

# MEMORANDUM



## JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee  
FROM Andrea Uhl, JBC Staff (303-866-4956)  
DATE January 30, 2023  
SUBJECT Proposed Use of Indirect Costs Excess Recovery Fund for Capitol Complex Renovation and Footprint Reduction Project

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Staff has prepared this memo to make the JBC aware of a proposal in OSPB's Capital Construction request that raises concerns among JBC staff. The prioritized list from OSPB includes \$32.8 million for the Capitol Complex Renovation and Footprint Reduction project within the Department of Personnel. This project is shown as entirely cash-funded for FY 2023-24 and ranked as priority seventeen out of twenty-two.

Of this amount, OSPB requests that \$14.8 million come from the Capitol Complex Renovation Fund created by S.B. 22-239 (Buildings in the Capitol Complex) and \$18.0 million come from the Indirect Costs Excess Recovery Fund. While not explicitly stated in the request, OSPB expects either the JBC or the Capital Development Committee (CDC) to sponsor legislation that transfers money from the Indirect Costs Excess Recovery Fund to the Capitol Complex Renovation Fund. The purpose of this memo is not to discuss the merits of the project itself, but to raise issues with the proposed use of the Indirect Costs Excess Recovery Fund for a capital project.

First, here are some key concepts for anyone unfamiliar with indirect costs:

- **Indirect costs** broadly refer to costs for administrative overhead or other centrally provided services provided to any program, regardless of fund source, and for which those services are not billed directly (i.e. accounting, budget, or HR services vs. liability insurance, legal services, or fleet vehicles).
- **Indirect cost assessments** are line items in the Long Bill in program or division sections applied to cash-, reappropriated-, or federal-funded programs to bill (or informationally identify estimated federal collections) program fund sources for indirect costs. The indirect cost assessment line is a payment from the program, and more specifically, the program fund source, to the department to cover overhead costs for the program.
- **Indirect cost recoveries** refers to actual indirect cost collections by departments. This term also refers to letternotes in the Long Bill that budget how the department will expend recoveries (shown as reappropriated funds) to pay for specified department overhead line items that would have otherwise been paid for by the General Fund.
- When a department either over-collects or under-expends indirects, the **excess recoveries** are deposited in that department's subaccount of the Indirect Costs Excess Recovery Fund.
- Departments submit an **indirect cost recovery plan** each year in preparation for Figure Setting. This serves as the basis for indirect cost assessments and indirect cost recoveries in the Long Bill.
- If JBC staff determines that a department's balance is too high or projected to grow based on the submitted plan, staff will recommend offsetting additional uses of General Fund with reappropriated funds from the department's balance, therefore **creating General Fund savings**, or direct the department to lower its assessments if the rate is not federally dictated.

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The Indirect Costs Excess Recovery Fund is to be used for “...the sole purpose of paying any indirect costs incurred by agencies within the department during a fiscal year that exceed their actual indirect cost collections for the fiscal year”.<sup>1</sup> The fund was created to serve as a buffer from fluctuating indirect cost recoveries year to year; this is especially important for departments receiving large amounts of federal funds that are required to use federally set rates. An example of this challenge was discussed by JBC staff during the Department of Public Health and Environment (Administrative and Environmental Divisions) Supplemental presentation dated January 19, 2023.

The State Controller submits an annual report to the JBC Staff Director reporting activity and balances within the Indirect Costs Excess Recovery Fund for the prior fiscal year. The letter dated November 1, 2022 included the following:

*“The Fiscal Year 2022 increase in fund balance is due primarily to increases in federal award expenditures related to the COVID-19 pandemic. These increases in federal award expenditures are expected to result in reduced rates of federal indirect cost recoveries in future years. Therefore, it is expected that these excess recoveries will be needed to fund administrative operations in future years.”*

In staff’s correspondence with OSPB, OSPB stated that they did not have recommendations for how much should be transferred out of specific subaccounts, but acknowledged that CDPHE’s subaccount should not be reduced due to the issue referenced above. The total statewide fund balance for the fiscal year ending June 30, 2022 was \$37.7 million. Excluding CDPHE, and factoring in the recently approved Human Services S1 Utilities Expense Increase that will be funded out of the Human Services balance, the remaining balance is \$14.1 million. Not only does this amount fall short of the requested transfer, but it assumes that all other subaccounts are brought down to zero – something JBC staff, in no circumstance, would ever recommend. Additionally, no projections have been provided for the FY 2022-23 ending fund balance; it is likely that some departments had planned to draw down the balance in their subaccounts during this fiscal year.

INDIRECT COSTS EXCESS RECOVERY FUND BALANCE BY DEPARTMENT	
FISCAL YEAR ENDING JUNE 30, 2022	
Personnel and Administration	\$209
Agriculture	258,808
Corrections	314,396
Education	1,761,004
Public Health and Environment	20,964,486
Human Services	9,520,060
Judicial	31,700
Local Affairs	269,576
Natural Resources	744,528
Public Safety	2,281,973
Regulatory Agencies	1,211,343
State	331,731
<b>Total</b>	<b>\$37,689,814</b>
Less: Public Health and Environment	(20,964,486)
Less: Human Services S1 Utilities Expense Increase	(2,673,286)
<b>Total available, bringing all other balances to zero</b>	<b>14,052,042</b>

<sup>1</sup> Section 24-75-1401 (3)(a), C.R.S.

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While it is true that the Joint Budget Committee transferred \$8.4 million from the Indirect Costs Excess Recovery Fund to the General Fund in June 2020, that action was during an unprecedented crisis in order to balance the overall state budget. Additionally, the JBC chose this amount based on individual staff recommendations for a reasonable balance to be retained by each department. If the JBC determines that budgeting for FY 2023-24 requires extraordinary action, staff can be directed to look for appropriate ways to apply additional indirect cost recoveries on a department by department basis to create overall General Fund savings or determine appropriate amounts to transfer out of each subaccount for statewide balancing purposes.

It is staff's intent to call attention to the aforementioned issues while leaving time for the CDC to consider this topic during its deliberations. As a reminder, the CDC must send its prioritized list of recommended Capital Construction projects for FY 2023-24 by February 15<sup>th</sup>. In light of everything discussed in this memo, staff believes the CDC should consider the Capitol Complex Renovation and Footprint Reduction project as having an \$18.0 million General Fund impact and rank it against other state-funded projects.

If the Joint Budget Committee agrees with staff's assessment of this issue, staff recommends the JBC send a letter or signal to the CDC in some way that you do not support the transfer out of the Indirect Costs Excess Recovery Fund for a capital project.