

MEMORANDUM

TO: Joint Budget Committee Members

FROM: John Ziegler, JBC Staff

SUBJECT: Discussion of Statutory Reserve Requirements

DATE: March 21, 2016

Section 24-75-201.1 (1)(d), C.R.S., defines the amount that must be retained each year as a reserve. For FY 2015-16 it states (**emphasis added**):

24-75-201.1. (1) Restriction on state appropriations - legislative declaration - definitions.
(d) For each fiscal year, unrestricted general fund **year-end** balances **shall be retained** as a reserve in the following amounts:

(XIV) For the fiscal year 2014-15 and each fiscal year thereafter, six and one-half percent of the amount appropriated for expenditure from the general fund for that fiscal year.

Staff has discussed with both staff from the Office of Legislative Legal Services (OLLS) and the State Controller how this language would be interpreted should the end of fiscal year revenues be insufficient to allow expenditure of all the General Fund appropriations for the year without retaining a 6.5 percent reserve in the General Fund.

Both the OLLS staff and the State Controller indicate that, if at the end of the fiscal year the balance in the General Fund would drop below the 6.5 percent reserve, expenditures would not be paid in order to maintain a 6.5 percent reserve. They indicate that the language “**shall be retained**” in the above definition requires this action.

Section 24-75-201.5, C.R.S., provides the actions required by the Governor if the Office of state Planning and Budgeting (OSPB) revenue estimate indicates that there will be less than one half the amount required for the statutory reserve in the current fiscal year. This statute states (**emphasis added**):

24-75-201.5. Revenue shortfalls - required actions by the governor with respect to the reserve. (1) (a) Except as provided in paragraphs (c) and (d) of this subsection (1), whenever the **revenue estimate** for the current fiscal year, prepared in accordance with section 24-75-201.3 (2), **indicates that general fund expenditures for such fiscal year based on appropriations then in effect will result in the use of one-half or more of the reserve required by section 24-75-201.1 (1) (d), the governor shall formulate a plan for reducing such general fund expenditures so that said reserve, as of the close of the fiscal year, will be at least one-half of the amount required by said section 24-75-201.1 (1) (d).** The governor shall promptly notify the general assembly of such plan. Such plan shall be promptly implemented by the governor, using the procedures set forth in section 24-2-102 (4) or 24-50-109.5 or any other lawful means.

The important distinction between these two statutory cites is the distinction of who takes what action and when the action is to be taken. The statute on the restriction on state expenditures requires that a balance be retained **at the end of the fiscal year** based on actual experience. The **State Controller** has monitored the fiscal year-end balance as compared to the necessary reserve in the past. The State Controller has determined if there would be reserve as required by law and taken actions to ensure that level of reserve is available as of the end of the fiscal year. In my discussions with the State Controller, he has indicated he would continue to monitor this and take action, if necessary, in the future as required by the statute.

The statute on revenue shortfalls requires that the **Governor, based on OSPB revenue estimates**, take actions to ensure that at least one half of the statutory reserve is maintained. In my discussions with OLLS staff, I have come to the understanding that this statute was put in place to provide the General Assembly with options other than reducing the statutory reserve when this situation occurs. This statutory requirement also attempts to ensure that the reserve is not presumed to be the first alternative to solving issues regarding revenue shortfalls. The revenue shortfall statute has no bearing on the end of year requirement as monitored by the State Controller unless the General Assembly takes action to change the level of reserve required by statute.

These statutes have worked in coordination with one another for many years. They ultimately, leave the final decision with regard to the statutory reserve to the General Assembly. The General Assembly has taken a variety of actions over the years to ensure a balanced budget at the end of the fiscal year. These include reductions in appropriations, increases to General Fund revenue, and changes to the statutory reserve. Some of these actions have been suggested by the Governor in a plan and some have not. Therefore, **JBC staff recommends the JBC sponsor legislation to lower the statutory reserve if the JBC determines that is the best course of action to balance the FY 2015-16 budget.**