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MEMORANDUM

January 11, 2007

TO: Capital Development Committee
FROM: Jennifer Moe, Research Associate II, 303-866-3487
SUBJECT: Capital Construction Overview

This memorandum provides an overview of Colorado's capital construction and controlled maintenance process. Specifically, the memorandum summarizes the following:

- ✓ general information about the Capital Development Committee (CDC);
- ✓ the process for prioritizing and funding capital requests;
- ✓ types of projects eligible for funding;
- ✓ other CDC statutory duties and responsibilities; and
- ✓ key provisions of law related to the CDC.

Capital Development Committee (CDC)¹

Creation

The CDC was established in 1985 through the passage of House Bill 85-1070. The CDC is a year-round joint committee, consisting of three members of the House of Representatives and three members of the Senate. Each house is represented by two members of the majority party and one member of the minority party.

¹Section 2-3-1301, *et seq.*, C.R.S.

Selection of Members

Members of the CDC are chosen according to the rules of each house. The CDC is required to elect a chairman and a vice-chairman each year, at the first meeting held on or after October 15 in odd-numbered years, or at the first meeting held after the General Election in even-numbered years. The chairmanship alternates between the House and Senate each year. The chairman elected for the 2007 session is from the House.

Primary responsibility

The primary responsibility of the CDC is to review and make recommendations concerning the capital construction and controlled maintenance requests submitted by state departments and higher education institutions each year. The CDC forwards its recommendations to the Joint Budget Committee (JBC).

Process for Annually Prioritizing and Funding State Capital Projects

State agencies submit requests for funding of capital projects to the CDC. Agencies may request funding from state sources or cash sources, such as a federal matching grant, or a combination of both. The CDC reviews the requests and considers the recommendations of the Office of State Planning and Budgeting (OSPB) and the Colorado Commission on Higher Education (CCHE) in developing its funding priorities.

The CDC conducts hearings to review capital requests some time between October and January. The committee generally uses the months of January and February to set its capital construction and controlled maintenance priorities. The committee then submits its recommendations, findings, and comments to the JBC. The JBC considers and incorporates the recommendations into the Long Bill for the following fiscal year. The JBC may make changes to the CDC's recommendations, and if this happens, the CDC can appeal such changes in a meeting with the JBC.

Types of Projects that Qualify for State Funding

Capital projects include capital construction, capital renewal, and controlled maintenance projects.

Section 24-75-301 (1), C.R.S., defines *capital construction* as follows:

- the purchase of land;
- the purchase, construction, or demolition of buildings or physical facilities, including utilities and state highways;

- the remodeling or renovation of existing buildings or other physical facilities;
- the purchase and installation of fixed or movable equipment necessary for the operation of buildings or physical facilities;
- the purchase of architectural engineering and other consultant services to prepare plans, program documents, life-cycle cost studies, energy analyses, and other studies associated with any capital request; and
- any item of instructional or scientific equipment if the cost exceeds \$50,000.

Section 24-30-1301 (2), C.R.S., defines *controlled maintenance* as follows:

- 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;
 - ▶ replacement and repair of the fixed equipment necessary for the operation of such facilities, when such work is not funded in an agency's operating budget to be accomplished by the agency's physical plant staff; and
 - ▶ the purchase of the services of architects, engineers, and other consultants to investigate conditions and prepare recommendations for the correction thereof, to prepare plans and specifications, and to supervise the execution of controlled maintenance projects authorized by the General Assembly.

Distinguishing Between Types of Capital Projects

Capital construction projects are program-driven. These projects allow an agency to improve or alter its ability to provide a certain program or service. Examples of capital construction projects include constructing a new state prison, renovating a biology building at a state university, and developing an automated fingerprinting identification system.

Capital renewal projects are also program-driven. These projects address controlled maintenance issues that have exceeded \$2 million in costs, or have grown in scope and are better addressed building-by-building, rather than system-by-system. An example of a capital renewal project is upgrading a heating/ventilation/air conditioning system in a chemistry building at a community college.

Controlled maintenance projects are system-driven, and address facility component systems at the end of their useful life. As such, controlled maintenance involves corrective repairs or replacement of utilities, equipment, and site improvements at state facilities. Examples of controlled maintenance projects include replacing deteriorated mechanical equipment and upgrading fire alarm systems.

Information technology projects. The CDC, JBC, OSPB, and CCHE entered into a Memorandum of Understanding (MOU) regarding information technology projects during the fall of 1997. The MOU states that certain criteria must be met for information technology projects to be eligible for capital construction funding. The criteria are as follows:

- the project must total at least \$500,000;
- the project cannot be for computer replacements or maintenance, unless such replacement is a component of a much larger agency-wide computer system upgrade; and
- the majority of the components of the request should have a useable life of at least five years.

Information technology requests not meeting the criteria are to be submitted as operating budget requests.

The \$500,000 threshold is waived for several small colleges, including community colleges and some state colleges.

Other CDC Statutory Duties and Responsibilities

Supplemental Requests²

State agencies may request additional funding or reduced funding for approved capital projects, or may request funding for new projects (generally involving emergency situations).

- Supplemental requests must be submitted to the CDC by December 10 each year.
- The CDC reviews supplemental requests and makes recommendations to the JBC.

²Section 24-37-304 (1)(c.3)(III), C.R.S.

- At the very beginning of each legislative session, the JBC introduces a supplemental bill to authorize funding for supplemental capital construction requests, including emergency supplemental requests approved during the current fiscal year.

*Emergency supplementals.*³ House Bill 98-1331 instituted a process for state agencies to request funds for projects when the legislature is not in session. Emergency supplemental requests are sometimes referred to as "1331 requests."

- Emergency supplementals are generally requested during the interim because of unforeseen circumstances that have arisen.
- Under extenuating circumstances, emergency supplemental requests may be heard while the General Assembly is in session.
- Funds cannot be released for emergency supplemental requests until the following has occurred:
 1. OSPB has approved the request. For higher education institutions, CCHE must approve the request before it goes to OSPB;
 2. the CDC considers and submits a written recommendation regarding the request to the JBC;
 3. if a majority of the JBC approves the request, the written request goes to the State Controller.
 - ▶ For the five state agencies listed below, emergency supplemental requests are submitted directly to the CDC, then follow steps two and three above:
 - the Judicial Branch;
 - the Legislative Branch;
 - the State Treasury;
 - the Department of Law; and
 - the Department of State.
- Agencies requesting an emergency supplemental are asked to identify a project(s) to restrict for the requested overexpenditure, although the statute authorizes the State Controller makes the decision. The requirements regarding overexpenditures are as follows:

³Sections 24-75-111 (1)(c)(III) and (IV), C.R.S.

- ▶ The overexpenditure must be consistent with all statutory provisions applicable to the program, function, or purpose of the capital construction project affected.
- ▶ No overexpenditure is allowed in excess of the unencumbered balance of the fund from which the overexpenditure is made.
- ▶ For any allowable overexpenditure, the State Controller is to restrict an amount equal to the overexpenditure in the Long Bill for the following fiscal year.
- ▶ The source of the restricted funds is selected, in priority order, from the following:
 1. the capital construction project affected;
 2. any other capital construction budget item of the agency requesting the overexpenditure; or
 3. any operating budget item relating to the agency requesting the overexpenditure.
- ▶ The agency is not to expend any amount restricted.

Six-Month Waiver Requests⁴

Agencies that receive funds for capital construction projects must encumber the funds for the professional services portion of the project within six months after the appropriation for the project becomes law. For projects that do not require professional services, agencies must enter into a contract with the project's contractor within the six-month period. If professional services cannot be encumbered or the contract cannot be executed within six months, an agency may ask the CDC to request that the State Controller waive the deadline.

The six-month encumbrance requirement does not apply to the following:

- projects that are under the supervision of the Colorado Department of Transportation;
- maintenance, repair, or improvements projects of the Department of Natural Resources, Division of Parks and Outdoor Recreation or Division of Wildlife (small projects);

⁴Section 24-30-1404 (7), C.R.S.

- easement acquisitions for the Division of Parks and Outdoor Recreation or the Division of Wildlife; and
- Senate Bill 92-202 cash projects.

Land Transactions

Division of Wildlife (DOW) and Division of Parks and Outdoor Recreation (Parks).⁵ If the DOW or Parks plans to acquire, sell, or otherwise dispose of real property or an easement, or enter into a long-term lease agreement, it must submit a report to the CDC (see below for report requirements). The reporting requirement applies to:

- fee title agreements (for Parks, the cost of the agreement must exceed \$100,000); and
- easements or lease agreements that exceed 25 years or cost more than \$100,000.

Department of Military and Veterans Affairs.⁶ The adjutant general of the Department of Military and Veterans Affairs is required to submit a report to the CDC prior to acquiring or disposing of any real property (see below for report requirements).

State departments.⁷ The Department of Personnel and Administration is authorized to acquire fee simple title, or any lesser interest therein, to any real property for present or future use by the state. The title to such property may be acquired by purchase, donation, lease-purchase agreements, or by the exercise of the power of eminent domain through condemnation proceedings from funds appropriated by the General Assembly or from funds donated to the state for the purpose.

If the executive director of the Department of Personnel and Administration plans to acquire or dispose of any real property (except easements or rights-of-way), he or she must submit a report to the CDC (see below for report requirements).

- The CDC reviews the report and makes recommendations to the executive director concerning the disposition of the real property.
- The executive director is not to acquire, sell, or otherwise dispose of any real property without considering the recommendations of the CDC.

⁵Sections 33-1-105 (3)(a) and 33-10-107 (2), C.R.S.

⁶Section 28-3-106 (1)(s), C.R.S.

⁷Section 24-82-102 (1)(a), C.R.S.

Required reports. Reports submitted to the CDC from the DOW, Parks, the adjutant general of the Department of Military and Veterans Affairs, or the executive director of the Department of Personnel and Administration must describe the following:

- the anticipated use of the property;
- associated maintenance costs;
- the property's current value;
- any conditions or limitations that may restrict the property's use; and
- any potential liability to the state related to the transaction.

With the exception of requests from the executive director of the Department of Personnel and Administration, the CDC is required to review reports regarding land transaction proposals within 30 days, and makes recommendations concerning the proposed transactions to the following entities:

- Wildlife Commission (for DOW proposals);
- State Parks Board (for Parks proposals); or
- the adjutant general of the Department of Military and Veterans Affairs.

No real property may be acquired, sold, or otherwise disposed of without consideration of the CDC's recommendations, if such recommendations are made within the 30-day time period.

Facility Program Plans

Department of Corrections (DOC) and Division of Youth Corrections (DYC), Department of Human Services.⁸ The DOC and the DYC are required to submit facility program plans to the CDC for projects to construct, expand, renovate, or improve correctional facilities. The CDC is required to make a recommendation to the JBC regarding each facility program plan.

- A facility program plan is defined as a pre-architectural design program and must include, at a minimum:
 1. the number of beds proposed;
 2. the primary security level;
 3. the staffing plan; and
 4. a description of any educational or ancillary support facilities required.
- Facility program plans are to be submitted by November 1 prior to the beginning of the budget year for which the appropriation is requested.

⁸Sections 17-1-104.8 and 27-1-104.5, C.R.S.

Other state departments.⁹ Executive directors review and approve facility master plans and facility program plans for all capital construction projects of their respective departments, regardless of the source of funds.

- No capital construction may begin without an approved facility master plan, a facility program plan, and a physical plan.
- Projects requiring less than \$250,000 of state moneys may be exempted by the affected executive director from the program plan requirements.
- The executive director is to request and consider recommendations from the CDC and the JBC before approving facility master plans and facility program plans.

Higher education institutions.¹⁰ The statutes indicate that it is the policy of the General Assembly not to authorize any capital construction project for state-supported higher education institutions unless the project has been approved by CCHE.

- CCHE is responsible for approving all facility program plans for higher education institutions.
- Projects requiring less than \$500,000 of state moneys may be exempted by CCHE from the program plan requirements.

Senate Bill 92-202 Projects¹¹

Senate Bill 92-202 provides for the expedited review and approval of capital projects at higher education institutions that will never require state funds for design, construction, operating, and maintenance costs. Such requests are commonly referred to as "202 projects."

- 202 projects over \$1 million require CCHE, CDC, and JBC approval in order to commence.
- 202 projects costing \$500,001 to \$1 million require CDC and JBC approval to commence, but do not appear to be subject to CCHE review or approval.
- 202 projects under \$500,000 are not reviewed by CCHE, CDC, or the JBC.

⁹Section 24-1-136.5, C.R.S.

¹⁰Section 23-1-106 (1), C.R.S.

¹¹Section 23-1-106 (9)(a), C.R.S.

- ▶ 202 projects must be reviewed by the CDC and JBC within 30 days of submission to the CDC during a legislative session; the period is extended to 60 days when the legislature is not in session.
 - ▶ Once a 202 project is approved by the JBC, the institution can proceed immediately on the project.
 - ▶ The project appears in the Long Bill for informational purposes only.
- All costs for 202 projects must be solely funded from student fees, auxiliary enterprise funds, wholly endowed gifts and bequests, research building revolving funds, or a combination of such sources.

State Capitol Building Advisory Committee¹²

The advisory committee reviews plans to restore, redecorate, or reconstruct space within the public and ceremonial areas of the State Capitol Building, the Legislative Services Building, and surrounding grounds.

- The advisory committee submits its recommendations to the CDC.
- The advisory committee consists of 12 members:
 - ▶ three members appointed by the Speaker of the House;
 - ▶ three members appointed by the President of the Senate;
 - ▶ three members appointed by the Governor;
 - ▶ an architect, appointed by the Governor, who is knowledgeable about the historic and architectural integrity of the State Capitol Building;
 - ▶ the President of the State Historical Society (ex officio member); and
 - ▶ the executive director of the Department of Personnel and Administration (ex officio member).

Transportation Projects¹³

The CDC is required to study requests from the Transportation Commission for state highway reconstruction, repair, and maintenance projects.

- The Transportation Commission is required to prioritize a list of projects based on need without regard to location in the state.
 - ▶ The list must be submitted to the CDC by October 1 each year.

¹²Section 24-82-108, C.R.S.

¹³Section 2-3-1304 (1)(a.5), C.R.S.

- The CDC determines the number of projects on the list that may be funded out of capital construction monies.
 - ▶ Only projects on the list may be funded.
 - ▶ The projects must be funded in the priority determined by the Transportation Commission.
- The CDC-approved projects are forwarded to the JBC, along with all other capital projects recommended by the committee.

K-12 Capital Construction Projects¹⁴

The CDC is required to review a list of school districts recommended by the State Board of Education (state board) to receive matching grants from the School Construction and Renovation Fund for capital projects.

- The state board must submit the prioritized list by August 16 of the fiscal year for which financial assistance is being sought.
 - ▶ The list must include the amount of each grant and the amount of the school district match.
- The CDC must determine the number of capital construction projects on the list that may receive matching grants.
 - ▶ Only capital construction projects on the list may receive funding.
 - ▶ The projects must be funded in the priority determined by the state board.
- The CDC must make its determination on the list by September 15.
 - ▶ If the CDC does not make a determination by that date, the list is deemed to be approved as submitted.
- The state board submits the CDC-recommended list to the JBC no later than December 1 of each year.
 - ▶ Appropriations are made for that fiscal year to the Department of Education.

¹⁴Section 22-43.7-105 (6), C.R.S.

Adult and Juvenile Population Projections¹⁵

Legislative Council Staff is required to forecast the adult and juvenile offender populations.

- Historically, these projections are presented to the CDC to assist with determining the facility/bed need for the DOC and the DYC.
- The CDC also receives adult and juvenile population projections from the Division of Criminal Justice, Department of Public Safety.

Public Safety Communications Trust Fund¹⁶

The CDC is required to review the annual capital construction and maintenance request from the executive director of the Department of Personnel and Administration regarding the Public Safety Communications Trust Fund (see also Section 24-30-908.5, C.R.S.).

- Moneys in the fund are subject to annual appropriation by the General Assembly to the department.
- The department is to distribute the funds according to the rules adopted by the department.
 - ▶ The primary purpose of the distributions is to acquire and maintain public safety communication systems for use by, but not limited to, the following departments:
 1. Public Safety;
 2. Transportation;
 3. Natural Resources; and
 4. Corrections.

Community-based Access Grant Program¹⁷

The CDC is to hear a report from the Department of Local Affairs on the community-based access grant program at the conclusion of each fiscal year of operation of the program.

¹⁵Section 2-3-304 (4), C.R.S.

¹⁶Section 2-3-1304 (f), C.R.S.

¹⁷Section 24-32-3001 (9), C.R.S.

- The grant program began in 1999, and has received only one appropriation (FY 1999-00) since its inception.
- To date, the CDC has not heard any reports regarding the program.

Key Provisions of Law Related to the CDC

Section 24-75-201.1 (1)(d), C.R.S. Specifies, for each fiscal year, the amount of unrestricted General Fund balances that are to be retained as a reserve.

Section 24-75-302 (1)(a), C.R.S. Creates the Capital Construction Fund and delineates the types of projects for which the fund may be used.

Section 24-75-302 (1)(a), C.R.S. Requires all interest in the Capital Construction Fund earned from the investment of moneys in the fund to remain in the fund and not revert to the General Fund. Also, unexpended or unencumbered moneys are to remain in the fund and not revert to the General Fund.

Section 24-75-302 (2), C.R.S. Stipulates that General Fund transfers made to the Capital Construction Fund, pursuant to this section of law, are not deemed to be appropriations subject to the General Fund appropriations limit.