

MEMORANDUM

TO: Joint Budget Committee

FROM: John Ziegler, JBC Staff

SUBJECT: Discussion of Statutory Deadlines for Budget Submissions

DATE: January 9, 2013

The statutory deadlines for submission of department budget requests, both for the supplement and upcoming fiscal year requests, may not be clear enough to eliminate confusion between the General Assembly and the other branches of state government. For many years, Joint Budget Committee (JBC) staff has contended that certain aspects of the Office of State Planning and Budgeting (OSPB) requests do not meet the statutory deadlines. The OSPB contends that their requests are within the statutory requirements. JBC staff believe that a discussion of the statutory timeframes and the processes involved in the development of the budget may be beneficial to both the General Assembly and the OSPB.

The Existing Statutory Guidelines and How Confusion Enters the Picture

Section 24-37-304, C.R.S. provides the OSPB budget submission deadlines (see Appendix A for complete verbiage). Three deadlines are addressed in this section of statute.

- Section 24-37-304 (1) (b), C.R.S. indicates all state agency requests for the upcoming fiscal year are to be submitted to the JBC by November 1 of each year. JBC staff believe this deadline is clear. Requests for the upcoming year must be submitted by November 1. For the most part, OSPB staff comply with this initial deadline for the upcoming year budget requests. There have been occasional exceptions over the years, but they have not been common or egregious. Also, the General Assembly, realizing there may be instances where changes to the request were necessary, added paragraph (c) to the statute that deals with budget amendments to the upcoming year's request.
- Section 24-37-304 (1) (b.5), C.R.S. indicates all agency requests for supplemental appropriations for the current fiscal year be submitted to the JBC by January 1 of each year. JBC staff believe this deadline is clear. Supplemental requests must be submitted by January 1. However, there is a caveat in this paragraph that indicates "nothing contained in this paragraph (b.5) shall be construed to prohibit an agency from later submitting a request for a supplemental appropriation based upon circumstances unknown to, and not reasonably foreseeable by, the requesting agency at the time of submission of the agency's original request for supplemental appropriations". JBC staff contends that this caveat should be limited to items that are "based upon circumstances unknown to, and not reasonably foreseeable by, the requesting agency at the time of submission". Very specifically, the circumstances are unknown and unforeseeable as of January 1. It is JBC staff's contention that OSPB has historically tended to use this caveat more liberally than it was originally intended.

- Section 24-37-304 (1) (c), C.R.S. indicates *preliminary* or *final* (*emphasis added*) executive budget recommendations on *all* agency requests be submitted to the JBC by January 1 of each year. JBC staff believe this paragraph relates to items that have historically been called “budget amendments” in the budget process and that the intention of the statute is that these budget amendments for the upcoming year must be submitted to the JBC by January 1 of each year. JBC staff does not believe that the statute provides OSPB with flexibility to submit budget amendments beyond January 1. OSPB, in an email to JBC staff indicated the following with regard to budget amendment deadlines:

Concerning budget amendments, no specific statute governs the time line for amending the Governor's November 1 budget request. For well over a decade, the Executive Branch chose to submit budget amendments unrelated to supplemental requests around January 20 of each year. Again, last year, OSPB agreed to accelerate the submission of these stand-alone budget amendments to the greatest degree possible. Indeed, the request we submitted on January 2, 2013 included a number of stand-alone budget amendments that, under past practice, would have been delayed until the latter part of January. However, as noted in our letters to the Committee on December 21 and January 2, we do have a number of budget amendment requests in this cycle that will not be complete until later in January.

JBC staff is confused by this response as we contend Section 24-37-304 (1) (c), C.R.S. of the OSPB statutes directly pertains to and governs the submission of budget amendments, both those attached to supplementals and those OSPB staff refer to as “stand alone”. JBC staff believes the submission date for budget amendments to be January 1 without exception.

Deadlines and the Current Budget Process

OSPB has traditionally set deadlines that are different from and beyond the statutory budget deadlines based on their interpretation of the deadline statutes. OSPB has for the past several years created a standard deadline of February 15 for supplemental and budget amendments for three specific areas; the Education total program, Health Care Policy and Finance (HCPF) Medicaid caseload, and Corrections caseload. OSPB has also regularly submitted both supplementals and budget amendments for other areas of the budget throughout the session as they deemed appropriate.

The following is JBC staff’s understanding of the various reasons behind OSPB’s establishment of a February 15 deadline for Education Total Program, HCPF Medicaid caseload, and Corrections caseload.

- 1. Education Total Program Situation:** Section 22-54-106 (4) (b), C.R.S. requires the Department to submit a total program supplemental each year that accounts for both caseload (including total pupil counts and at-risk pupil counts) and the availability of local revenues. The Department of Education does not have the relevant data in time to submit a supplemental request by January 1. School districts conduct a count on or near October 1

each year and must submit both pupil counts and at-risk pupil counts to the Department by November 10. The Department then works with the districts to correct the counts (for example, removing students that have been counted in more than one district) and finalizes the pupil counts (including total and at-risk counts) in mid- to late December. According to the Department, districts continue to submit adjustments and corrections to the pupil counts well into December. The Department also must account for the amount of local revenues available to support total program. The relevant data (including assessed value and certified mill levies) is due to the Department by December 20 each year but the Department reports that districts also regularly submit the local share data after that deadline. Over the past several years, the Department has generally submitted the relevant data to both the JBC Staff and OSPB in early January, allowing JBC staff to begin working on the supplemental document while OSPB prepares the request. OSPB has generally been able to provide the request to JBC staff by January 15, although OSPB has indicated that the deadline for the total program request is February 15. JBC staff has generally developed their own recommendation based on the Department's data, and OSPB has given the JBC a request "earlier" than the February 15 deadline if OSPB wanted to provide input.

- 2. Health Care Policy and Finance (HCPF) Medicaid Caseload Situation:** HCPF uses June actuals to determine the request for November 1. This is done because OSPB requires that the request be submitted to them by August. The Department then utilizes December actuals (six more months) to develop the request that OSPB submits on February 15. This places JBC staff in a position of either developing their own forecast for the January supplemental time frame based on more current actuals, or, using the November forecast that was based on the June actuals. JBC staff then use the OSPB forecast that is provided on February 15 to make recommendation on both the current and upcoming fiscal years during figure setting (usually within one or two weeks of receiving the data). This results in utilizing a placeholder in January (based on either the OSPB November submission or a JBC staff forecast) for the JBC supplemental deliberations and then re-deliberating the issue during figure setting after the February submission from OSPB becomes available.
- 3. Corrections Caseload Situation:** Corrections does not seem to be an issue. JBC staff believe Corrections was added to the OSPB February 15 deadline several years ago when there was an issue with growth in the medical programs in the department of Corrections. The department and OSPB wanted to get more up-to-date information on medical needs prior to providing a request for the medical portion of the Corrections budget. Corrections became grandfathered into the OSPB exemption for *ALL* corrections caseload, but a placeholder does not appear to have been requested or provided for the last eight sessions. The Corrections supplemental requests have been typically submitted at the January 1 deadline.

JBC staff is unsure of the reasoning behind OSPB creating a deadline beyond the January 1 statutory deadline for budget amendments other than OSPB staff's belief that no deadline exists for budget amendments so they are free to submit them when they deem appropriate. As stated earlier, JBC staff disagree with the OSPB position and contend the January 1 deadline for budget amendments is clear.

Why Deadlines Matter to the Budgetary Process

JBC staff has the following concerns with OSPB's traditional practices regarding deadlines:

- 1. Current practices indicate confusion exists regarding statutory deadlines for budget submissions.** JBC staff and OSPB staff have varying opinions of what the statute indicates. JBC staff believe a January 1 deadline exists for supplementals, with limited caveats. OSPB agrees that the supplemental deadline exists but utilizes the caveat much more liberally than JBC staff believe was intended. JBC staff believe a January 1 deadline for budget amendments exists. OSPB believes no deadline exists for budget amendments and that they are free to create their own deadlines as they deem appropriate.
- 2. OSPB's creation of deadlines beyond the statutory deadlines creates confusion as to the totality of the Executive Request.** Given the numerous changes that occur within the OSPB budget submissions each year, it becomes difficult to track the totality of the OSPB request. Typically JBC staff stop trying to track the changes when the budget amendments are continuously submitted throughout the year. When JBC members or other members of the General Assembly ask what the overall OSPB request is and JBC staff can't respond, it calls into question the relevance of the OSPB overall request.
- 3. Members of the General Assembly and the JBC are at a disadvantage because they often have little time to analyze, understand, and deliberate late supplemental and budget amendment submittals.** Late supplemental submissions can cause confusion for members by requiring that the members deal with significant changes in the current year request at the same time that they are dealing with upcoming budget requests during figure setting, especially in the area of Medicaid. For the last several years, the Medicaid budget has had a significant impact on the overall state budget. Dealing with two fiscal years at once, especially without time to deliberate, is difficult. When budget submissions are delayed until two to three weeks prior to the end of the figure setting process, the JBC members risk learning of significant issues at the last minute. This makes the deliberation of the issues more difficult and limits the JBC members' ability to get input from other sources beyond the Executive Branch. Members of the JBC and the General Assembly can hear about potential requests from various sources (such as the departments, OSPB, the press, etc.) but have no idea when the request will actually be submitted for consideration.

Continual changes to requests also lead to confusion. Members spend more time trying to determine what the request is then why it has been requested. Also, members remember the request as it was made at some point in the process and then must spend time understanding why the request has changed and why the request is not as they remember it.

4. **JBC staff do not have a process in place to frame recommendations on requests they believe are late.** JBC staff are obligated to bring OSPB requests to the JBC for deliberation regardless of when the request has been submitted. However, JBC staff have not had a consistent framework for advising the JBC when a request is provided to the JBC beyond the deadline. Also, the confusion over what constitutes a request that is beyond the deadline makes it difficult to create this framework.
5. **The OSPB deadline for certain supplementals is well beyond the General Assembly's deadline for introduction of supplemental bills.** The JBC must introduce the supplemental bills prior to the deadline for all bill introductions in the chamber of the Chairman of the JBC. OSPB's self-initiated deadline of February 15 is well beyond the date of introduction of bills in both the House and Senate. This means that, if the JBC wishes to consider OSPB's requests for supplemental changes in the three areas with a February 15 deadline, the JBC must wait until sometime after February 15 to introduce the supplementals for these areas. This situation especially applies to Medicaid, as Education and Corrections have typically provided information prior to the introduction of the JBC supplementals in late January. Therefore, the JBC includes the Medicaid supplemental as an add-on to the Long Bill. This process is less transparent than including the Medicaid supplemental as part of the overall supplemental package in late January or early February. It also results in confusion as the JBC members have to explain to their colleagues why the Medicaid supplemental is not included in the supplemental package.

JBC Staff Recommendation for Statutory, Rule, and Budget Process Changes

After reviewing this issue and in order to attempt to accommodate both the General Assembly's and the Executive Branch's needs during the process, JBC staff recommends a combination of statutory changes, General Assembly joint rule changes, Executive Branch process changes, and JBC staff process changes in order to remedy the confusion surrounding the statutory budget deadlines and the budget process. **Specifically, JBC staff recommends:**

1. The JBC sponsor legislation to:
 - a. Change Section 24-37-304 (1) (b.5), C.R.S. to make supplemental requests due on January 2 rather than January 1. January 1 is always a state holiday and, therefore, OSPB never delivers the supplementals until January 2. Create an exception for HCPF Medicaid caseload related supplementals and K-12 total program supplementals making

them due to the JBC on January 15. This will provide the OSPB additional time beyond January 1, but still permit inclusion of both items in the initial supplemental package.

- b. Change Section 24-37-304 (1) (c), C.R.S. to make budget amendments due on January 2 rather than January 1. Eliminate the reference to “preliminary” and indicate that the January 2 deadline is for final budget amendments associated with supplementals submitted on January 2. Indicate budget amendments associated with HCPF Medicaid caseload related supplementals, budget amendments associated with K-12 total program supplementals, and stand-alone budget amendments are due on January 15. Add the language from Section 24-37-304 (1) (b.5) that provides the exception for “circumstances unknown to, and not reasonably foreseeable by, the requesting agency’s original November request for the upcoming year”.
2. The General Assembly, by resolution, add a deadline in the General Assembly’s joint rule 23 for supplemental introduction on the 27th day of the session. This year, that would make the deadline Monday, February 4. The JBC would need to discuss the rule change with leadership and solicit their input.
3. Request that the Executive Branch prepare the estimates for the Medicaid supplemental and budget amendment based on actuals as of the end of November rather than the end of December in order to accommodate the newly established statutory January 15 supplemental and budget amendment deadline.
4. Add a new internal procedure in the JBC office that requires JBC staff to indicate in their supplemental and figure setting write-ups whether the supplemental or the budget amendment was submitted on (or before) the deadline as required by the statute, and, if not submitted by the required deadline, if the late submittal is due to “circumstances unknown to, and not reasonably foreseeable by, the requesting agency’s original request for supplemental appropriations”. If the supplemental or budget amendment is not due to “circumstances unknown to, and not reasonably foreseeable by, the requesting agency’s original request for supplemental appropriations”, JBC staff will be directed to recommend the JBC deny the request. JBC staff will still analyze the request and provide input to the JBC on the facts associated with the request. The goal of this procedure is to give JBC staff guidance on how to respond to late submissions not to restrict JBC members’ ability to make the final decision. As with everything, the JBC is ultimately responsible for deciding whether the request is approved (in whole or in part) or denied.

Benefits and drawbacks Associated with the JBC Staff Recommendation

JBC staff believe the following benefits exist if the JBC follows the JBC staff recommendations.

- **Provides clarity to the statutory deadlines.** As discussed above, JBC staff and OSPB staff disagree on the basic tenants of statutes surrounding budget deadlines. OSPB makes relevant points about the supplemental deadlines not taking into account the timing surrounding two of the major programs in the General Fund, Medicaid and Education Total Programs.

Making the statutory changes recommended by the JBC staff will take the timing differences for these two programs into account while still maintaining flexibility for other issues outside the Executive's control. It will create more certainty regarding when the Executive will deliver requests each year.

- **Allows the JBC and OSPB time to evaluate budgetary questions prior to making decisions on them.** Creating a supplemental introduction deadline and changing the process for Medicaid caseload requests to require that the Executive utilize actuals through November month-end rather than December month-end will allow both OSPB and the JBC time to review supplemental caseload issues prior to introduction of the JBC supplemental package. OSPB will have 6 weeks to prepare the Medicaid caseload forecast and formulate their request prior to the January 15 deadline. The JBC will have approximately 2 weeks to review the request, formulate recommendations, deliberate, and introduce the supplemental package. Hopefully, the change will add clarity to the entire budgetary process because OSPB and the JBC can focus on one year at a time rather than two. The changes to the statutes, rules, and processes also add clarity because members will not have to deal with continually changing requests in multiple years throughout the process.
- **Creates a consistent framework for JBC staff to follow when analyzing requests that are beyond the statutory deadlines.** JBC staff will have clear direction on how to handle items that are beyond the statutory deadlines. OSPB will understand consequences of submitting items beyond the statutory deadlines. The members will be aware of items that are beyond the deadlines and will still be able to make decisions based on the programmatic needs.

JBC staff believe the following drawbacks exist if the JBC follows the JBC staff recommendations.

- **Decreases the Medicaid caseload forecast by one month.** The recommended process for the Medicaid caseload forecast shortens the additional amount of actual months in the forecast by one month from six to five (November versus December). This could slightly change the outcome of a forecast in any year.
- **Shortens OSPB's time to evaluate some issues.** Tightening and reinforcing the deadlines for stand-alone budget amendments eliminates OSPB's claim that they do not have a deadline for budget amendments and as a result could decrease their time to evaluate items if they meet the required deadlines.
- **Does nothing if OSPB continues to have a different interpretation of the statutes.** If after the change OSPB continues to claim they have no deadline for budget amendments and continues to liberally follow the exemptions provided in statute, confusion will still exist in the process.

Appendix A – Section 24-37-304, C.R.S.

24-37-304. Additional budgeting responsibilities. (1) In addition to the responsibilities enumerated in section 24-37-302, the office of state planning and budgeting shall:

(a) Annually evaluate plans, policies, programs, and budget requests of all departments, institutions, and agencies of the executive branch of state government. The office of state planning and budgeting shall develop a financial plan encompassing all sources of revenue and expenditure. It shall propose this plan for the budget, consisting of operating expenditures, capital construction expenditures, estimated revenues, and special surveys. Budget requests shall include a description of one or more measurable annual objectives in the areas of operational efficiency and effectiveness for each department, institution, and agency. Proposed expenditures in the budget shall not exceed estimated moneys available.

(b) Ensure submission, to the joint budget committee of the general assembly by November 1 of each year, of all agency requests for the upcoming year; except that the office of state planning and budgeting shall ensure submission of all agency requests for the 2006-07 fiscal year by November 15, 2005;

(b.5) Ensure submission, to the joint budget committee of the general assembly by January 1 of each year, of all agency requests for supplemental appropriations for the current fiscal year; however, nothing contained in this paragraph (b.5) shall be construed to prohibit an agency from later submitting a request for a supplemental appropriation based upon circumstances unknown to, and not reasonably foreseeable by, the requesting agency at the time of submission of the agency's original request for supplemental appropriations;

(c) Submit preliminary or final executive budget recommendations on all agency requests to the joint budget committee by January 1 of each year;

(c.3) (I) Except for projects authorized pursuant to section 23-1-106 (9) or (10), C.R.S., ensure submission of all capital construction and controlled maintenance requests and proposals for the acquisition of capital assets by each state department, institution, and agency to the capital development committee no later than September 1 of each year;

(II) Submit the recommended priority of funding of capital construction projects of all state departments, institutions, and agencies to the capital development committee no later than November 1 of each year;

(III) Ensure submission of all requests for supplemental appropriations for capital construction and controlled maintenance requests and proposals for the acquisition of capital assets by each state department, institution, and agency to the capital development committee no later than December 10 of each year.

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(d) Execute the appropriations acts or other acts having fiscal implications in such a manner as to assure compliance with the expenditure limitation, by source of funds, personnel authorizations, contingency and performance requirements, and legislative intent;

(e) Repealed.

(f) Develop, or cause to be developed, current operational master plans for each state institution and agency, except state schools, colleges, and universities as provided in section 23-1-106, C.R.S., for submission to and approval by the general assembly;

(g) Develop and enforce a method of internal audit that will assure compliance with appropriations provisions and executive orders;

(h) Carry out such other functions and duties as may be directed by the governor.