

# MEMORANDUM



## JOINT BUDGET COMMITTEE

TO Joint Budget Committee  
 FROM Carolyn Kampman, JBC Staff Director (303-866-4959)  
 DATE March 18, 2022  
 SUBJECT Designation of State Emergency Reserve Assets for FY 2022-23

On March 14, 2022, the Joint Budget Committee (JBC) approved staff recommended changes to the “headnotes” contained in section one of the 2022 Long Bill. This section typically includes a provision to designate assets to constitute the State Emergency Reserve (SER) as required by Article X, Section 20 (5) of the State Constitution (the Taxpayer’s Bill of Rights or “TABOR”). For FY 2021-22, the Long Bill headnotes did not include a provision designating the SER. Instead, this provision was included in S.B. 21-227, which created the State Emergency Reserve Cash Fund. For FY 2022-23, staff recommended again designating the SER in the Long Bill. The Committee approved this recommendation, but has not yet acted on the specific assets or amounts to include in this section. This memorandum includes recommendations and information for the JBC to take action on this issue.

### STAFF RECOMMENDATION

**For FY 2022-23, staff recommends an SER of \$500.0 million. Both of the March 2022 forecasts project a required SER of \$499.8 million. The specific amounts and assets recommended by staff are listed in the following table.**

DESIGNATED STATE EMERGENCY RESERVE				
	FY 2021-22	% OF TOTAL	FY 2022-23	% OF TOTAL
<b>Cash Assets:</b>				
Disaster Emergency Fund	\$48,000,000		\$66,000,000	
State Emergency Reserve Cash Fund	201,000,000		271,000,000	
Marijuana Tax Cash Fund	100,000,000		100,000,000	
Unclaimed Property Tourism Promotion Trust Fund	5,000,000		5,000,000	
Major Medical Insurance Fund	59,000,000		25,000,000	
Colorado Water Conservation Board Construction Fund	33,000,000		33,000,000	
<b>Subtotal:</b>	<b>\$446,000,000</b>	<b>93.9%</b>	<b>\$500,000,000</b>	<b>100.0%</b>
<b>Capital Assets: State Properties up to:</b>				
	<b>\$29,000,000</b>	6.1%	<b>\$0</b>	0.0%
<i>Value of State Properties Listed in Headnote:</i>				
State Parking Garage (1350 Lincoln Street, Denver)			\$0	
Centennial Building (1313 Sherman Street, Denver)			0	
Human Services Building (1575 Sherman Street, Denver)			0	
Grant Street Building (1570 Grant Street, Denver)			0	
Capitol Annex Building (1375 Sherman Street, Denver)	28,930,625		0	
State Services Building (1525 Sherman Street, Denver)			0	
Legislative Services Building (200 E 14th Ave, Denver)			0	
<b>Subtotal</b>	<b>\$28,930,625</b>		<b>\$0</b>	
<b>TOTAL</b>	<b>\$475,000,000</b>	100.0%	<b>\$500,000,000</b>	100.0%

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**Staff recommends the following changes and actions:**

- Maintain existing designations for the Marijuana Tax Cash Fund, the Unclaimed Property Tourism Promotion Trust Fund, or the Colorado Water Conservation Board Construction Fund.
- Increase the designation for the Disaster Emergency Fund based on estimates provided by OSPB staff concerning the amount projected to be available as of July 1, 2022.
- Decrease the designation for the Major Medical Insurance Fund to \$25.0 million. This would allow the Division of Workers' Compensation to eliminate the existing related premium surcharge of 0.1 percent, effective July 1, 2022. This would reduce related revenues for FY 2022-23 by \$1,364,724, which would reduce the TABOR refund by the same amount.
- Do not designate any capital assets.
- Increase the designation for the State Emergency Reserve Cash Fund to an amount sufficient to constitute a total reserve of \$500.0 million, and sponsor legislation to:
  - direct interest earned on federal ARPA funds to the State Emergency Reserve Cash Fund, as proposed by OSPB; and
  - transfer \$38.8 million General Fund to the State Emergency Reserve Cash Fund.

Staff's recommended General Fund transfer is calculated as follows:

**State Emergency Reserve Cash Fund**

Beginning balance in fund	\$201,000,000
Amounts transferred out as of March 11, 2022 (Executive Orders D2021 141, D2022 004, and D2022 012)	(135,152,010)
Estimated reimbursements to the Fund by June 30, 2022 pursuant to Section 24-77-104 (7), C.R.S.	20,000,000
Interest earned as of March 11, 2022	886,328
Transfer of interest earned on federal ARPA funds through June 30, 2022 <i>[Requires bill]</i>	31,200,000
Transfer from the Controlled Maintenance Trust Fund balance on June 30, 2021	
Transfer from General Fund <i>[Requires bill]</i>	<u>38,800,000</u>
Subtotal: State Emergency Reserve Cash Fund	<b>\$271,000,000</b>

## BACKGROUND INFORMATION

### USE OF STATE EMERGENCY RESERVE

TABOR requires the State to set aside an emergency reserve equal to at least three percent of fiscal year spending, and limits expenditures from this reserve for declared emergencies. TABOR defines “emergency” to exclude economic conditions, revenue shortfalls, and salary or fringe benefit increases. Unused reserves apply to the next year’s State Emergency Reserve (SER).<sup>1</sup>

The SER may be expended in any given fiscal year upon:

- The declaration of a state emergency by the passage of a joint resolution which is approved by a two-thirds majority of the members of both houses of the General Assembly and which is approved by the Governor; or
- The declaration of a disaster emergency by the Governor.

Declaring a disaster emergency of any kind gives the Governor access to the Disaster Emergency Fund (DEF). Pursuant to Section 24-33.5-706 (4), C.R.S., the stated legislative intent is that money required during a disaster first be paid from money regularly appropriated to state and local agencies. If these existing resources prove insufficient, the Governor may make money available from the DEF. If money in the DEF is insufficient, the Governor may transfer to the DEF and expend money that has been appropriated for other purposes. The declaration of a disaster emergency also authorizes expenditures from the Reserve.

If the DEF is credited with reimbursements for previous State expenditures for a particular disaster, the Governor *may* transfer money to the Reserve fund(s) as repayment for the amounts the Governor originally transferred from said fund(s) to the DEF.

From FY 1994-95 through FY 2017-18, annual transfers from the Reserve to the DEF ranged from \$0 to \$53.4 million, with an average of \$6.9 million over this 24-year period. These transfers were typically related to wildfire and flood disaster emergencies. The number and magnitude of transfers from the Reserve have increased significantly in recent years.

### DESIGNATION AND COMPOSITION OF RESERVE

Pursuant to Section 24-77-104, C.R.S., the SER “shall consist of moneys as are annually designated by the general assembly in the general appropriation bill or by separate bill to constitute said emergency reserve.” The General Assembly typically designates the fund sources and assets that comprise the annual SER in the headnotes at the beginning of the annual Long Bill.

The General Assembly’s practice has been to estimate the size of the required SER for the next fiscal year based on the preceding March revenue forecasts. The components of the SER have been based on the available balances in certain cash funds and the replacement values of certain State properties provided by the Department of Personnel’s Risk Management Unit.

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<sup>1</sup> See Section 20 (5) of Article X of the Colorado Constitution and Section 24-77-104, C.R.S.

Since FY 1993-94, the General Assembly has designated the General Fund, various cash funds, and capital assets to satisfy the SER requirement.

- In FY 1995-96, the SER consisted entirely of General Fund.
- From FY 1996-97 through FY 2000-01, the SER consisted entirely of the CMTF.
- In all other fiscal years the SER has included amounts in multiple cash funds.
- Since FY 2003-04, the SER has also included capital assets. In all but one fiscal year these assets have comprised less than 40.0 percent of the SER.

#### CASH ASSETS

For FY 2021-22, six cash funds are designated as part of the SER. Senate Bill 21-227 created a replenishment mechanism by requiring that if money from any fund that is designated as part of the SER is expended for a declared emergency and the State subsequently receives reimbursement for the expenditure, the State Treasurer shall deposit the reimbursement into the fund that was the source of the expenditure.

#### **Disaster Emergency Fund** [Section 24-33.5-706 (2)(a), C.R.S.]

This fund consists of any money appropriated by the General Assembly and, if the money available from the fund is insufficient, the Governor may transfer to the fund and expend money appropriated for other purposes. Only fund balance that is not encumbered should be designated as part of the SER. This fund was first designated as part of the SER in FY 2020-21.

#### **State Emergency Reserve Cash Fund** [Section 24-77-104 (6), C.R.S.]

This fund was established through S.B. 21-227 to be some or all of the required SER. This bill required the State Treasurer to transfer to this cash fund, on June 30, 2021, \$101.0 million from the General Fund and \$100.0 million from the Controlled Maintenance Trust Fund (CMTF).

#### **Marijuana Tax Cash Fund** [Section 39-28.8-501 (1), C.R.S.]

The Marijuana Tax Cash Fund (MTCF) consists of: (a) all revenues collected from the regular state sales tax on medical marijuana and non-marijuana retail product sales; and (b) a portion of special sales tax revenue that is collected on retail marijuana sales. The General Assembly annually appropriates money in this fund to support a variety of state programs and services<sup>2</sup>. This fund was first designated as part of the SER in FY 2021-22.

#### **Unclaimed Property Tourism Promotion Trust Fund** [Section 38-13-801.5 (1), C.R.S.]

The principal of this fund consists of all proceeds collected by the Unclaimed Property program from the sale of securities. The interest derived from the deposit and investment of money in this fund is credited to the following funds:

- 25.0 percent to the Colorado State Fair Authority Cash Fund;
- 65.0 percent to the Agricultural Management Fund; and
- 10.0 percent to the Colorado Travel and Tourism Promotion Fund.

This fund was first designated as part of the State Emergency Reserve in FY 2011-12.

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<sup>2</sup> See Section 39-28.8-501 (2)(b)(IV), C.R.S. for a list of allowable purposes.

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**Major Medical Insurance Fund** [Section 8-46-202 (1)(a), C.R.S.]

This fund was established in 1971 to provide benefits to industrial workers who had sustained catastrophic injuries. Since July 1, 1981, no further cases have been accepted into this program. Expense claims for individuals who sustained qualified injuries from 1971 to 1981 fluctuate each year depending on the specific medical treatments required by clients. The Department indicates that there are currently 723 open claims, and benefit payments are projected to continue through 2049. Any money remaining in the Fund when the last liabilities have been paid will revert to the General Fund.

Funds are continuously appropriated for payment of benefits, and included in the Long Bill for informational purposes. The Long Bill also includes appropriations from the fund to cover related administrative expenses. This fund was first designated as part of the SER in FY 2004-05. In addition, from 2003 through 2011, the General Assembly transferred a total of \$246.0 million from this fund to the General Fund during two economic downturns.

This fund receives revenue from the Workers' Compensation Premium Surcharge assessed to insurance carriers and self-insured employers. This rate is set by the Division Director to generate sufficient revenue to cover claim payments and direct and indirect administrative costs. The Division Director is also required to maintain a reserve to cover one full year of claim payments and direct and indirect administrative costs.

The Department requests that the amount designated as part of the SER be decreased to at least \$55.0 million (from \$59.0 million). Otherwise, the Division may need to increase the premium surcharge to cover both the required program reserve and 12 months of operating expenses. The Department notes that if this fund is not designated as part of the SER, the Fund would have sufficient funding to cover all expected future liabilities.

Specifically, if the General Assembly discontinues designation of this fund as part of the SER for FY 2022-23, the Division Director would take action to eliminate the existing related premium surcharge of 0.1 percent, effective July 1, 2022. This surcharge reduction is anticipated to reduce related revenues for FY 2022-23 by \$1,364,724. As the State is projected to collect total revenues in excess of the TABOR limit, this would reduce the projected TABOR refund by the same amount, reducing General Fund liabilities by \$1,364,724.

Another option for the Committee to consider is to reduce the designation to \$25.0 million in FY 2022-23. The Department indicates that this would allow the Division Director to eliminate the premium surcharge for FY 2022-23 through FY 2026-27. For subsequent fiscal years, the designation would need to decrease over time to \$0 to avoid the need for the Division to reinstate the surcharge. **Staff recommends reducing this designation to \$25.0 million.**

**Colorado Water Conservation Board (CWCB) Construction Fund** [Section 37-60-121 (1)(a), C.R.S.]

This fund supports loans for water projects, grants, and agency operating expenses. The Department indicates that the capacity and longevity of the CWCB's cash fund portfolio, including the Construction Fund, is dependent on achieving a rate of growth that is commensurate with construction inflation through revenue generated by loan repayments and interest earned on the

balance of the fund. This fund was first designated as part of the State Emergency Reserve in FY 2012-13.

The Department has indicated that this fund can continue to accommodate a designation of \$33.0 million for emergency purposes for FY 2022-23. However, the Department notes that any significant reduction in the fund balance, even on a temporary basis, can negatively affect the CWCB's ability to issue project loans and fund water programs, increasing the challenges of supplying water for a growing population. If the Governor transfers money from this fund to the Disaster Emergency Fund, it reduces the amount of earned interest revenue (e.g., \$166,000 for a five month period in FY 2020-21). In addition, although the recent transfers from the Construction Fund were ultimately recapitalized within the same fiscal year, there remains a lack of certainty about the repayment of emergency transfers, which poses a risk to cash funds included in the reserve and makes planning difficult if emergency spending is required.