CHAPTER 2

STATEWIDE BUDGET OVERVIEW

2.1 INTRODUCTION

This chapter starts with a brief overview of the executive and legislative budget processes. Section 2.3 is an overview of the review processes for information technology requests, capital construction requests, and controlled maintenance requests. Section 2.4 provides information on various fund sources including federal and custodial funds. Section 2.5 describes the process of coordinating requests that affect multiple departments and Section 2.6 addresses spending limits that are applicable to the budgeting process in the State of Colorado.

2.2 BUDGET PROCESS

The following description of the budget process provides a general timeline for budget preparation and review. Please refer to the budget calendar for detail on all deadlines.

Executive Budget Process

The executive budget process begins with the development of strategic plans by the departments. The submission of the Governor's request to the JBC on November 1st is a major milestone in the process. The executive budget process continues beyond November 1st as departments submit requests for changes in the current fiscal year budget (Supplementals) or changes to the November 1 Budget Request (Budget Request Amendments).

The Governor’s November 1 Budget Request is balanced within the limitations on General Fund appropriations and available revenues from cash and federal sources. Furthermore, the approved Supplemental and Budget Request Amendment requests are also balanced within appropriation limitations and available revenues. The process of balancing the budget may require previously approved requests to be withdrawn or may result in new requests if proposed expenditures are demonstrated to be an efficient or effective use of state resources and funds are available. In addition to the various budget submissions to the General Assembly, initiatives requiring statutory changes may be prepared as part of the OSPB package. An outline of the executive budget process follows.

Strategic Plan and Budget Request

Strategic Plans are an essential component of the annual Budget Request. Just as the OSPB develops and updates state revenue forecasts throughout the year, state departments should update strategic plans on an on-going basis. These strategic plans become the basis for the annual Budget Requests. Through the spring and summer, departments develop and prepare their *Strategic Plan*, which is submitted to the OSPB in July.

Base Budget Requests are due to the OSPB in May. In June, the so-called "Reverse Mark" is provided from the OSPB to the departments. Based on this reverse mark, on August 1, departments submit their prioritized Change Requests to the OSPB. In August and September, the OSPB staff reviews and analyzes department Change Requests.

The Governor's Budget Request

After the OSPB review of the Change Requests, the Director of the OSPB makes recommendations to the Governor for final approval. In October, the OSPB issues final Mark letters to the departments providing final authorization on the entire request. The OSPB also completes a review of the final Budget Requests to assess conformity to the Mark letters, completeness, and accuracy. Special attention will be given to the quality and completeness of the request by the staff. Please proof all things well prior to submitting items to OSPB. Errors and quality problems could inadvertently result in non-approval of initiatives which are important to the department. The OSPB transmits department requests to the JBC on November 1 as required by statute. On November 1, Department requests become the Governor's executive Budget Request. As such, these requests may not be changed without authorization from the OSPB.

Supplementals and Budget Amendments. After submission of the Governor's Budget Request to the JBC on November 1, departments have an opportunity to request changes to current fiscal year funding (Supplemental requests) and changes to the November 1 request (Budget Request Amendments) based on specified criteria. Supplementals and Budget Request Amendments go through a review and approval process at the OSPB similar to the review of the Decision Items and Base Reduction Items which are included in the November 1 Budget Request. Supplementals and Budget Request Amendments are due to the OSPB for review no later than November 21. Supplementals and associated Budget Request Amendments are submitted to the Joint Budget Committee on January 2 and stand-alone Budget Request Amendments are submitted to the Joint Budget Committee on January 23.

Legislative Action. In January, the General Assembly convenes and the Governor conveys his agenda during the State of the State address. Throughout the legislative session, departments review legislation to evaluate the fiscal impact of proposed legislation.

Legislative Budget Process

The Governor's Budget Request is submitted to the Joint Budget Committee, the General Assembly's permanent fiscal and budget review agency, and to Legislative Council staff, and to the Legislative Library. The JBC has six members: two majority party and one minority party members of the Senate Appropriations Committee, and two majority and one minority member of the House Appropriations Committee. Members serve two-year terms and are selected following the general election. The chairperson of the JBC alternates between the Senate and the House and changes each November. An outline of the legislative budget process follows.

Briefings/Hearings. After November 1, the Joint Budget Committee staff briefs the JBC on department funding levels and issues. After the briefings, the Joint Budget Committee conducts hearings with the departments on their budget submissions and the departments provide written responses to Joint Budget Committee questions raised during the briefing. In some cases, follow-up written responses are required to be submitted to the Joint Budget Committee. Aside from the periodic hearings where a department is called before the JBC to discuss a specific issue, the budget hearing is the only time departments officially appear before the Joint Budget Committee. Briefings and hearings occur mostly in November and December, with a few department hearings occurring in January.

Supplementals. In January, the Committee considers regular Supplemental Budget Requests for the current fiscal year. The requests are reviewed and approved by the OSPB before submission to the Joint Budget Committee as noted above. When the Joint Budget Committee has finalized all of its decisions on Supplementals, the OSPB can do comebacks on requests where it is seeking the Joint Budget Committee to reverse its decision. Please see “comebacks” below.

Figure Setting. During February and March, the Joint Budget Committee staff reviews and makes recommendations to the Committee on funding levels, financing, FTE, and footnotes for each department for the upcoming fiscal year. The Joint Budget Committee votes on each Long Bill (annual budget bill) line item request. This process is called Figure Setting.

Comebacks. After the Joint Budget Committee concludes (Supplementals) and/or Figure Setting, the Governor and non-executive departments have the opportunity, at the discretion of the Joint Budget Committee, to request reconsideration of Committee decisions. This is called the “Comeback” process. The executive departments submit Comeback requests to the OSPB for approval. If approved, the Comebacks are presented to the Joint Budget Committee by the OSPB Director.

Long Bill Introduction. After Comebacks, the Joint Budget Committee “closes” the Long Bill. This means that the final Long Bill decisions have all been made by the Joint Budget Committee in preparation for the drafting of the Long Bill for introduction. The Long Bill is then introduced for consideration by both houses, as a House bill when the JBC chairperson is a House member, and as a Senate bill when the JBC chairperson is a Senator. The Joint Budget Committee staff writes a Long Bill Narrative which explains the Joint Budget Committee’s decisions for each area of the Long Bill as introduced.

Caucuses. Budget consideration by the entire General Assembly begins in the respective house’s party caucuses. These caucuses last a couple of days and Joint Budget Committee members explain their decisions and answer questions from their colleagues. The members of the caucuses can request amendments to the Long Bill, which are drafted by the Joint Budget Committee staff. The majority of these amendments are requested during the caucus discussion.

Long Bill Debate. Debate on the Long Bill occurs on second reading in the respective houses and amendments to the Long Bill are considered. After both houses pass the Long Bill, the Joint Budget Committee members are appointed as the Conference Committee to resolve differences between the two houses. After both houses adopt the Conference Committee Report, the Long Bill is sent to the Governor.

Final Action. The Governor has line item veto (and total bill veto) authority over the Long Bill and any item vetoed will not become law unless over-ridden by a two-thirds vote of both houses.

If the General Assembly sends the Long Bill to the Governor before the last ten days of the session, the Governor must act on the bill before the end of the session. If the Long Bill is sent to the Governor within the last ten days of the session, the Governor has 30 days after the end of the session to act on the bill.

2.3 OTHER REVIEW AND APPROVAL PROCESSES

Additional executive or legislative review procedures exist for certain types of Budget Requests. It is important that these additional procedures are followed when preparing a Budget Request. The following is a summary of the procedures and additional information may be found in Chapters 9 and 10.

Information Technology Requests

Pursuant to Section 24-37.5-104, C.R.S., the Office of Information Technology is an agency within the Governor's Office. The OIT reviews Change Requests for information technology equipment, information system projects, and related personal services. Approval of OIT is required for any request related to information technology including personal services, hardware, software, telecommunications, and other costs. All information technology requests totaling $500,000 or more must be requested through the capital construction budget. Information technology requests under $500,000 must be requested through the operating budget (for exceptions, see Chapter 10). Detailed instructions on information technology requests are included in Chapter 9.

Capital Construction Requests

Capital construction projects arise out of a department's need to create, expand, or relocate facilities. Alterations to programs resulting from growth, advances in technology, or changes in methods of program delivery can result in capital needs. Requests addressing physical space requirements needing to accommodate particular functions, such as those traditionally included in facility programs, would constitute a "program driven" request, and therefore, would be considered a capital construction request.

Capital construction budget instructions are used by departments requesting spending authority and capital construction funds for projects (see Chapter 10). These projects are usually for the acquisition of fixed assets, and last more than one fiscal year. Funds appropriated for capital construction are available for up to three fiscal years. (see Chapter 10). Capital construction requests are submitted to the OSPB for review and consideration. If approved by the OSPB, they are forwarded to the Capital Development Committee (CDC).

The CDC is a legislative committee established by statute with responsibility to review and recommend capital construction projects to the Joint Budget Committee. If capital construction requests are approved by the OSPB, they are forwarded to the CDC and departments coordinate efforts with the OSPB to provide the CDC and its staff with requested information. Once the CDC submits its recommendations to the Joint Budget Committee, these requests are further reviewed by the Committee and its staff, and departments may be asked for additional information. Please see Chapter 10 for additional information on capital construction requests.

Controlled Maintenance

Controlled maintenance projects arise out of the deterioration of a facility's physical and functional condition (including site and infrastructure) or the inability to comply with current codes. These are referred to as "maintenance driven" requests, as opposed to "program driven" requests, which would constitute a capital construction project.

Controlled maintenance includes corrective repairs or replacement used for existing state-owned general-funded buildings and other physical facilities, including, but not limited to, utilities and site improvements, which are suitable for retention and use for at least five years, and replacement and repair of the fixed equipment necessary for the operating of such facilities, when such work is not funded in a department's operating budget to be accomplished by the department's physical plant staff. Please see Chapter 10 for more information on controlled maintenance.

2.4 FUND SOURCES

Budget schedules in this manual require departments to identify specific fund sources. Departments should list the fund sources in the order in which they appear in the Long Bill (e.g., General Fund, Cash Funds, Cash Funds Exempt, and Federal Funds). However, do not list General Fund Exempt unless your program uses that funding source.

There are seven major fund sources identified in funding appropriations. All appropriations come from the fund sources described below in the Operating Funds and Capital Funds sections. The General Fund typically covers general operating needs of the State while cash fund revenues tend to be earmarked for specific purposes. The designation "exempt" after the fund source referenced notes that said funds are exempt from the TABOR limit. Please note, General Fund appropriations which are exempt from the 6.0% limit on General Fund appropriations pursuant to Section 24-75-201.1, C.R.S. are letter-noted as exempt from the 6.0% limit and, unless otherwise appropriate, would not be included in the "General Fund Exempt" column.

Operating Funds

Operating funds include five distinct categories:

1) *General Fund (GF).* General Fund derived primarily from state income and sales taxes.

2) *General Fund Exempt (GFE).* General Fund revenues not subject to the TABOR limit (e.g. moneys authorized by Referendum C or proceeds from the sale of property).

3) *Cash Funds (CF).* Cash Fund revenues that come primarily from fees and other specified funds which are collected by state departments.

4) *Cash Funds Exempt (CFE).* Gifts, grants, donations, and/or damage awards paid to the state (e.g., the tobacco settlement). With the exception of enterprises, transfers of funds from other state departments are reflected as cash funds exempt. Funds which are transferred from an enterprise to a state agency would be reflected by the receiving agency as "cash funds" because these moneys are entering the state and therefore count under TABOR.

5) *Federal Funds (FF).* Any funds received directly from the federal government; includes categorical or block grants not necessarily available for uses outside of those specified in the grant award.

Specifying Special Funds Further:

Medicaid Cash Funds (Exempt). Medicaid Cash Funds (Exempt) are first appropriated as state funds (mostly General Fund) and matched with federal funds in the Department of Health Care Policy and Financing, the single state agency for Medicaid. If Medicaid funds are transferred to other agencies, they are transferred as Medicaid Cash Funds Exempt dollars. Departments with Medicaid Cash Fund revenues (funds received) must identify this source by line item for informational purposes only and must specify the General Fund portion within the Medicaid Cash Funds Exempt and the *net General Fund.* Net General Fund is the General Fund within the Medicaid as it is appropriated in the Department of Health Care Policy and Financing and the direct General Fund appropriated to the line item being funded. Medicaid Cash Funds Exempt should be included in the total Cash Funds Exempt (CFE) and identified by line item.

HUTF. Likewise, departments that are appropriated moneys from the Highway Users Tax Fund (HUTF) must identify this source by line item, but still include it in the total Cash Funds Exempt.

Capital Funds

Capital funds include the following fund categories:

Capital Construction Funds Exempt. The principal source of this fund is a transfer from the General Fund appropriated for this purpose or from a transfer from excess General Fund made pursuant to HB 02-1310. When the funds are transferred to the Capital Construction Fund, they become Capital Construction Funds Exempt as they have already been counted once under TABOR (and are therefore exempt).

Cash Funds, Cash Funds Exempt, and Federal Funds (see above). These types of funds may be available for capital construction appropriations depending on the department and the nature of the request.

Federal and Custodial Funds

The OSPB exercises statutory authority on behalf of the Executive Branch to provide additional spending authority to departments for custodial federal funds through accounting documents created by the State Controller. Custodial federal funds are provided for a specific purpose and are not subject to appropriation by the General Assembly. Federal funds are subject to appropriation when such funds can be transferred to other block grants or when the funds are not for a specific purpose. In addition, pursuant to its authority to allocate state funds, the General Assembly can limit federal funds when state matching funds are required.

Federal funds are generally identified as either block grants or categorical grants depending on the restrictions imposed. Block grants may be used for a specific purpose, although the state has discretion to spend block grant funds for any activity consistent with that purpose. Block grants usually require states to make an annual application. Examples of block grants include the Maternal and Child Health and Preventive Health grants made to the Department of Public Health and Environment. Categorical grants may only be spent for a specific type of activity. Title XIX (Medicaid) and Title X (Family Planning) are examples of categorical grants.

COORDINATING REQUESTS THAT AFFECT MULTIPLE DEPARTMENTS

This section describes two cases in which Budget Requests may require coordination among departments: contracts among state departments and requests from cash funds shared by more than one department.

Coordination of Requests between Departments

When a department (department A) requires services which are provided by another department (department B) for which associated funding is transferred from department A, any increase in costs must be reflected in both or all of the appropriate budgets. For example, if the State Land Board in the Department of Natural Resources was requesting an increase in the number of vehicles it is appropriated, the Department of Personnel and Administration will also require commensurate spending authority to provide the fleet vehicle(s) and the receipt of moneys from the Department of Natural Resources. It is important that “department A” communicate its request for an increase to “department B” in time for department b to incorporate the increase into its Budget Request. The appropriation to the department B will be usually be from cash funds exempt, reflecting the transfer of funds from one department to another. [The exception to this would be a transfer from an enterprise which would be reflected as cash funds, not cash funds exempt.]

Departments Sharing the Same Fund

Some departments share the same cash fund. For example, the AIR account within the Highway Users Tax Fund (HUTF) is used by the Department of Public Health and Environment and the Department of Revenue. In cases where departments share a common cash fund, the OSPB will be responsible for ensuring that the total request does not exceed the capacity of the fund unless a fee increase is being requested. Chapter 5 provides more detail on cash funds and managing cash fund reporting when more than one department accesses the funds.

SPENDING LIMITS

State government is subject to three separate, but related, spending limits. The first of these, referred to as the "TABOR" limit, was made part of the Colorado Constitution (Article X, Section 20) in 1992 as a result of a citizen's initiative. The TABOR limit restricts the State's total *revenue* growth for cash funds and General Fund combined to the sum of inflation and population growth. The second restriction is a statutory six percent growth limit on annual increases in General Fund appropriations. Third, there is a statutory six percent limit on appropriations in the Highway Users Tax Fund (HUTF) for off-the-top activities (State Patrol, Ports-of-Entry, and the Motor Vehicles Division). Although the latter two limits are statutory, a provision in TABOR prevents the State from weakening any existing spending limits. Hence, TABOR has been interpreted to effectively make these two statutory limits similar to constitutional limits. The remainder of this chapter describes these limits in more detail.

TABOR (Article X, Section 20 of the Colorado Constitution)

In 1992, voters passed the constitutional amendment known as TABOR - the Taxpayer's Bill of Rights. TABOR imposes various fiscal limits and requirements on state and local Colorado governments.

State revenues are defined as cash funds and General Fund. Federal funds are not subject to TABOR, as well as other exemptions (e.g., donations). TABOR requires voter approval for any new or increased taxes.

TABOR restricts state revenues from growing by more than the sum of inflation plus state population growth. Thus, if inflation was 2.1% and state population growth was 1.4 percent in the prior calendar year, then the total allowable TABOR growth rate in State revenues would be 3.5%.

If state revenues are higher than the TABOR limit, the surplus revenues in excess of the limit must be refunded to taxpayers unless the state has prior voter approval to keep some portion of the excess. If revenues are lower than the TABOR limit, no refunds occur.

TABOR and Referendum C

Referendum C, a bi-partisan measure referred by the General Assembly to the voters, was approved by Colorado voters in November 2005. Referendum C authorized the state to retain (and spend) all state revenues in excess of the limitation on state fiscal year spending for the 2005-06 through FY 2009-10 fiscal years. While this authorization may sometimes referred to as a "TABOR time out", provisions of TABOR still apply save for the refund requirement.

Referendum C allowed the state to spend the money it collects over this five year period on health care, public education, transportation projects, and local fire and police pensions. Referendum C eliminated, for the next five years, refunds that taxpayers would have received when the state collected more than it was authorized.

Beginning in 2011, Referendum C created a new state spending cap equal to the highest amount of money the state collects in any year between 2006 and 2010. This dollar amount increases annually by inflation plus population growth. Please note, this provision eliminated the "ratchet-down" effect. All money collected above the new cap will be refunded to taxpayers.

Funds Which are Exempt from TABOR

As noted above, General Fund and cash funds fall under the TABOR limit. TABOR exempted some revenues from its limits. These are identified in the budget as either General Fund Exempt or cash funds exempt. Exempt revenues include:

- Expenditures from reserves;
- Transfers from one agency to another (as long as the sending agency is not an enterprise);
- Refunds of excess state revenues made in the current fiscal year or in the subsequent fiscal year;
- Gifts, including any interest earned thereon;
- Federal funds, including any interest earned thereon;
- Collections for another government;
- Pension contributions by employees;
- Pension fund earnings;
- Damage awards paid to the state, including any interest earned thereon;
- Property sales, including any interest earned thereon;
- Net proceeds from state-supervised lottery games; and
- Enterprise revenues.

According to TABOR, an enterprise "means a government-owned business authorized to issue its own revenue bonds and receiving under ten percent of annual revenue in grants from all Colorado state and local governments combined." An example of an enterprise is the State Lottery or the Division of Wildlife in the Department of Natural Resources.

General Fund Appropriations Limit

Named after its 1992 authors, Representative Arveschoug and Senator Bird, the "6.0 percent limit" provides that annual General Fund appropriation growth in the budget cannot exceed 6.0%, subject to a few narrow exceptions specified in statute.

Specifically, Section 24-75-201.1, C.R.S. restricts increases in state annual General Fund appropriations to the lesser of 5% of state personal income or 6% over the total General Fund appropriations of the previous year. (Since its passage, the lesser amount has been six percent over the previous year's General Fund appropriations, so it is commonly referred to as the "6.0 percent spending limit".)

Although the 6.0% limit was added statutorily, a subsequently passed provision in TABOR (Article 10, Section 20 of the Colorado Constitution, discussed above) effectively prevents the appropriations limit from being weakened without voter approval. TABOR stipulated that an existing spending limit could not be weakened without a vote of the people. Thus, statutory spending limits (such as the 6.0% limit on annual General Fund appropriation growth, discussed earlier) essentially was transformed from statutory to requiring a vote of the people.

The 6.0% provisions found at Section 24-75-201.1 and 24-75-201.2, C.R.S. have a couple of exceptions. The primary exceptions include the following:

- General Fund Medicaid over-expenditures;
- General Fund appropriations for new programs or increased service levels required by federal law or final state or federal court orders; and,
- General Fund appropriations from voter-approved tax or fee increases.

Please note, General Fund transfers to the Capital Construction Fund do not fall under the 6.0% limit. Additionally, the following expenditures do not fall within the 6.0% limit on General Fund appropriations: Old Age Pension payments, cigarette tax rebates, the Property Tax and Heat Credit, and Police/Fire Pension payments.

Frequently Asked Questions about the 6.0 Percent General Fund Limit

Question #1: Are General Fund appropriations attributable to lawsuits exempt from the 6.0 percent limit on General Fund appropriations?

> Answer: General Fund appropriations for *new programs* or *increased service levels* required by a *final* <u>state</u> or <u>federal</u> *court orders* are exempt from the 6.0% limit on General Fund appropriations for the first year they are made.
>
> Thus, a General Fund appropriation is not exempt *just because it was associated with a lawsuit*. If the General Fund appropriation is associated with a court order, it must be a *final* court order to be exempt. A General Fund appropriation is not exempt just because it is associated with a legal action. Finally, the appropriation furthermore has to be for a "*new program*" or "*increased service level*" to be exempt. So, there are many important caveats to be aware of. If you have any questions, contact your Attorney General legal staff.

Question #2: If a department spends General Fund in order to *prevent* a final state or federal court order, is that sum exempt from the 6.0% limit?

Answer: No. Dollars appropriated *to prevent* a lawsuit or associated court order are not exempted from the limit.

Question #3: But aren't damage awards exempt from the TABOR limit and therefore the GF limit?

Answer: Two things – first damage awards *paid to* the state are exempt from TABOR. Second, the TABOR *revenue* limit and the 6.0% General Fund *appropriations* limit are two different limits.

Question #4: Are appropriations from the General Fund to a cash fund included in the appropriations limit?

Answer: Yes. Appropriations from the General Fund to a cash funds would be subject to the 6.0% limit.

Question #5: Since Referendum C allowed the State to keep revenue it would otherwise have refunded to voters for the time-out period specified, can those moneys be spent above the 6.0 percent limit on General Fund appropriations?

Answer: No. Referendum C did not change the limitation on General Fund appropriations.

Highway Users Tax Fund Off-the-Top

Highway Users Tax Fund (HUTF) "off-the-top" funds are removed from the first seven cents of motor and special fuels prior to allocation to the cities, counties, and the Department of Transportation. For FY 2005-06, off-the-top appropriations are limited to the State Patrol, Ports of Entry, and the Motor Vehicles Division, but can be used for either operating or capital expenditures. For FY 2006-07, off-the-top appropriations are limited to the State Patrol and Ports of Entry. Similar to General Fund appropriations, HUTF off-the-top appropriations are limited to six percent annual growth.