

# MEMORANDUM



## JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee  
FROM Gustavo Cortés, JBC Staff (303-866-4955)  
DATE April 17, 2024  
SUBJECT Staff-initiated Cash Fund Waivers Recommendations

### NEW DECISION ITEMS

#### → CASH FUND WAIVER RECOMMENDATION: DIVISION OF FIRE PREVENTION AND CONTROL CASH FUNDS

*REQUEST:* The Department is requesting that the following two cash funds be granted a three-year waiver extension and an alternative maximum reserve increase for the Health Facility Construction and Inspection Cash Fund, from 30.0 percent to 40.0 percent to address excess uncommitted reserves.

- Health Facility Construction and Inspection Cash Fund (Section 24-33.5-1207.8, C.R.S.):
- Public School Construction and Inspection Cash Fund (Section 24-33.5-1207.7, C.R.S.):

*RECOMMENDATION:* **Staff recommends denial of the request for the following reasons:**

- Both funds have been exempted twice in the past, prior to July 1, 2017 and again from FY 2021-FY 2022-23. Approval of the current request would be a third waiver exemption for both funds.
- In addition, Section 24-75-402(8)(b), C.R.S., states: “To request a waiver in accordance with this subsection (8), an entity, during the annual budget-setting process, must present a plan to the joint budget committee that at a minimum specifies the specific purpose for which the entity needs the waiver, whether it would like a maximum alternative reserve or an exemption, the time period for the waiver, and the plan for reducing any excess uncommitted reserves that may remain on completion of the waiver period.” The Department stated their compliance plan is the JBC approving their waiver request.
- Finally, the Department stated that “*If the waiver is not approved, it will be necessary for DFPC to continually adjust fees based on fund balance rather than on industry best practice and standard fee calculations.*” However, the Department’s desire to maintain a consistent fee schedule is not a valid reason to be exempted from the requirement. Per Section 24-75-402(1)(e), C.R.S., “In order to ensure compliance with the limitations on the amount of uncommitted reserves that may be maintained for any cash fund, the General Assembly may require reductions in the amount of fees collected by state agencies, even though such reductions may result in some persons paying more than other persons to receive state agency services.”

#### **BACKGROUND**

Section 24-75-402, C.R.S., requires that the uncommitted reserves of a cash fund at the conclusion of a given fiscal year shall not exceed 16.5 percent of the amount expended from the fund for that fiscal

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year, except for funds exempted by statute or receiving a waiver from the JBC. The JBC may waive the maximum reserve requirement or establish an alternative reserve for a fund for up to three years for an entity that demonstrates a specific purpose for which the entity needs to maintain an uncommitted reserve greater than the maximum reserve otherwise allowed. If a particular fund's uncommitted reserve balance exceeds the applicable statutory limit, the agency responsible for the fund is required to reduce fees accordingly or increase expenditures in order to reduce the excess.

**Health Facility Construction and Inspection Cash Fund:** This cash fund was exempt from the maximum uncommitted reserve balance requirements of Section 24-75-402, C.R.S., prior to July 1, 2017. Beginning in FY 2017-18, the fund was no longer exempt and by FY 2017-18 year-end, it had an excess uncommitted reserve. The fund was brought into compliance by the end of FY 2019-20 to avoid a restriction of spending authority for FY 2020-21 by the OSC pursuant to Section 24-75-402(12), C.R.S. by temporarily suspending the \$500 Certificate of Compliance Annual Fee in FY 2016-17, and an additional accelerated reduction of other fee revenues along with increased expenditures. The fund is currently under a JBC cash fund maximum reserve requirements waiver of 30% of total expenses for FY 2020-21 through FY 2022-23.

**Public School Construction and Inspection Cash Fund:** This cash fund was exempt from the maximum uncommitted reserve balance requirements of Section 24-75-402, C.R.S., prior to July 1, 2017. However, beginning in FY 2017-18, the fund was no longer exempt from the maximum uncommitted reserve requirements and as of FY 2017-18 year-end, it had an excess uncommitted reserve. Despite an accelerated reduction of fees and increased expenditures, the fund was above the compliance threshold at the end of FY 2019-20. As a result, a spending authority restriction of \$7,341 was implemented for the FY 2020-21 operating year, and the fund closed the year in compliance in accordance with the cash fund statute. The fund has been under a JBC cash fund maximum reserve requirement waiver of 40% of total expenses for FY 2020-21 through FY 2022-23.

*ANALYSIS:*

**MAJOR REVENUE SOURCES FOR BOTH FUNDS**

Funds are primarily derived from fees collected for the purposes of funding public school construction plan review and inspection activities. The construction projects subject to these fees include the construction of new facilities, ongoing renovations, repairs, and improvements/additions, initial construction of life safety systems, such as fire suppression systems. These projects are ongoing and cannot easily be forecasted from fiscal year to fiscal year. Further, these projects do not occur within the confines of any one fiscal year and very often carry over from one fiscal year to the next.

Additionally, the DPFC collects fees that are intended to cover the Division's expenditures related to their responsibility to conduct annual maintenance inspections in each facility that is not inspected annually by a qualified local jurisdictional representative. Fee sources include Section 24-32-124(2), C.R.S. - School District Building or Structure Construction; Section 23-71-122(1)(v), C.R.S. - Junior College Building or Structure Construction; or Section 24-33.5-1213.3, C.R.S. - Building and Structure Fire Code Maintenance.

**MAJOR EXPENDITURE SOURCES**

**Health Facility Construction and Inspection Cash Fund:** The fund is used by DFPC's Fire and Life Safety Section (FLSS), which conducts plan reviews and inspections of health facilities and issues

certificates of compliance with fire and building codes upon completion of such reviews and inspections, to pay the expenses of the health facility construction and inspection program, including personal services for FTE, indirect cost assessment, and operating expenses.

Public School Construction and Inspection Cash Fund: The fund is used by DFPC’s Fire and Life Safety Section (FLSS), which enforces school building and fire codes, to pay the expenses of the public school construction and inspection program, including personal services for FTE, indirect cost assessment, and operating expenses. Pursuant to Section 22-32-124(1)(c), C.R.S. and Section 23-71-122(1)(v)(I), C.R.S., both school district boards and local college district boards of trustees must construct school buildings and structures in conformity with the building and fire codes adopted by the director of the DFPC.

According to the Schedule 9’s provided, the Department’s excess uncommitted reserve balance shows to be steadily decreasing, or at least, staying under the maximum/alternative reserve balance. It also shows that the Department should not have a problem staying within the statutory limit of 16.5 percent. A summary of the cash fund balance is provided in the table below.

HEALTH FACILITY CONSTRUCTION AND INSPECTION CASH FUND					
	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25
Uncommitted Fee Reserve Balance	\$22,305	\$384,307	\$437,470	\$339,787	317,527
Maximum /Alternative Reserve	541,643	578,925	636,131	352,047	350,959
Excess Uncommitted Reserve Balance	(\$519,338)	(\$194,617)	(\$198,660)	(\$12,260)	(\$33,433)

PUBLIC SCHOOL CONSTRUCTION AND INSPECTION CASH FUND					
	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25
Uncommitted Fee Reserve Balance	\$128,648	\$319,905	\$222,123	\$222,937	225,169
Maximum /Alternative Reserve	985,896	890,846	864,074	357,378	356,786
Excess Uncommitted Reserve Balance	(\$857,249)	(\$570,940)	(\$641,950)	(\$134,441)	(\$131,617)

**RECOMMENDATION**

Staff recommends denial of the request to allow the Department to work within statutory limits based off the information above. However, if the Committee should choose to approve the waiver requests, staff recommends the Department approval of 3-year waiver extension, but to follow the 16.5 statutory limit in accordance with Section 24-75-402, C.R.S.