resulting refund did not account for the impact of federal H.R. 1 on FY 2024-25 revenues. The request assumes that accurately reflecting the impact of H.R. 1 on FY 2024-25 revenue would have pulled the State below the Referendum C cap in FY 2024-25 and therefore eliminated the refund.

The request asks the Committee to sponsor legislation to correct for the asserted over-refund by reducing the anticipated TABOR refund obligation in FY 2026-27 and FY 2027-28. The request assumes that the proposal would reduce the State's TABOR refund obligation by \$148.0 million per year for both years. **If one assumes a refund of \$306.1 million for FY 2024-25 then R2 would reduce the refunds by \$153.0 million per year.**

¹ See the Schedule of TABOR Revenue and Computations, beginning on page 265 of the ACFR, with the refund amount identified on page 267.

Recommendation

JBC Staff is not recommending that the Committee sponsor the requested legislation. Based on discussions with the Office of Legislative Legal Services (OLLS), Legislative Council Staff (LCS), and the Office of the State Auditor (OSA), the FY 2024-25 refund does not appear to qualify as an over-refund under current statute. JBC Staff recommends that the Committee weigh the potential legal risks of the proposal to treat it as an over-refund against the potential benefits of doing so.

Statute instructs the state controller to perform adjustments for over-refunded and unrefunded revenue in cases when TABOR refund mechanisms refund more or less money than is required to be refunded to taxpayers.² However, in this case, refund mechanisms are not anticipated to refund more than the amount certified. Rather, the asserted over-refund would arise from the TABOR certification incorrectly reporting the amount of revenue in excess of the Referendum C cap. While the certification did not account for the revenue impact of H.R. 1 on income tax collections for tax year 2025, under current law and accounting rules, the certification is not in error because it *could not* account for the impact of H.R. 1, because that legislation had not become law at the end of the state fiscal year. Given that, staff is concerned that attempting to correct for the refund would present legal risks. Staff offers the following points to consider:

- Staff does not disagree with the logic of the request. H.R. 1 impacted all of income tax year 2025, which would usually require the accrual of a part-year revenue impact for FY 2024-25. Reflecting that impact would presumably decrease the TABOR surplus and resulting refund for FY 2024-25.
- However, accounting rules would not allow the adjustment to FY 2024-25 revenues as a result of H.R. 1. Because H.R. 1 was signed into law on July 4, 2025, it was not known that H.R. 1 would become law at the end of FY 2024-25. Accordingly, it is JBC Staff's understanding that current law and accounting standards would not have allowed for the accrual adjustments resulting from H.R. 1 to be made for FY 2024-25. The request indicates that there was not sufficient time and information to analyze the impact prior to the September certification. It is staff's understanding that the information could not have been included at all.
- The existing statutory process for over-refunds addresses circumstances where TABOR refund mechanisms refund more money than is required to be refunded to taxpayers. The amount required to be refunded is identified in the TABOR certification and the ACFR. Accordingly, the over-refund statute would only apply to this case if the amount of the refund identified in the certification and the ACFR is in error. Given the constraints described above, passage of H.R. 1 did not cause an over-refund of revenue for FY 2024-25. The FY 2024-25 refund was certified in accordance with TABOR, statute, and state accounting rules, resulting in a clean opinion of the certification from the Office of the State Auditor.
- TABOR requires the refund of any state revenue collected in excess of the fiscal year spending limit.³ Without an error to correct, staff is concerned about the potential legal risks associated with the proposed reduction to future TABOR refunds.
- Staff recognizes that the proposed legislation may be able to modify future TABOR refunds as requested, although uncertainty remains regarding the potential legal exposure.

² Section 24-77-103.7, C.R.S.

³ See Section 20 (7)(d) of Article X of the State Constitution, which requires the State to refund any amount above the cap in the following fiscal year.

Staff Analysis

On its face, statewide R2 looks like a pragmatic technical correction. It makes three basic assertions:

1. Because H.R. 1 impacts state tax revenues for all of tax year 2025 it reduced revenue attributable to FY 2024-25.
2. The TABOR certification did not account for the impact on FY 2024-25 revenues, resulting in an over-refund.
3. The reason that the State did not correct for the impact on FY 2024-25 revenues is that there was not enough time to identify the impact through the accrual process. The Executive Branch has indicated that it would treat H.R. 1's impact on FY 2025-25 revenue as causing an over-refund through the existing process under current law, but that the timing makes it difficult and it would be better for the State to spread the correction over two years.

JBC Staff contends that the situation is more complicated. In hopes of facilitating the discussion, staff is breaking the analysis down into three basic questions:

1. Is there an over-refund?
2. If there is an over-refund, when will we know the magnitude?
3. How should one weigh potential legal risks vs. uncertain General Fund benefits?

Is there an overrefund?

First, staff agrees that H.R. 1 impacted revenues that could be attributed to FY 2024-25 because it applies to all of state income tax year 2025. That said, whether that impact resulted in an over-refund is more complicated. Staff's conclusion is that it is not an over-refund *as that term has been applied under current law*.

Current law has a process for the correction of over-refunds. Section 24-77-103.7, C.R.S., directs the State Controller to reduce refunds in a subsequent year by the amount of the over-refund(s) from previous year(s).

The request asserts that accurately reflecting the impact of H.R. 1 on FY 2024-25 revenues through accruals would have eliminated the TABOR refund for FY 2024-25 but there was not time to do so. That assertion implies that, given more time, the State could have managed the issue through the existing accrual process and prevented the over-refund.

The Executive Branch has indicated that it believes that the asserted over-refund could and should be accounted for under current law through the existing over-refund process. Under that scenario, the main impact of request R2 would be to adjust the timing of the remedy to span two years rather than one. Legislative staff disagree and do not believe that this situation fits the existing over-refund process.

Based on discussions with the other legislative staff agencies, the fact that the federal legislation was signed after the close of the fiscal year (and the impact of the legislation was not known and measurable as of the end of the fiscal year) means that the State probably *could not have accrued the impact back to FY 2024-25 without*

violating accounting rules. As a result, doing so through the standard accrual process at the end of the year could have been problematic and may have threatened the Auditor’s clean opinion of the financial statements.⁴

If the State could not account for the impact of H.R. 1 in FY 2024-25 under the existing system, then there was no over-refund as that term has applied to date. The General Assembly may sponsor legislation to change the treatment of revenues in FY 2026-27 and FY 2027-28 based on the asserted over-refund in FY 2024-25, but the existence of the over-refund is not clear under current law. Refund mechanisms set for state income tax year 2025 are expected to refund approximately the amount of the refund obligation identified in the TABOR certification and the ACFR. They would only over-refund revenue by the amount in the request if the refund obligation identified in the certification and the ACFR is in error.

If there is an overrefund, when will we know the magnitude?

If the General Assembly moves forward with the proposed legislation *for budget balancing purposes* then staff will need to know what to assume for the General Fund benefit (via reduction to the TABOR refund) for FY 2026-27. The size of the asserted over-refund will not be known until the OSC certifies TABOR revenues for FY 2025-26 in September 2026. Even after September 2026, the amount of the asserted over-refund will likely continue to move until the publication of the ACFR in December 2026 or January 2027, obviously well after the end of the 2026 regular session.

The uncertainty stems from the interaction between FY 2024-25 and FY 2025-26. As the General Assembly discussed at length during the August 2025 special session, H.R. 1 has an outsized impact on FY 2025-26 because 18 months of revenue impact are showing up in one fiscal year. While TABOR operates strictly on an annual basis for each fiscal year, request R2 requires one to consider the State’s position relative to the limit across both years because the request proposes to rebalance the impact of the bill across both years.

Under the logic of the request, the existence and magnitude of a potential over-refund for FY 2024-25 depend on the State’s position relative to the limit *in FY 2025-26*.

- **\$306.1 million is the *maximum* size of the over-refund for FY 2024-25.** If the State falls at least that far below the limit in FY 2025-26 then the request would assume that the entire refund is an over-refund.
- **If the State is below the limit by less than \$306.1 million in FY 2025-26, then the over-refund for FY 2024-25 could be no larger than the gap below the limit for FY 2025-26.** So, if the State ends FY 2025-26 \$100.0 million below the limit, then that would be the maximum size of the over-refund from FY 2024-25.
- **If the State ends FY 2025-26 at or *above* the limit then there would be no over-refund for FY 2024-25.** While one could argue that the refund was misallocated between fiscal years, the total refund over the two-year period would still be accurate.

The December 2025 OSPB forecast estimates that the State will be \$308.2 million below the limit in the current year (very close to the magnitude of the \$306.1 million refund from FY 2024-25). LCS projects revenues \$464.7 million below the limit. Both offices emphasized the degree of uncertainty in the December 2025 forecasts. Staff

⁴ Legislative staff note that H.R. 1 is not the only policy change that has come after the close of the fiscal year but impacted the entire tax year. For example, state ballot measures have done so. Legislative staff are not aware of any cases where the State has accrued such a revenue impact back to the previous fiscal year.

assumes the State could well end FY 2025-26 above the limit; the March 2026 forecasts will have additional information.

Staff notes that the request proposes that FY 2024-25 revenues be reconsidered *only* in light of the actual impacts of H.R. 1. The request ignores the fact that other economic and policy factors caused tax year 2025 revenue to deviate from the assumptions used to produce the accrual adjustments for FY 2024-25, and that any of these factors would also have had impacts on the TABOR situation for both FY 2024-25 and FY 2025-26. Staff is uncertain about the validity of that assumption – and whether retroactively accounting for *only* the impact of H.R. 1 is appropriate.

How should one weigh potential legal risks vs. uncertain General Fund benefits?

For the reasons outlined above, staff is concerned that treating the FY 2024-25 refund as an over-refund could create legal risk. However, the degree of legal risk is uncertain. If the Committee considers moving forward with the proposed legislation, then staff suggests weighing the potential legal risk against the proposal's budget balancing benefits. The uncertainty of both the legal risk and the benefits complicates that analysis.

The potential benefit for General Fund balancing ranges from \$0 to a maximum of \$306.1 million over two years - or, if that benefit is split over two years, a maximum of \$153.0 million per year. In addition to the uncertainty about the magnitude of the asserted over-refund, the benefit depends on there being sufficient TABOR surplus in both FY 2026-27 and FY 2027-28. Interaction with the Senior Citizen and Disabled Veteran Property Tax Exemption (Homestead Exemption) adds uncertainty because Homestead is the first TABOR refund mechanism each year. That mechanism backfills local governments for the loss of revenue resulting from the Homestead Exemption.

- During times of adequate surplus, the refund from prior year revenues pays for Homestead. So, the December 2025 OSPB revenue forecast assumes that \$183.0 million of the FY 2024-25 refund is covering Homestead in the current year.⁵
- When there is no surplus from the prior year, Homestead becomes a General Fund obligation. With the State projected to be below the limit in FY 2025-26, the December OSPB forecast assumes that Homestead will be a \$189.4 million General Fund obligation in FY 2026-27.

Given that interaction, the General Fund benefit of request R2 depends on the magnitude of the TABOR refunds from FY 2026-27 and FY 2027-28 revenues after accounting for Homestead.

- To help balance FY 2026-27, revenues for the year have to be above the Ref C cap because there has to be a TABOR refund to reduce. If the full \$306.1 million from FY 2024-25 were found to be an over-refund, then the FY 2026-27 TABOR refund would need to be at least \$153.0 million to get the proposed benefit in FY 2026-27.
- However, the FY 2026-27 refund needs to be much larger to avoid creating a General Fund obligation for Homestead in FY 2027-28. The December 2025 OSPB revenue forecast projects that Homestead will cost \$196.8 million in FY 2027-28. Covering the refund reduction in FY 2026-27 and Homestead in FY 2027-28

⁵ The December 2025 LCS forecast assumes that Homestead is absorbing \$184.3 million of the FY 2024-25 refund. Staff is uncertain whether that amount should be considered an overrefund if the General Assembly would have used General Fund to pay for Homestead in the absence of the refund in the current year.

would require a refund of roughly \$350.0 million in FY 2026-27 (\$153.0 million + \$196.8 million = ~\$350.0 million). Otherwise, any uncovered portion of Homestead becomes a General Fund obligation in FY 2027-28.

The Governor based the October 2025 request (including R2) on the September 2025 OSPB revenue forecast, which showed the State above the limit by \$363.9 million in FY 2026-27 and \$721.1 million in FY 2027-28. Reducing those amounts by roughly \$150.0 million would still leave enough refund to cover Homestead in FY 2027-28 and FY 2028-29. That holds true under the December 2025 LCS forecast, which projects TABOR refunds of \$500.8 million in FY 2026-27 and \$817.0 million in FY 2027-28.

In contrast, the December 2025 OSPB forecast shows only a \$208.2 million TABOR refund in FY 2026-27. Reducing the FY 2026-27 refund by \$153.0 million would create a \$141.6 million General Fund obligation for Homestead in FY 2027-28 (and Homestead would consume nearly all of the \$153.0 million reduction to the refund in FY 2027-28).

The following tables outline the dynamics under current law without R2 (Table 1) and with R2 (Table 2) under the December 2025 OSPB forecast. Table 2 assumes that the proposed legislation would deem all of the \$306.1 million from FY 2024-25 an over-refund, reducing the outyear refunds by \$153.0 million per year.

**Table 1: TABOR Refund and Homestead Interactions Under Current Law
(December 2025 OSPB Forecast, \$ in millions)**

	FY 2025-26	FY 2026-27	FY 2027-28
TABOR refund from prior year revenues	\$306.1	\$0.0	\$208.2
Homestead obligation (from prior year TABOR refund)	183.0	0.0	196.8
Remaining TABOR refund after Homestead	123.1	0.0	11.4
Homestead obligation (General Fund)	0.0	189.4	0.0

**Table 2: TABOR Refund and Homestead Interactions Under Statewide R2
(December 2025 OSPB Forecast, \$ in millions)**

	FY 2025-26	FY 2026-27	FY 2027-28
TABOR refund from prior year revenues	\$306.1	\$0.0	\$55.2
Homestead obligation (from prior year TABOR refund)	183.0	0.0	196.8
Remaining TABOR refund after Homestead	123.1	0.0	0.0
Homestead obligation (General Fund)	0.0	189.4	141.6
General Fund made available by R2	0.0	153.0	153.0

The March 2026 revenue forecast will presumably reduce uncertainty about the State’s proximity to the limit in the current year (and hence the likely magnitude of the asserted over-refund). Revenues for FY 2026-27 and FY 2027-28, however, will remain much more uncertain.

Background - Process for Certification

Statute lays out the process for the annual certification of potential TABOR refunds.⁶

- By September 1, the OSC must certify the amount of revenue collected in excess of the TABOR Cap and the amount that may be retained under Referendum C. The OSC certified \$296.1 million in revenues above the

⁶ Section 24-77-106.5, C.R.S., specifies the timeline for the State Controller and the State Auditor. Section 39-22-2002, C.R.S., specifies the timeline and responsibilities of the Department of Revenue.

cap for FY 2024-25, although the certification letter said that accounting for over-refunds from the prior year would reduce the refund to \$293.3 million.

- By September 15, the Office of the State Auditor must audit the September 1 certification and transmit an audit letter to the Governor, the JBC, the House and Senate Finance Committees, and the Department of Revenue. The [audit of TABOR revenue for FY 2024-25](#) identified \$296.8 million in excess revenues for FY 2024-25 but also shows an actual refund amount of \$293.3 million after adjusting for prior year over-refunds.
- The [Annual Comprehensive Financial Report](#) (generally published in December or January) includes a multipage, annotated “schedule of computations required under Article X, Section 20”. The ACFR identifies a surplus of \$309.8 million and a necessary refund of \$306.1 million.⁷

⁷ See the Schedule of TABOR Revenue and Computations beginning on page 265 of the ACFR and the identified refund on page 267.