The Colorado Budget Primer

January 2011

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CHAPTER 1

WHAT EXACTLY IS THE STATE BUDGET?

Unlike many states, where the executive branch directs the main appropriations bill, Colorado vests primary responsibility for the annual state budget with the General Assembly. When Coloradans think of the state budget, they usually think first of the "**Long Bill**," developed and adopted by the legislature each year. The General Assembly's permanent fiscal and budget review agency, the six-member **Joint Budget Committee** (JBC) and its 16-member staff, prepares the Long Bill each year for approval of the full legislature and signature of the Governor. The JBC and its staff exercise the greatest control over the Long Bill and, consequently, a great deal of power over the state budget.

The JBC consists of the chairman of the House appropriations committee plus one majority party member and one minority party member, and the chairman of the Senate appropriations committee plus one majority party member and one minority party member of the Senate. Members of the committee must be chosen in each house in the same manner as members of other standing committees are chosen.[1] Historically, the Senate elects its JBC members and in the House the Speaker appoints the majority party members and the minority party elects its members.[2] The committee functions during the legislative sessions and during the interim between sessions.

Although the legislature is vested with the primary authority to write and adopt the state budget, the governor's office and executive agencies play an important role in directing funding priorities and administering the budget over the course of the fiscal year. Colorado's fiscal year begins July 1 and the budget process is really a collaboration between the legislative and executive branches over the entire year.

THE BUDGET PROCESS

Executive Action

By statute, the governor, as chief executive, must annually evaluate the plans, policies, and programs of all departments of state government. He or she must formulate priorities into a financial plan encompassing all sources of revenue and expenditure. The governor and executive staff must then propose this plan for consideration by the General Assembly in the form of an annual **executive budget** consisting of operating expenditures, capital construction expenditures, estimated revenues, and special surveys no later than Nov. 1 of each year. Proposed expenditures in the executive budget must not exceed estimated available money, usually as determined by the governor's **Office of State Planning and Budgeting** (OSPB). The executive budget submitted to the JBC provides a skeletal outline of funding priorities, revenues and expenditures. Executive departments also prepare detailed backup information which they make available to the JBC and its staff.

Full departmental requests are housed in the library of the Capitol and are available on the OSPB website.[3] After legislative review and modification of the budget, if any, the governor is charged with administering the budget during the year.[4]

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[1] C.R.S. §2-3-201(1)
[2] Colorado State, Joint Budget Committee "The Role of the Joint Budget Committee," 12 Oct. 2010 <http://www.state.co.us/gov_dir/leg_dir/jbc/jbcrole.htm>.
[3] http://www.colorado.gov/governor/ospb. Then click on "Budget Requests."
[4] C.R.S. §24-37-301.

JBC Action

As soon as possible after the Governor has submitted the executive budget request, the JBC schedules hearings with the departments. The JBC divides state departments and programs among staff analysts and thereby allows individual staff members to develop specific areas of budget expertise. JBC analysts review the requests submitted by the executive branch, meet with agency personnel when necessary and present detailed information to JBC members prior to a hearing with a department. **JBC staff briefings** are both oral and written presentations of the issues concerning a department request. According to the JBC, they are designed to stimulate discussion among JBC members about the programs, operations and funding needs of the departments. Briefings take place in November and December before the start of the legislative session in January and are open to the public although no public comment is allowed during briefings. Staff briefing documents and a schedule of briefing times are posted on the JBC website at http://www.state.co.us/gov_dir/leg_dir/jbc/jbchome.htm.

After staff briefings, JBC members decide the issues and priorities they wish to discuss with the departments at hearing. **JBC hearings** provide an opportunity for members to question department staff about programs, needs, new funding initiatives and other issues for the upcoming fiscal year. JBC hearings with departments are also open to the public, but again no public comment or testimony is permitted.[5]

By the start of the legislative session in early January, the JBC generally has a good sense of the Governor's priorities and executive agency needs and is ready to begin the process of developing the Long Bill. By Feb. 1, the General Assembly must certify, by joint resolution, the amount of general fund money available for appropriation for the next fiscal year. The General Assembly has access to revenue projections submitted by OSPB or can rely on estimates provided by its own economic research agency, **Legislative Council**.

The Legislative Council is an eighteen member legislative committee. Six members of the Senate are appointed to the Council by the president of the Senate and six members of the House are appointed to the Council by the speaker of the House. Appointments are subject to the approval of the respective houses. The president of the Senate and the majority and minority leaders of the Senate as well as the Speaker of the House and majority and minority leaders of the House serve as ex officio members of the council. The Council employs a research director who oversees a permanent research staff to work for the General Assembly. The Legislative Council staff, often known simply as "Leg Council," provides support to legislative committees, responds to requests for research and constituent services, prepares fiscal notes and provides revenue projections.

The revenue figure certified by the General Assembly is critical. The Colorado constitution requires the legislature to adopt a balanced budget each year. Thus, all appropriations decisions must eventually align with the amount certified – that figure becomes the target for balancing the budget. During February and March, the JBC, with the help of its staff, makes decisions on the level of funding necessary to maintain all state operations. The JBC votes on each line item recommendation, formulates head notes or footnotes which explain or request additional information for a specific line item, and the staff calculates, balances and begins drafting the Long Bill. This process is known as **figure setting**. Staff figure setting recommendations for each department are available online at http://www.state.co.us/gov_dir/leg_dir/jbc/figuresetting.htm.

[5] Joint Budget Committee, "The Role of the Joint Budget Committee." <http://www.state.co.us/gov_dir/leg_dir/jbc/jbcrole.htm>.

Legislative Action

Once written, the Long Bill moves to the full General Assembly for consideration. It is introduced in the chamber that the JBC chairman serves in. The chairmanship alternates annually between the House and Senate. A perfunctory hearing in the Appropriations Committee during this time presents the only opportunity for the public to comment or testify on the Long Bill. The Long Bill then proceeds through the legislature as any other bill. For more detail about the legislative process, please see "How a Bill Becomes a Law" at http://www.colorado.gov/cs/Satellite/CGA-LegislativeCouncil/CLC/1200536135358.

Legislative consideration starts in the party caucuses where JBC members and staff explain the budget items and funding decisions contained in the bill and answer questions from their fellow legislators. JBC prepares a "Long Bill Narrative" as part of this process (the public may obtain a copy of this narrative). The public can attend caucus meetings, but there is no official process for public participation. A party caucus can propose changes or a legislator may offer changes to the bill as an amendment for consideration when the Long Bill moves to the floor for debate by the full House or Senate. After both houses pass the Long Bill, it returns to the JBC if the House and Senate versions differ. The JBC acts as the **conference committee** for the bill and JBC members must resolve any differences between the House and Senate changes. After differences are resolved, the JBC conference committee report is sent to both houses for adoption. When both houses have adopted the conference committee report, the Long Bill goes to the Governor for final approval and signature.

Executive Approval/Veto

The governor has **line-item veto** power for the Long Bill. That means the governor can strike individual line items from the budget but does not have authority to increase, decrease or otherwise amend appropriations in the bill. The Long Bill becomes an Act after executive action. After final approval, the JBC staff writes and publishes the Appropriations Report by July 1. The Appropriations Report and the narrative that accompanies it can be found on the JBC website at http://www.state.co.us/gov_dir/leg_dir/jbc/jbchome.htm. After passage, the state budget moves to executive departments for implementation and oversight.

Post-passage Action

The state budget, like any budget, often requires revision during the course of the year as circumstances change. Executive departments may request funding changes during a current fiscal year through what are known as **supplementals**. In general, supplemental requests must be submitted by OSPB to the JBC by Jan. 1 of each year. However, agencies can submit requests later if unusual or unforeseen circumstances demand.[6] The state's balanced budget requirement restricts budget changes to those that align with available revenues and fall within allowable spending limits. The JBC and its staff review these requests for funding changes, determine which requests can or should be granted, explore where cuts can be made to accommodate the request if necessary and submit their decisions to the entire General Assembly through supplemental appropriations bills.

[6] C.R.S.§24-37-304 (1) (b.5)

Legislative Budget Process

Governor submits Budget to JBC

JBC schedules hearings with Executive Dept.

JBC Staff Briefings. Public hearing.

JBC decides on issues and priorities for hearings.

General Assembly certifies General Fund money available by Feb. 1.

JBC determines level of funding to maintain state operations. Starts drafting Long Bill.

Long Bill to Legislature: Party Caucus discussion of Budget. Public hearing.

Appropriations Committee Hearing: Public hearing and comment.

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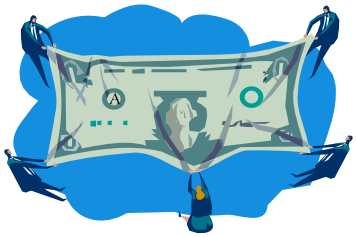


Both houses vote on Long Bill.

Versions Differ?

Yes

JBC reconciles differences.

No

To Governor for final approval and signature. Line item veto power.

JBC writes and publishes Appropriations report.

Exec. Depts. for implementation & oversight.

OSPB submits supplemental requests.

JBC reviews requests.

Legislature votes on JBC's recommendations.

Calendar of the Budget	
January	By Jan. 1 supplemental requests due to the JBC for consideration By Jan. 1 OSPB must submit preliminary or final executive budget recommendations on all agency requests to the joint budget committee Throughout January JBC considers supplemental requests 2nd Wednesday Legislature convenes 10:00 AM
February	By Feb. 1 General Assembly must certify by joint resolution the amount of the state's General Fund available for appropriation for the next fiscal year Throughout February JBC makes funding decisions – figure setting
March	Throughout March General Assembly acts on supplemental appropriations bills JBC figure setting continues and staff begin drafting the Long Bill Focus Colorado: Economic & Revenue Forecast released by Legislative Council. Available online at http://www.colorado.gov/cs/Satellite/CGA-LegislativeCouncil/CLC/1200536133919 Colorado Economic Perspective – State Revenue & Economic Quarterly Forecast released by OSPB. Available online at http://www.colorado.gov/governor/ospb
April	Late March/early April the Long Bill introduced and continues through process of consideration and approval by both bodies of the General Assembly – moves to party caucuses first Only opportunity for public input and testimony on the budget in when the Long Bill moves to the Appropriations Committee prior to introduction on the floor
May	Legislature adjourns 2nd Wednesday Governor acts on bills and can exercise his line-item veto power on select appropriations in the Long Bill
June	June 30 state fiscal year ends Focus Colorado: Economic & Revenue Forecast released by Legislative Council. Available online at http://www.colorado.gov/cs/Satellite/CGA-LegislativeCouncil/CLC/1200536133919 Colorado Economic Perspective – State Revenue & Economic Quarterly Forecast released by OSPB. Available online at http://www.colorado.gov/governor/ospb
July	July 1 state fiscal year begins

	July 1 JBC staff releases the "Appropriations Act" for current fiscal year and narrative. Available on the web at http://www.state.co.us/gov_dir/leg_dir/jbc/jbchome.htm Executive agencies begin internal budget process for upcoming fiscal year.
August	Executive agencies continue internal budget process for upcoming year and begin working with OSPB on budget request.
September	By Sept. 1 OSBP must 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 Focus Colorado: Economic & Revenue Forecast released by Legislative Council. Available online at http://www.colorado.gov/cs/Satellite/CGA-LegislativeCouncil/CLC/1200536133919 Colorado Economic Perspective – State Revenue & Economic Quarterly Forecast released by OSPB, available online at http://www.colorado.gov/governor/ospb
October	Executive agencies continue work with OSPB and governor's office on budget requests OSPB and governor develop and draft executive budget request
November	Nov. 1 – governor's office must submit to the JBC all agency requests for the upcoming year. No later than Nov. 1, OSPB must submit the recommended priority of funding of capital construction projects of all state departments, institutions, and agencies to the capital development committee Throughout November – JBC staff briefings and department hearings Governor's budget request available from OSBP at http://www.colorado.gov/governor/ospb
December	Throughout December – JBC staff briefings and department hearings No later than Dec. 10, OSPB must 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 Focus Colorado: Economic & Revenue Forecast released by Legislative Council. Available online at http://www.colorado.gov/cs/Satellite/CGA-LegislativeCouncil/CLC/1200536133919 Colorado Economic Perspective – State Revenue & Economic Quarterly Forecast released by OSPB. Available online at http://www.colorado.gov/governor/ospb

IMPORTANT TERMS CHAPTER 1

Appropriation – The authority to spend a specific amount of money.

Conference committee – Actually two committees, one from each house, meeting together to attempt to work out language acceptable to the Senate and House on some measure upon which agreement could not be reached through committee or floor amendments.

Executive budget – the Governor's budget request to the General Assembly

Figure setting – the process of setting line items with footnotes and head notes of the Long Bill

Joint Budget Committee (JBC) – The General Assembly's permanent fiscal and budget review agency, comprised of six members of the legislature which employs a staff of budget analysts.

JBC Briefing – Written and oral presentations of JBC staff to JBC members of budget issues and a review of expenditures and requests by executive agencies for funding.

JBC Hearing – A JBC meeting that is open to the public where members of the committee have the opportunity to question executive agencies about their programs, priorities and budget requests

Legislative Council Staff – The nonpartisan, permanent research arm of the General Assembly.

Line Item – An item that is listed in an appropriations bill on a separate line.

Line-Item Veto – The Governor has the power to selectively veto items in appropriations bills. Usually, this means items in the Long Bill.

Long Bill – Colorado's annual general appropriations act – the major funding bill for the operations of state government for a fiscal year.

OSBP – The Governor's Office of State Planning and Budgeting assists the governor with oversight of the budget and development of the executive budget. OSBP provides revenue projections, economic analysis and other information. OSPB is the primary economic research arm of the executive branch.

Supplementals – Requests for funding changes during a current fiscal year.

CHAPTER 2

HOW MUCH MONEY ARE WE TALKING ABOUT AND WHERE DOES IT GO?

Colorado raises money from a variety of sources, including grants to states from the federal government, general taxes such as income and sales tax, fees and fines such as those paid to courts or for hunting and fishing or license plates and driver's licenses, and many others. For budgeting purposes, the state divides the various revenues it receives into five broad fund categories: **Federal Funds**, **Cash Funds**, **Reappropriated Funds**, **General Funds, and General Funds Exempt**.

Federal funds are monies received from the federal government. Some federal funds are earmarked for specific short-term purposes; others support ongoing state-federal programs, such as Medicaid, and may require the state to match those funds with state dollars.

Cash Funds are separate funds received from taxes, fees and fines that are earmarked for specific programs, which are typically related to the identified revenue source. For example, some of the largest Cash Funds in the state budget come from taxes and fees related to transportation, gaming, and resource extraction. Several Cash Funds remain exempt from the provisions of Article X, Section 20 of the Colorado Constitution, otherwise known as the Taxpayer's Bill of Rights, or TABOR restrictions. These exempt funds include money awarded to the state from the tobacco settlement, donations to the state, and most of the tobacco tax revenue generated through a voter-approved measure known as Amendment 35. These particular Cash Funds are counted for budget purposes, but their values are exempt from any revenue restriction in TABOR (for more on TABOR, see Chapter 3: Limits on State Spending).

Reappropriated Funds is a new classification beginning in the 2008-09 fiscal year. It describes any funds given to a particular department that were then transferred to another department as payment for services. These were previously grouped with cash funds and classified as Cash Funds Exempt.

General Funds are those funds the state receives from general tax revenues, such as the state sales and income taxes, and can be used to pay for any state program or operation. The General Fund is like the state's general checking account. It is, in many ways, the least restrictive of the four funds and therefore the most competitive.

General Funds Exempt are funds exempt from TABOR revenue restrictions. They are collected from 3 percent, of the Amendment 35 tobacco taxes and revenue allowed by Referendum C, which authorized the state to retain and spend money in excess of limitations for five years. The moneys from these sources must be deposited in this account and only appropriated for health care, education, firefighter and police retirement plans, and strategic transportation projects.

Finally, the **Capital Construction Fund** receives transfers from the General Fund and the Lottery Fund to pay for certain projects. The fund is used to build, buy, renovate and repair state

buildings, major equipment and land. This includes in some cases information technology needs and facility maintenance. [7]

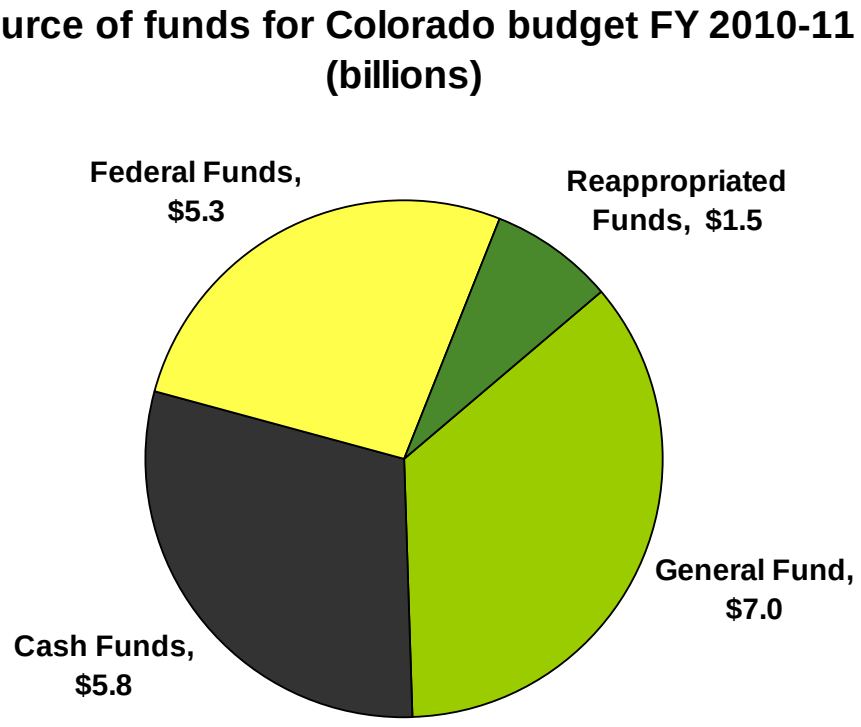
The quarterly revenue projections developed independently by OSPB and Leg Council, estimate both General Fund revenue and Cash Fund revenue. Those reports and are released about March 20, June 20, Sept. 20 and Dec. 20 and are available on those agencies web sites. The "Appropriations Report" breaks down appropriations from each fund by department and segregates the amount of money moved to the Capital Construction Fund.

Focus Colorado: Economic & Revenue Forecast released by Legislative Council can be found at http://www.colorado.gov/lcs, click on "Economics," and scroll to "Forecasts by Calendar Year."

The Colorado Economic Perspective, released by OSPB is available at http://www.colorado.gov/governor/ospb

For FY 2010-11 the Colorado budget totals more than $19.54 billion. The chart below (Figure 1) shows the four major categories of sources for the state budget. Although the General Fund is the largest portion of revenue for the state budget, federal aid and a wide variety of earmarked taxes and fees also account for large portions of the state budget.

Figure 1



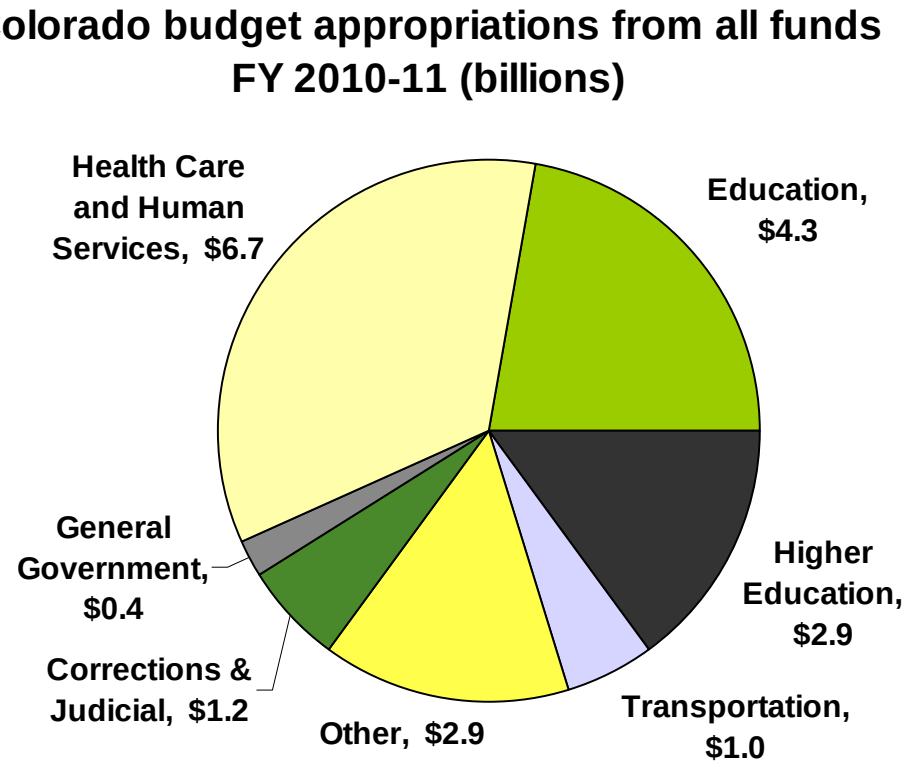
Source: Colorado Joint Budget Committee

[7] Colorado General Assembly, Joint Budget Committee, "Budget in Brief Fiscal Year 2010-11" (Denver: JBC) 1.

HOW DOES THE STATE SPEND THE MONEY IT RECEIVES?

Figure 2 shows that the largest portion of the all funds state budget goes to cover the costs of health care and human services. Health care includes Medicaid, child health or CHP+, and a other public health programs. Human services includes child welfare services, mental health, child care assistance and Temporary Assistance for Needy Families. Education, which includes kindergarten through 12th grade, captures the second largest portion of the entire state budget.

Figure 2



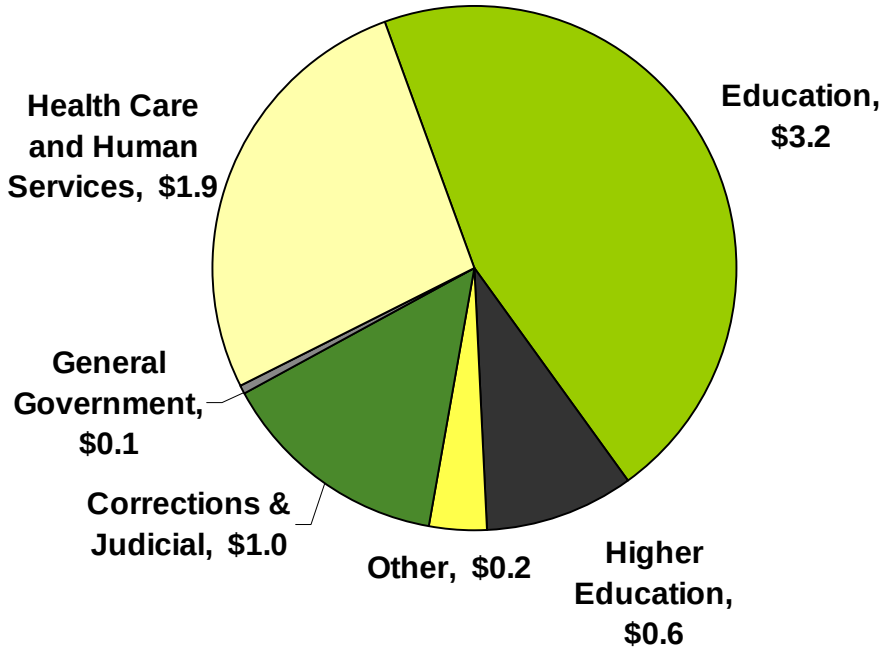
Source: Colorado Joint Budget Committee

Focusing on spending from the **General Fund only**, the appropriations picture for FY 2010-11 looks a little different from the budget as a whole. Total General Fund appropriations were roughly $6.967 billion. The largest share of total General Fund appropriations went to by K-12 education, which is slated to account for 46 percent of General Fund spending, or $3.2 billion. Health care and human services, which account for the largest portion of the total budget, consume just a little more than one-quarter of General Fund spending. (Figure 3)

For every general revenue dollar the state takes in, about 95 cents goes to the six most essential services provided by the state — K-12 education, higher education, health care, human services, prisons and courts. Also, General Fund revenue is not used for transportation.

Figure 3

Colorado budget appropriations from General Fund only, FY 2010-11 (billions)



Source: Colorado Joint Budget Committee

IMPORTANT TERMS CHAPTER 2

Capital Construction Fund – Fund into which General Fund and Lottery Fund transfers for capital construction projects are deposited. The fund is used to build, buy, renovate and repair state buildings, major equipment and land.

Cash Funds – Restricted funds set up to receive earmarked revenues, such as fines, fees and limited taxes. These funds typically pay for the programs for which the revenues are collected. Examples include the Hospital Provider Fee, the Highway Users Trust Fund, the Wildlife Cash Fund and funds for Higher Education Tuition.

Cash Funds Exempt – A category added in the FY1993-94 Long Bill for cash funds appropriations that are exempt from the provisions of TABOR. Other states do not have this fund category in their budgets. It is used strictly to ensure TABOR compliance. Appropriations paid by donations or from reserves in a cash fund are exempt from TABOR. Appropriations that provide spending authority for funds transferred from one department to another are also shown as cash funds exempt. The most notable example of an exempt cash fund is money appropriated from the tobacco settlement.

Federal Funds – Funds received from the federal government. Federal funds are also exempt from the TABOR revenue limit.

General Funds – Fund into which general tax revenues are deposited. The General Fund is used to pay for a broad array of state programs such as education, corrections and human services.

General Funds Exempt – A fund exempt from TABOR restrictions generated from revenue allowed by Referendum C and from a portion of the Amendment 35 tobacco taxes. Appropriations from it are limited to certain programs.

Reappropriated Funds – The fourth category of "revenue" that was first established in the 2008-09 state budget. It represents all of the revenue that one department gets in the form of transfers from other departments. Essentially it represents revenue that is counted twice in the budget. For example, state agencies use a portion of the funds appropriated to them to purchase legal services from the Department of Law, known more commonly as the Attorney General's Office. The Department of Law identifies that "revenue" as reappropriated funds because the General Assembly has appropriated that "revenue" from other agencies to the Department of Law to be used to pay their attorneys and paralegals. Previously these transfers had been grouped with cash funds in a category known as "Cash Funds Exempt."

CHAPTER 3

LIMITS ON REVENUE AND SPENDING

Decisions about changing how Colorado spends money are difficult not just because so much state funding currently goes to six categories of basic services, but also because of the many limitations on how dollars the state receives can be spent. Federal funds that flow into the state often come with strings attached or federal spending requirements, and unless otherwise specified by Congress, the governor has sole discretion in appropriating federal funds (as opposed to the legislative branch). Cash funds, including those that are exempt from TABOR, are typically restricted to the programs and purposes for which the revenues are raised. Flexibility in spending dollars from most of the state's major funds is very limited. That's why most of the state budget process hinges on how General Fund revenue is spent.

However, even General Fund revenue spending is not completely discretionary. Remember that roughly 95 cents of every dollar of General Fund was spent on education, health care, human services, corrections and judicial; leaving little more than a nickel for the rest of the services provided by the state. Major programs like education or health care are often subject to state and federal laws that mandate minimum spending levels or are subject to other factors that drive costs that are beyond the control of the state. For example, both state and federal law require the state to provide a basic education to every child. Federal law requires that we provide health care to all income eligible seniors and needy through the Medicaid program. Moreover, many of these programs have pressures to grow due to the increasing cost of their component services such as technology costs in classrooms, increasing cost of medical services and training for skilled personnel. This combination of legal mandates and natural cost drivers makes it very difficult for legislators to set or change budget priorities. Although these are challenges faced by budget officers in every state, Colorado's unique tax and expenditure limits compound the problem and severely restrict the discretionary authority of budget writers in Colorado.

TABOR

Probably the most significant restriction on state revenue and spending is **Article X, Section 20 of the Colorado Constitution**, or the **Taxpayer's Bill of Rights (TABOR)**. Passed by voter initiative in 1992, TABOR contains many provisions that affect the government's ability to raise and spend revenue. It applies to every level of government in Colorado, from special library districts and municipalities to school districts, county governments and the state. More than 1,900 words long, the TABOR amendment governs practically every revenue and expenditure decision made in the state of Colorado.

TABOR can be broken into three main provisions. TABOR:

1) Requires prior voter approval of any new tax or debt, tax or debt increase, increase in mill levy or any tax policy change that will result in a net revenue gain for the government.[8] All total, TABOR requires voter approval of more than 14 different types of provisions.

2) Limits the amount of revenue that a government or tax district can collect and retain by different formula for each level of government. For the state, the formula for determining the amount of revenue the state can collect each year is the Denver-Boulder-Greeley Consumer Price Index (CPI) inflation rate, plus the annual percentage change in state population, applied to the prior year's allowable revenue. For example, if the CPI was 2.2 percent and the state's population grew by 2.5 percent, the state is allowed to collect and retain 4.7 percent more revenue than it did in the prior year. Any revenue collected above the allowable limit, must be returned to taxpayers in the form of refunds or credits, unless voters approve a measure for allowing the government to keep and spend it. For local governments, including school districts, special districts, municipalities and counties, the inflation rate is included in the formula, but different criteria are used for the growth factor. Local governments must also refund surplus dollars unless approved by voters. Under TABOR, all state General Funds and Cash Funds are counted as revenue. Federal funds, litigation settlements, inter-governmental transfers and voter-approved changes are classified as exempt funds, meaning that TABOR's revenue limit does not apply.

3) Prohibits certain specific taxes and revenue-raising options, even if local voters approve them. TABOR prevents Colorado communities from creating any new or increased real estate transfer taxes, a local income tax, a state real property tax or a graduated state income tax. If a local community wanted a real estate transfer tax, it would first need to amend the constitution and then vote locally to approve the tax. TABOR, in effect, creates a constitutional bias against certain revenue measures.

By all accounts, TABOR is the most restrictive tax and expenditure limit in the country, making budgeting and changing budget priorities in Colorado an extremely difficult task for lawmakers. TABOR's strict limits on revenue, expenditures, revenue-raising options and voter requirements severely limit the flexibility and authority of Colorado governments to carry out their budgeting responsibilities in an effective and timely manner.

The most inflexible aspects of TABOR were made evident during the recession of 2001. Colorado, like the rest of the country, slipped into a deep recession in early 2001. The state lost more jobs and income than almost any other state. The faltering economy and growing unemployment took a heavy toll on Colorado's already lean state government. In just two years, Colorado's General Fund revenues fell by an unprecedented, cumulative total of 17 percent, the

[8] In 2009, the Colorado Supreme Court clarified what constituted a "net revenue gain" in the *Mesa County Board of County Commissioners v. State of Colorado* case. The case grew out of legislation that allowed mil levy rates to remain stable year after year (rather than automatically declining due to other revenue factors) in school districts that had previously voted to allow the school district to keep all revenue above the TABOR limit. In the ruling, the court defined the phrase "tax policy change" for the first time. The court ruled that elected bodies can make changes to tax policy so long as any revenue generated from the change is "de minimis" and does not exceed the annual revenue increase allowed in TABOR.

second largest decline in the country. In response to the revenue shortfall, the General Assembly utilized an array of one-time fixes available to them, including raising fees, shifting payroll dates for state employees and transferring funds. Yet despite their efforts and the growing need, lost revenues forced almost $2 billion in reductions from a $13 billion annual budget. TABOR compounded these problems. Its revenue limit, which allows the state to grow by population and inflation *over the lesser of the prior year's actual collections or the what would have been allowed under the formula* meant that Colorado could never make up for the drop in revenue. In other words, TABOR's revenue limit would ratchet down revenue, forcing the state to always build off the bottom of the recession and never fully recover.

The untenable situation led to a statewide effort to suspend TABOR's revenue limit for five years and fix the flaw in the formula that ensured the ratcheting down of allowable revenue in times of recession. The measure, Referendum C, was passed by voters in November 2005.

REFERENDUM C

Referendum C is what is known as a basic "de-brucing" measure — a term derived from the name of TABOR's author, Douglas Bruce. A de-brucing measure gives voters in any district the chance to suspend, either for a specific period or indefinitely, the revenue limit imposed by TABOR.

Approved by voters in 2005, Referendum C allowed the state to retain all revenue through June 30, 2010 without regard to the population growth and inflation limits imposed by TABOR. The revenue retained by this change funded health care, public elementary and high school education and higher education, pension plans for firefighters and police officers, and transportation projects.

Another critical component of Referendum C is that it eliminated the ratchet in TABOR, allowing the state to recover after future economic downturns**.** It establishes a new base for the revenue formula by allowing the state to select the fiscal year between 2006 and 2010 with the highest total state revenue. The base is adjusted for inflation and population change to determine the limit for 2011. In subsequent years, the TABOR limit is calculated by adjusting the prior years' limit for the annual inflation and population change. This new base and the approach of building the limit from the prior year's formula-defined limit (not actual revenues), eliminates the ratcheting down effect in future years.

The final major provision requires the State Controller, as part of the annual compliance audit, to report on revenues that the state is authorized to retain and spend pursuant to this referendum.

While Referendum C was a necessary step in helping Colorado recover from the recession that began in 2001 and prevented further budget cuts, it did not generate adequate revenues for general operating programs, like health care and education. Ref C, as it became known as, also did not help Colorado prepare for future downturns. General Fund revenue collections for 2010-11 are projected to be $1.4 billion below the $10.7 billion revenue limit allowed through Referendum C for that year.

GENERAL FUND APPROPRIATIONS LIMIT – ARVESCHOUG-BIRD – SENATE BILL 09-228

For decades, Colorado lawmakers operated under a limit on the amount of general fund money that could be spent on general operating expenses. That law, known as Arveschoug-Bird or the 6 percent limit, limited general fund appropriations to 6 percent over the previous year's General Fund appropriations or to 5 percent of Colorado personal income, whichever was less. General fund money above the limit was allocated to capital construction projects, transportation and a state "excess general fund reserve."

In 2009, through Senate Bill 09-228 the General Assembly significantly amended Arveschoug-Bird by adopting new general fund allocation requirements. SB 09-228 retained the general fund appropriations limit equal to 5 percent of Colorado personal income.

SB 09-228 TRANSFERS TO TRANSPORTATION, CAPITAL CONSTRUCTION, AND A RAINY DAY FUND

SB 09-228 also undid some arcane spending formula for transportation and capital construction while also providing assurances that those two areas, along with a state rainy day fund, would get increased funding when the economy recovers.

Beginning in FY 2012-13, if Colorado personal income grows by 5 percent, transfers will be made each year for five years to highway users tax fund (HUTF) for transportation, capital construction and the General Fund Reserve each year for five years. Transportation will receive a general fund revenue transfer equal to 2 percent of general fund appropriations, capital construction a transfer equal to 0.5 percent and the statutory reserve increases by 0.5 percent of general fund appropriations. In the last three years of the five, capital construction will receive a 1 percent transfer. The transfers will begin no sooner than FY 2012-13 and are triggered only if personal income in calendar year 2012 is five percent higher than 2011. If personal income increases less than 5 percent in 2012, the transfers are deferred until personal income does grow by five percent.

These transfers are also subject to limitation if the state is making TABOR rebates. If state revenue exceeds the TABOR limit, the transfers will be modified in the following ways: If TABOR rebates are between 1 percent and 3 percent of general fund appropriations the transfers will be reduced by 50 percent; if TABOR rebates exceed 3 percent of General Fund appropriations, the transfers will be eliminated.

AMENDMENT 23 – MINIMUM FUNDING FOR K-12 EDUCATION

Another restriction on the legislature's ability to set budget priorities is **Amendment 23**. Amendment 23, a constitutional amendment passed by voters in 2000, provides for guaranteed increases in funding for public elementary and secondary education. It requires annual increases in per pupil funding in the school finance act and total state funding for programs of at least the inflation rate plus 1 percent from FY 2001-02 throughout FY 2010-11 and by the inflation rate thereafter. Amendment 23 also contains a "**maintenance of effort**" (MOE) provision that

requires General Fund appropriations for state aid under the school finance act to increase by at least 5 percent annually, except when state personal income grows by less than 4.5 percent. Finally, Amendment 23 establishes a **State Education Fund** and diverts 1/3 of 1 percent of income tax revenue to the fund. The revenues diverted into the fund are exempt from the TABOR revenue limit. State Education Funds can be used to meet the minimum funding requirements for K-12 education as long as the MOE provision is met, and for a variety of education-related purposes.[9]

Thus, Amendment 23 requires annual increases in funding for K-12 education, but also diverts what otherwise would be General Fund revenue to the State Education Fund. During economic downturns, when General Fund revenue sources such as income tax receipts tend to decline or grow at slower rates. Amendment 23 mandates increases in spending and further reduces General Fund revenues available for use on programs and services other than K-12 Education.

THE GALLAGHER AMENDMENT AND PROPERTY TAXES

Property taxes have long been a source of revenue for public services in Colorado. Today property taxes are used exclusively by local governments and are the primary source of local funding for schools.

A 1982 constitutional provision known as the **Gallagher Amendment** has weakened the property tax base of school districts and other local governments and has forced the state to pay a larger portion of the total bill for educating children. That in turn has reduced money available for other areas of the state budget, such as human services, Medicaid, etc.

Gallagher mandates two key factors used in determining property tax revenue. First, it requires that residential property can account for no more than 45 percent of the total *assessed* value of all property in Colorado. Second, it dictates that the assessment rate for non-residential property be fixed at 29 percent. While the assessment rate for businesses is fixed, the assessment rate of residential property fluctuates in order to maintain the ratio. In years when the value of residential property grows more than the value of nonresidential property, the assessment rate for residential property drops in order to preserve the 45 percent limit.

In most years since 1982, the value of residential property statewide has increased faster than the value of non-residential property. As a result, the assessment rate for residential property has steadily declined since 1983 from 21 percent down to 7.96 percent, where it has stayed since 2003. This reduction in residential assessment rate means that business property is assessed at over 3 times the rate of residential property.

In accordance with another constitutional amendment, TABOR, the assessment rates can increase only by approval of voters statewide. Therefore, it is widely accepted that the residential assessment rate is not likely to increase above 7.96 as long as Gallagher and TABOR remain law.

[9] Colorado State, Legislative Council Staff, "House Joint Resolution 03-1033 Study: TABOR, Amendment 23, the Gallagher Amendment, and Other Fiscal Issues" (Denver: Legislative Council, 2003) 93.

The impact of Gallagher varies widely between regions of the state, and even within particular regions. Both the rate of growth in value of property and the mix of properties within a jurisdiction affect the impact of Gallagher on the local tax base.

Because of Gallagher and TABOR, property tax revenue — the primary revenue source for school districts — can increase for school districts only if a school district experiences growth or the voters approve raising the mill levy rate. This has resulted in a stagnation and decline in local revenue available to fund public schools. When this stagnation is coupled with a Colorado law which requires the state to backfill funding for schools, Gallagher's impact on the state budget can be seen. In the past 23 years, as the strength of property taxes have been diminished, the state share of K-12 education funding in Colorado has grown from 44 percent to 65 percent. As the state spends more on K-12 it has less to spend on other services.

Taken together, these policies – TABOR, Amendment 23, Gallagher – reduce the flexibility of state lawmakers to set or alter budget priorities on a continuing basis and to respond to changing economic conditions.

IMPORTANT TERMS CHAPTER 3

Amendment 23 – Constitutional amendment approved by voters in 2000 that mandates minimum funding levels for K-12 education

Article X Section 20 Colorado Constitution – Known as the Taxpayer's Bill of Rights or TABOR. Requires voter approval of new and increased taxes and debt, limits the amount of revenue any taxing district in Colorado may collect and retain requiring excess revenues to be refunded to taxpayers, prohibits specific taxing options and prevents the "weakening" of any pre-existing tax or spending limit.

Arveschoug-Bird – Repealed in 2009, it was the 6 percent statutory General Fund appropriations limit.

Highway Users Tax Fund – The primary source of highway funds in Colorado, generated primarily from motor and diesel fuel taxes. Funds from other highway related revenues, such as vehicle registration fees, driver's license fees, court fines and interest earnings also contribute to the fund.

Gallagher Amendment – Constitutional amendment from 1982 that limits property tax revenue in Colorado. Gallagher mandates that residential property accounts for no more than 45 percent of the total assessed value of all property and that non-residential be assessed at a fixed rate of 29 percent. Thus, in years when the value of residential property grows more quickly than non-residential property, the assessment rate of residential property goes down.

Maintenance of Effort (MOE) – MOE provision, as it relates to Amendment 23, requires General Fund appropriations for state aid under the school finance act to increase by at least 5 percent annually, except when state personal income grows by less than 4.5 percent

State Education Fund – Established by Amendment 23, which authorized a diversion of one-third of one percent of taxable income on state income tax returns to the Fund. The revenues diverted into the fund are exempt from the TABOR revenue limit and spending from the fund is not subject to the 6 percent appropriations limit. State Education Funds can be used to meet the minimum funding requirements for K-12 education as long as the MOE provision is met, and for a variety of education-related purposes

Statutory 4 percent Reserve – According to C.R.S. §24-75-201.1 (1)(d)(III), a 4 percent reserve must be set aside to fund General Fund obligations in years where there is insufficient revenue. Money taken from the reserve account must be repaid each year.

TABOR – the Taxpayer's Bill of Rights or Article X Section 20 of the Colorado Constitution

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