

# MEMORANDUM



## JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee  
FROM Alfredo Kemm, JBC Staff (303-866-4549)  
DATE January 20, 2022  
SUBJECT Briefing recommendation for supplemental package legislation

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Attached please find the issue brief titled, *Statewide Agency Access to the IT Capital Budget Process and Funding*. Staff presented this on November 17<sup>th</sup> in the IT Capital briefing. Staff recommends legislation to be included with the supplemental package to provide access to the IT Capital section of the Long Bill for non-executive branch agencies.

## ISSUE: STATEWIDE AGENCY ACCESS TO THE IT CAPITAL BUDGET PROCESS AND FUNDING

Current statute limits access to the IT Capital budget process and IT Capital dedicated funding to state agencies in the executive branch and institutions of higher education. This limits the opportunity for state agencies from the independent branches and elected official departments from the opportunity to submit project requests for dedicated state funding for large-scale, IT projects. This gap in process also reduces the specialized, technical, and ongoing legislative oversight of the development and implementation of large-scale IT projects provided by the Joint Technology Committee.

### SUMMARY:

- The JTC was initially created to provide technical, legislative oversight to the operations and policies of the Governor's Office of Information Technology (OIT). Later, the JTC was additionally charged with review of IT Capital budget requests.
- IT Capital requests were previously considered and prioritized by the Capital Development Committee alongside building capital budget requests; and prior to the creation of the JTC and its review of IT Capital budget requests, such requests followed the statutory guidance for capital construction, which apply to all state agencies.
- However, Section 2-3-1701 (5), C.R.S., in the Joint Technology Committee section of statute, defines *state agency* as executive branch agencies only; and subsection (2.5) defines and limits *information technology budget requests* to state agencies and institutions of higher education.
- Section 24-75-302 (3.7), C.R.S., creates the Information Technology Capital Account and broadly provides that the General Assembly may appropriate from the account for information technology projects. However, additional clauses in the provision mirror the JTC section definition, specifying state agencies and institutions of higher education in addressing limitations and restrictions on the use of those appropriations.
- The Joint Budget Committee is substantially aided in making better decisions related to IT projects because of the technical assessment and technical staff resources of the JTC; and is aided by broader General Assembly support gained for critical projects funded in this section of the budget. Additionally, ongoing oversight by the JTC ensure that projects remain visible and that adequate quarterly or annual progress is made toward implementation.

### RECOMMENDATION:

Staff recommends that the Committee pursue legislation (1) to clarify statute to provide authority, but not requirement, for the inclusion of information technology projects from non-executive branch state agencies in the IT Capital section of the budget; (2) to further clarify that such items placed in the IT Capital section of the budget become the oversight responsibility of the JTC until project implementation; and (3) to establish annualization requests for previously funded IT Capital projects to be reflected as base budget items in the November budget request.

## DISCUSSION:

### BACKGROUND

In preparation for the current budget cycle, including staff conversations with the Office of the State Public Defender, an independent agency in the Judicial Department, staff discovered that the IT Capital budget process, as defined in statute, does not provide authority for non-executive branch agencies to be included in the IT Capital budget and budget process.

The key provision is found in the definitions section of Part 17 of Article 3 of Title 2, governing the Joint Technology Committee. Section 2-3-1701 (5), C.R.S., states (emphasis added):

*(5) "State agency" means all of the departments, divisions, commissions, boards, bureaus, and institutions in the executive branch of the state government. "State agency" does not include the legislative or judicial department, the department of law, the department of state, the department of the treasury, or state-supported institutions of higher education, including the Auraria higher education center established in article 70 of title 23, C.R.S.*

Additionally, the definition of an "information technology budget request" in subsection (2.5) limits requests to defined state agencies and institutions of higher education.

The equivalent definition provision in Part 16, governing the Capital Development Committee (CDC), defines "state agency" as "any department, commission, council, board, bureau, committee, office, agency, or other governmental unit of the state. The CDC provisions do not define a "capital construction request".

Additionally, as it regards IT Capital and the JTC, Joint Rule 45, *Classification of a Budget Request*, states:

*(a) Commencing with budget requests for the 2015-16 state fiscal year and each state fiscal year thereafter, in order to facilitate the initial review of budget requests, the following rules apply:*

*(3) Information technology budget requests reviewed and prioritized by the Joint Technology Committee.*

*(A) Budget requests for information technology with a total project cost that equals or exceeds \$500,000 are information technology budget requests that are reviewed and prioritized by the joint technology committee.*

*(B) The joint technology committee shall review any operating budget requests for information technology that the joint budget committee forwards to the joint technology committee for review.*

...

*(d) As used in this Joint Rule, unless the context otherwise requires:*

*(2) "Information technology budget request" and "information technology" have the same meaning as set forth in section 2-3-1701 (2.5), Colorado Revised Statutes.*

Joint Rule 45 also provides that any of the Committees may refer a request to any other Committee at its discretion.

While there is no direct access to the IT Capital process (and therefore JTC review and consideration) for non-executive branch agencies, Joint Rule 45 provides authority for the JBC to refer a request to the JTC. However, there appears to be a lack of clarity in statute on whether the JBC could include an appropriation for an IT project for a non-executive branch agency in the IT Capital budget.

Section 24-75-302 (3.7), C.R.S., creates and defines the Information Technology Capital Account within the Capital Construction Fund. The provision includes the following broad authority: "The general assembly may appropriate moneys in the account for information technology projects." The term "information technology projects" is not defined in statute. The provision continues (emphasis added):

*All unexpended or unencumbered moneys from an information technology capital account appropriation to a state agency or state institution of higher education for any fiscal year reverts to the account at the end of the period for which the moneys are appropriated. No portion of the unexpended balance of a state agency's or state institution of higher education's information technology capital account appropriation may be used by the state agency or the state institution of higher education for any additional projects that are beyond the scope or design of the original project without further approval by the joint technology committee of such additional project.*

References to "state agency" in this provision do not reference a defined term. However, the language specifying "state agency or state institution of higher education" appears to mirror the definitions in Section 2-3-1701 (2.5) and (5), C.R.S. While it is not clear that appropriations to non-executive branch agencies are prohibited, it appears that this statute was drafted to mirror the definitions that clearly specify only executive branch agencies as state agencies.

Staff has consulted with the Office of Legislative Legal Services, who guided staff to this understanding and, therefore, are in general agreement with staff's explanation of this issue.

From a perspective of fairness and equity, and to establish JBC authority over its discretionary placement of appropriations in the Long Bill, staff recommends that statute be amended only enough to allow for the appropriation of IT projects to non-executive branch agencies in the IT Capital section of the budget.

### **JTC TECHNICAL EXPERTISE AND ADVISEMENT IN THE BUDGET PROCESS**

It appears that the JTC was created primarily to provide competent technical, legislative oversight to the operations and policies of the Governor's Office of Information Technology (OIT). Later, the JTC was charged with review of IT Capital budget requests previously considered and prioritized by the Capital Development Committee alongside building capital budget requests.

Over the last five years, staff worked through concerns and significant budget requests related to the GenTax IT system in the Department of Revenue. The JTC, particularly in the form of its technical staff, were critically helpful to ensure that funding requests were reasonably suited to address the ongoing problems and concerns of the GenTax system. Additionally, the ongoing oversight of the Joint Technology Committee, for projects reviewed, recommended, and funded ensure that projects remain visible and that adequate quarterly or annual progress is made toward implementation.

It is an easier budget practice to rely on an exclusive JBC review, recommendation, and decision of any budget request. However, the review of major IT projects by the JTC also provide for broader legislative knowledge of, and in some cases, broader General Assembly support for, critical projects as well-vetted and merited budget choices. It is staff's belief that the Joint Budget Committee is substantially aided in making better decisions related to IT projects because of the structure, oversight, and technical staff resources of the JTC; and is aided in gaining broad General Assembly support for projects in this section of the budget.

On that basis, staff questions the current statutory structure of the IT budget request process that limits such requests to executive branch agencies and institutions of higher education. If JTC review processes help rather than hinder budget decisions by the JBC, it appears to be in the interest of the JBC to provide expanded access to the IT Capital and JTC process to non-executive branch agencies.

### **THE GOVERNOR'S BUDGET SUBMISSION**

The Governor/OSPB budget submission for FY 2022-23 includes two executive branch projects and one placeholder amount for an unknown number of forthcoming budget amendment requests. These amounts totaling \$30.3 million in state funds are captured in the Governor's request.

However, the OSPB budget does not include recognition or consideration of 11 institution of higher education projects submitted by the Colorado Commission on Higher Education (CCHE), which include six continuation projects initially funded in FY 2021-22. This omission excludes an estimated \$24.2 million in state-funded continuation projects and an additional \$20.3 million in new requests from institutions of higher education.

In the building capital budget process, OSPB is charged with including, prioritizing, and recommending or not recommending for funding, all submitted capital construction budget requests. Section 24-37-304 (1)(c.5), C.R.S., appears to require OSPB to submit budget requests and prioritization for all state agency or institution of higher education information technology budget requests. Staff assumes that the omission of CCHE requests for FY 2022-23 may have been an oversight. However, the OSPB budget submission letter to the JTC includes the following statement:

*The Department of Higher Education (CDHE), along with the Commission on Higher Education, reserve the ability to submit a prioritized list to the JTC that may include projects not recommended by OSPB. The department will submit these requests directly to JTC.*

This statement appears to suggest that the Governor's request, through its omission, possibly did not recommend the CCHE projects for funding. Notwithstanding that statement, the OSPB request appears to fall short of the statutory requirement that all requests be submitted and prioritized and recommended or not recommended for funding.

Regardless, and more importantly, the Governor's budget fails to include, at a minimum, an affirmative recommendation for funding or not funding the continuation projects. This relates more to the issue of transparency and statewide budget balance, in which all known and legally provided budget requests are reflected and addressed affirmatively in the Governor's budget submission.

## SUMMATION AND CONCLUSION

Staff understands that the statutory structure limiting access to the IT Capital process to executive-branch agencies was intended to establish legislative oversight over the executive branch, and specifically OIT, but not the independent departments. Such access was also provided to institutions of higher education. Statute guiding OSPB responsibilities appears to include the recommended priority of funding for all requests from executive branch agencies and institutions of higher education.

Staff recommends making a change to statute that does not entail infringing on or ceding authority that independent agencies currently have to submit all budget requests, including for IT projects, directly to the JBC (and avoid the complication of formal submission to OSPB or the JTC through the IT Capital process). Staff does not identify a critical or urgent reason that independent agency requests need to be formally structured into the IT Capital request process at this time.

The decision to refer IT projects to the JTC, is perhaps best left to consideration by the JBC based on the specific context and elements of a request. In all cases, independent department budget requests in the operating budget will continue to capture the estimated budget request amounts, so that the JBC has a clear view of the totality of all request amounts submitted for the year. Similarly, OSPB would maintain its current ability to request generally accurate budget request amounts from the independent agencies prior to the November budget submission.

A project that is "prioritized" and "recommended for funding" by the JTC and then funded and included in the Long Bill by the JBC appears to signify that a legislative budget decision has been made to proceed with the project with an intention of completion. This decision, as with budget decisions in the operating budget, necessarily incorporates the totality of the request, which may include out-year funding requirements for project completion. However, once a decision has been made and prioritized in the first year of funding, it is unclear to staff why a second, third, or fourth recommendation for prioritization and funding should be required in future years.

In the operating budget, this is treated as an annualization; and occurs for budget decisions in budget bills and in fiscal notes for regular legislation. These are technical adjustments that are made to the base appropriation for the following budget year to comport with the decision made in the first year. There are times when an adjustment may be made to an annualization that require a reconsideration of the annualization amounts, such as in a revenue downturn or due to new or additional technical information. Nevertheless, annualizations are considered to be budget decisions previously considered and made, and in most cases do not change.

Annualizations, as with all funding built into the base in the operating budget, do not violate the principle that a General Assembly cannot tie the hands of a future General Assembly, as all elements of the budget must be affirmatively approved, including annualizations and the base, as a part of each annual budget decision making. The principle of the annualization is that except for those exceptions, typically related to revenue downturns, funding decisions made in prior years that include out-year adjustments, are simply accepted as made and not brought back to the JBC – or in the case of a bill, to the General Assembly – for reconsideration.

## **RECOMMENDATION**

Staff recommends a minimal adjustment to statute with the following goals in mind:

- 1 Access to IT Capital funding for non-executive branch agencies by JBC authority: Provide that IT project appropriations to non-executive branch agencies may be included in the IT Capital section of the budget by authority of the JBC. Independent agencies continue to submit projects to the JBC as operating requests; the JBC retains Joint Rule 45 authority to refer such projects to the JTC; the JBC gains clarified statutory authority to fund and locate such projects in the IT Capital budget.
- 2 Ongoing oversight by the JTC: Provide that such items placed in the IT Capital section of the budget become the oversight responsibility of the JTC until project implementation.
- 3 Annualize multi-year projects: Provide that multi-year (identified out-year) appropriations for any project appropriated in IT Capital, become base budget items in future years, eliminating the need for prioritization of continuation projects by the JTC. Such base budget items would still require all agencies to submit an annualization request in the formal budget request process. This would require that the OSPB request reflect and include funding for any continuation project funded in a prior IT Capital budget as a matter of course, unless the Governor is affirmatively recommending that a project should be discontinued due to technical issues or for state revenue budget balancing.

Staff further recommends that the Committee pursue this legislation with the supplemental package in order to ensure proper placement of potential appropriations that may be included in the 2022 Long Bill.