

JOINT BUDGET COMMITTEE



INTERIM SUPPLEMENTAL BUDGET REQUESTS FY 2019-20 AND FY 2016-17

CAPITAL CONSTRUCTION FOR DEPARTMENT OF HIGHER EDUCATION

JBC WORKING DOCUMENT - SUBJECT TO CHANGE
STAFF RECOMMENDATION DOES NOT REPRESENT COMMITTEE DECISION

PREPARED BY:
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SEPTEMBER 18, 2020

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INTERIM SUPPLEMENTAL REQUESTS

COLORADO SCHOOL OF MINES SUBSURFACE FRONTIERS BUILDING

	REQUEST	RECOMMENDATION
TOTAL	\$34,543,259	\$0
FTE	0.0	0.0
Capital Construction Funds	(1,856,741)	0
Cash Funds	(120,000,000)	0
Federal Funds	156,400,000	0

Does JBC staff believe the request satisfies the interim supplemental criteria of Section 24-75-111, C.R.S.? [The Controller may authorize an over expenditure of the existing appropriation if it: (1) Is approved in whole or in part by the JBC; (2) Is necessary due to unforeseen circumstances arising while the General Assembly is not in session; (3) Is approved by the Office of State Planning and Budgeting (except for State, Law, Treasury, Judicial, and Legislative Departments); (4) Is approved by the Capital Development Committee, if a capital request; (5) Is consistent with all statutory provisions applicable to the program, function or purpose for which the over expenditure is made; and (6) Does not exceed the unencumbered balance of the fund from which the over expenditure is to be made.] **NO**

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.] **YES**

Explanation: The Colorado School of Mines has requested a contingent adjustment to a capital appropriation that will reduce General Fund and cash funds amounts and provide a federal funds appropriation if federal legislation pending in the U.S. Senate is adopted. While OSPB and the CDC approved this as a contingent request, OLLS and JBC staff do not believe the request fits within the provisions of Section 24-75-111, C.R.S., as described further below.

DEPARTMENT REQUEST: The request is to modify FY 2019-20 appropriations for the Subsurface Frontiers building at the Colorado School of Mines. The General Assembly has thus far authorized \$1,856,741 from the Capital Construction Fund (CCF) and \$120,000,000 cash funds spending authority for the building, which is to be constructed in partnership with the United States Geological Survey (USGS) on the Colorado School of Mines campus and will house both organizations' mineral exploration and subsurface mineral economics programs.

Previous appropriations and spending authority for this building anticipated that the Colorado School of Mines would construct the building and lease space to the USGS. However, in light of federal stimulus legislation that has so far been adopted in the U.S. House of Representatives, the Colorado School of Mines anticipates that the federal government may directly fund related construction costs. The School requests appropriation adjustments that are contingent on enactment of this federal stimulus legislation. The changes would include:

- Eliminating a capital construction appropriation of \$1,856,741
- Eliminating state cash fund spending authority of \$120,000,000; and
- Adding a federal funds appropriation of \$156,400,000

The request indicates that the purpose of making an appropriation change at this time is to ensure that the project is "shovel ready" if federal funds are made available.

CAPITAL DEVELOPMENT COMMITTEE RECOMMENDATION: The Capital Development Committee approves the request and recommends a conditional appropriation as requested by the Colorado School of Mines and the Governor’s Office. The CDC’s approval is conditional both on approval of the project by the Colorado Commission on Higher Education and the receipt of the federal funds.

STAFF RECOMMENDATION: Staff recommends that the Committee take no action on this request at this time.

STAFF ANALYSIS:

Additional Background: The General Assembly first authorized appropriations for Subsurface Frontiers building in FY 2019-20: \$1,856,741 CCF and \$9,369,018 cash funds was appropriated in S.B. 19-207 (the FY 2019-20 Long Bill), and the cash funds spending authority was increased to \$120,000,000 through an interim supplemental in 2019 that was enacted through H.B. 20-1259 (the Capital Construction Supplemental Bill). As the appropriation was amended, the cash funds are from donations and bonds, but the School of Mines was not expected to use the Higher Education Revenue Bond Intercept program.

The request indicates that due to uncertainty surrounding whether the university’s partner, the USGS, would move to the facility as a result of the coronavirus pandemic, the university suspended the project. Soon afterward, the university learned of potential federal infrastructure stimulus legislation and is now pursuing this funding source for the project, with the support of the university’s congressional representatives. Since the project must be “shovel ready” in order to qualify for federal stimulus funding, the university requested that the General Assembly provide federal funds spending authority so that it could accept the federal funds immediately if authorized.

If the new federal funding is approved, the scope of the building would be expanded. The revised plan is for a 194,292 GSF six-story building to house research laboratories, imaging labs, classrooms, conference rooms, offices, and associated spaces on the Colorado School of Mines campus. The net increase in costs of \$34.5 million, to a total of \$156.4 million, is to cover “increased building system costs, computer system redundancy, increased interior finish and site costs, and future growth”.

Federal Legislation: The Colorado School of Mines submitted the request in light of the adoption of an amendment to H.R. 2, the *Moving Forward Act*, an infrastructure stimulus bill. The provision was considered in the U.S. House on June 30, 2020 and is included in the bill that passed the U.S. House on July 1, 2020. The provision reads as follows:

SEC. 40002. AUTHORIZATION FOR SCIENCE CENTER CONSTRUCTION.

(a) AUTHORIZATION OF APPROPRIATIONS.— There are authorized to be appropriated to the Director of the United States Geological Survey \$166,800,000 to fund, through a cooperative agreement with an academic partner, the design, construction, and tenant build- out of a facility to support energy and minerals research and appurtenant associated structures. (b) AGREEMENTS.—The United States Geological Survey will retain ownership of the facility and associated structures once constructed and is authorized to enter into agreements with, and to collect and spend funds or in-kind contributions from, academic, Federal, State, or other facility ten-ants

on facility planning, design, maintenance, operation, or facility improvement costs during the life of the facility. (c) LEASE.—The Director of the United States Geological Survey is authorized to enter into a lease or other agreement with the academic partner, at no cost to the United States, for that partner to provide land on which to construct the facility for a minimum term of not less than 99 years.

The bill was received in the U.S. Senate on July 20, 2020, but there has not been any Senate action on it thus far.

Need for Spending Authority/Interim Supplemental Criteria: Based on discussions with the Office of Legislative Legal Services, staff does not believe that this bill fits within interim supplemental statutory criteria.

- Federal funds received, if authorized as outlined in the federal *Moving Forward Act*, would be custodial and therefore would not require a state legislative appropriation for expenditure.
- Section 24-75-111, C.R.S., allows the JBC to authorize the *over expenditure* of appropriations; however, *reducing* cash and Capital Construction Fund appropriations does not fit well under the statute. Executive agencies can always spend less than their appropriation without action by the JBC or General Assembly.

Since the Colorado School of Mines does not require a state appropriation of federal funds to be “shovel ready”, there is no need for urgent action on this issue by the JBC or the General Assembly. If federal funding is approved by the U.S. Senate and signed into law by the President, current appropriations may be changed through the regular supplemental process. If this occurs, staff anticipates that the Executive Branch will submit a regular supplemental request, and staff will recommend adjustments that include eliminating the current CCF and cash funds appropriations and adding in a federal funds amount with an informational “(I)” notation.

UNIVERSITY OF NORTHERN COLORADO CAMPUS COMMONS PROJECT

	REQUEST	RECOMMENDATION
TOTAL	\$0*	\$0*
FTE	0	0
General Fund	0	0
Cash Funds	0	0
Federal Funds	0	0

*Time extension for existing appropriation

Does JBC staff believe the request satisfies the interim supplemental criteria of Section 24-75-111, C.R.S.? [The Controller may authorize an over expenditure of the existing appropriation if it: (1) Is approved in whole or in part by the JBC; (2) Is necessary due to unforeseen circumstances arising while the General Assembly is not in session; (3) Is approved by the Office of State Planning and Budgeting (except for State, Law, Treasury, Judicial, and Legislative Departments); (4) Is approved by the Capital Development Committee, if a capital request; (5) Is consistent with all statutory provisions applicable to the program, function or purpose for which the over expenditure is made; and (6) Does not exceed the unencumbered balance of the fund from which the over expenditure is to be made.] **YES**

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? **YES**

[An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]

Explanation: The Capital Development Committee took staff-initiated action on this issue on September 2, 2020, on the basis that a change was needed to correct a technical error. Specifically, a previous extension was provided for one year instead of three. Since an interim supplemental also requires approval by OSPB, OSPB sent a letter on September 14, 2020 indicating that it supported the change and also viewed the change as needed to correct a technical error. OSPB indicated that JBC staff made an error in including only a one-year extension in the supplemental bill. It also appears that the Executive Branch failed to note the length of the extension and request additional time for the project during the 2020 legislative session, which was an error. Staff believes the request falls under the provisions of 24-75-111.5, C.R.S., concerning nonmonetary supplemental adjustments.

CDC ACTION/DEPARTMENT REQUEST: The Executive Branch requests extension of FY 2016-17 appropriations for the University of Northern Colorado Campus Commons project through FY 2021-22, in order to spend the remaining \$4 million of the original \$73.5 million.

STAFF RECOMMENDATION: Staff recommends that the Committee approve the request to extend time for the project through June 2022.

STAFF ANALYSIS:

Additional Background: The University of Northern Colorado Campus commons project received appropriations in FY 2015-16 and FY 2016-17 for the Campus Commons project. Phase I, funded in FY 2015-16, constructed large event spaces and the main building lobby. Phase II, funded in FY 2016-17, constructed a three-story structure to house academic services. In June 2019, the University requested an interim supplemental for an additional three years to spend the final \$4 million of the project (through June 2022). The request indicated that the time extension would allow the university to construct a new parking lot, which was included in the project's program plan. The JBC approved the request as submitted in June 2019, but the supplemental bill adopted during the 2020 session (H.B. 20-1259) extended the availability of FY 2016-17 appropriations through June 30, 2020, rather than June 30, 2022.

Project Update from UNC: The University of Northern Colorado indicates that a parking lot is still be constructed as part of this project at a cost of approximately \$4 million. The original delay in this part of the project was due to a bankrupt vendor. More recently, UNC placed it on the back burner due to addressing COVID-19 issues. They do require additional parking associated with the Campus Commons project, which eliminated 250 existing parking spaces and is expected to increase visitors requiring parking due to new event spaces that are part of the project. The immediate need has been less acute than projected due to COVID-19 impacts, since many public events are not occurring and many faculty and students are not coming to campus. UNC is now planning to construct the additional parking in Spring 2021. The balance of funds will also support some furniture, fixtures, and equipment.

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DRAFT

September 18, 2020

Robert Jaros, State Controller
Office of State Controller
1525 Sherman Street
Denver, CO 80203

Dear Mr. Jaros,

The Joint Budget Committee recently reviewed a request for an extension of time to expend the balance of appropriations for the University of Northern Colorado's Campus Commons capital construction project. The request would allow the balance of funds from the FY 2016-17 appropriation for the Campus Commons project, now less than \$5.0 million, to be spent through June 30, 2022. The request has been approved by the Office of State Planning and Budgeting, as well as the Capital Development Committee. The Joint Budget Committee voted to approve the request on September 18, 2020. The Committee will sponsor a supplemental budget bill during the 2021 legislative session to modify the appropriation to make it available through June 30, 2022. Under the provisions of Section 24-75-111.5, C.R.S., we request that you allow the funds to remain available for expenditure pending the adoption of such legislation.

If you have questions regarding this matter, please contact Amanda Bickel on the JBC staff (Amanda.bickel@state.co.us).

Thank you for your assistance.

Sincerely,

Daneya Esgar
Chair

Cc:

Carolyn Kampman, Staff Director, JBC Staff
Lauren Larson, Executive Director, Office of State Planning and Budgeting
Jason Schrock, Chief Financial Officer, Colorado Department of Higher Education
Michelle Quinn, Chief Financial Officer, University of Northern Colorado