

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



SUPPLEMENTAL REQUESTS FOR FY 2013-14

**CAPITAL CONSTRUCTION – CONTROLLED
MAINTENANCE TRUST FUND**

**JBC Working Document - Subject to Change
Staff Recommendation Does Not Represent Committee Decision**

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CAPITAL CONSTRUCTION – CONTROLLED MAINTENANCE TRUST FUND

Department Overview

Pursuant to Section 24-75-302.5, C.R.S., up to 50 percent of interest earnings on the Controlled Maintenance Trust Fund is to be used to support controlled maintenance of state buildings. The Trust Fund may also be used as part of the emergency reserve required by Article X, Section 20 of the State Constitution (TABOR).

Summary: FY 2013-14 Appropriation and Recommendation

Capital Construction - Operating: Recommended Changes for FY 2013-14				
	Total Funds	General Fund	Federal Funds	FTE
FY 2013-14 Appropriation				
FY 2013-14 Long Bill appropriation to Controlled Maintenance Trust Fund	48,000,000	23,000,000	25,000,000	0.0
Current FY 2013-14 Appropriation	\$48,000,000	\$23,000,000	\$25,000,000	0.0
Recommended Changes				
Current FY 2013-14 Appropriation	\$48,000,000	23,000,000	\$25,000,000	0.0
Controlled Maintenance Trust Fund Repayment	78,000,000	78,000,000	0	0.0
Recommended FY 2013-14 Appropriation	\$126,000,000	\$101,000,000	\$25,000,000	0.0
Recommended Increase/(Decrease)*	\$78,000,000	\$78,000,000	\$0	0.0
Percentage Change	162.5%	339.1%	0.0%	0.0%

* The recommendation corresponds to the Executive Request.

Request/Recommendation Descriptions

Controlled Maintenance Trust Fund Repayment: The request and recommendation are for an appropriation of \$78.0 million General Fund to the Controlled Maintenance Trust Fund.

Supplemental Requests

SUPPLEMENTAL REQUEST, GOVERNOR’S OFFICE PRIORITY S-4 CONTROLLED MAINTENANCE TRUST FUND REPAYMENT

	Request	Recommendation
Total	<u>\$78,000,000</u>	<u>\$78,000,000</u>
FTE	0	0
General Fund	78,000,000	78,000,000
Cash Funds	0	0
Federal Funds	0	0

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]	YES*
*The request does not specify a supplemental criterion and focuses on the need for a TABOR reserve for FY 2014-15 (as opposed to an FY 2013-14 supplemental need). Nonetheless, the CMTF was drained mid-year to address a declared emergency (criterion #1), and staff believes it is prudent to have an additional cash-cushion available in the CMTF in the event another large emergency occurs before the end of the fiscal year.	

Department Request: The Governor’s Office requests a one-time General Fund appropriation to the Controlled Maintenance Trust Fund (CMTF). The appropriation will restore revenue into the State’s designated TABOR reserves. The September 2013 floods led the Governor to transfer all remaining funds in the CMTF to the Disaster Emergency Fund (DEF).

The request: (1) appropriates \$48.0 million to the CMTF, corresponding the original FY 2013-14 appropriation to the Fund that is no longer available due to transfer to the DEF; and (2) appropriates an additional \$30.0 million to the Fund, corresponding to the required increase in the TABOR emergency reserve for FY 2014-15.

Staff Recommendation: Staff recommends that the Committee approve the request. Staff anticipates that the appropriation will amend Section 21 of the FY 2013-14 Long Bill (S.B. 13-230) which provides an appropriation to the CMTF. Based on consultation with the Office of Legislative Legal Services, staff further recommends an explanatory subsection be added to the appropriation indicating that the original \$48.0 million appropriated for FY 2013-14 was transferred to the DEF.

Staff Analysis: In the last two years (FY 2012-13 and FY 2013-14), the General Assembly has appropriated a total of \$71.0 million to the CMTF. There have been two rationales provided for the appropriation of these funds, both of which are consistent with statute:

1. providing a portion of the state emergency reserve required by TABOR; and

2. providing a corpus from which interest payments may be used to support controlled maintenance of state buildings.

While the General Assembly has appropriated moneys based on both rationales, the Governor has thus far transferred all appropriated funds, quite rapidly, to the DEF. This is consistent with the spirit of the TABOR reserve, which is to be used for disasters, but means that in recent years the CMTF has been of little use for supporting maintenance of state buildings.

Controlled Maintenance Trust Fund*		
	FY 2012-13	FY 2013-14
Balance (beginning of year; approximate)	\$0	\$6,400,000
Appropriated to CMTF	23,000,000	48,000,000
Transferred from CMTF to Disaster Emergency Fund		
Fires (various)	(16,600,000)	(12,900,000)
September floods	0	(41,500,000)
End of year balance (approximate)	6,400,000	n/a
Current balance (approximate)	n/a	0
Requested additional appropriation	n/a	78,000,000

*Reflects approximate balances and transfers as described by the Governor’s Office; excludes small balance in the Fund not addressed in emergency declarations and transfers.

The rationale provided in the current request again focuses on the state’s TABOR reserve. While staff has recommended the additional \$78.0 million on this basis, the General Assembly should be aware that these funds could again be transferred to the DEF without further action by the General Assembly.

Appropriating the funds to the CMTF could allow the funds to be used for the TABOR reserve for FY 2014-15 and could allow a portion of accrued interest to be used of maintenance of state buildings. Further, any transfers of these moneys to the DEF might be repaid to the CMTF. However, *because the Governor has great flexibility with respect to the DEF, there is always a possibility that funds will be transferred from the CMTF to the DEF even before the start of FY 2014-15, and there is no guarantee that the CMTF will ever be reimbursed for moneys transferred to the DEF.* Background on the relevant statutes and legislation is provided below for reference.

TABOR Reserve: Article X, Section 20 of the State Constitution requires any taxing district, including the State, to reserve 3.0 percent or more of its fiscal year spending, excluding bonded debt service, for emergency reserves. These funds are “to use for declared emergencies only” specifically excluding “economic conditions, revenue shortfalls, or district or fringe benefit increases”. If money is spent from the TABOR emergency reserve, it must be repaid in the following year.

Section 24-77-104, C.R.S., implements the state TABOR emergency reserve and indicates that the state emergency reserve may be expended based on either the declaration of a state of

*JBC Staff Supplemental Recommendations: FY 2013-14
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emergency by joint resolution of the General Assembly or by the declaration of a disaster emergency by the Governor.

The FY 2013-14 TABOR reserve was based on an estimated reserve requirement of \$329.6 million, fulfilled as shown on the table below.

Designated TABOR Reserves	FY 2012-13	FY 2013-14
Major Medical Insurance Fund (Section 8-4-202 (1) (a), C.R.S.)	\$92,500,000	\$83,000,000
Wildlife CF (liquid assets) (Section 33-1-112 (1) (a), C.R.S.)	34,000,000	34,000,000
Perpetual Base Account of Severance Tax Trust Fund (Section 39-29-109 (2) (a) (II), C.R.S.)	33,000,000	33,000,000
CO Water Conservation Board Construction Fund (Section 27-60-112 (1) (a), C.R.S.)	33,000,000	33,000,000
Controlled Maintenance Trust Fund (Section 24-75-302.5 (2), C.R.S.)	23,000,000	48,000,000
Unclaimed Property Fund (Section 38-13-116.7 (1), C.R.S.)	5,000,000	5,000,000
State Buildings (Equity Assets)	98,800,000	93,600,000
Total	\$319,300,000	\$329,600,000

Pursuant to the OSPB December forecast, the required TABOR reserve will be \$359.4 million for FY 2014-15, or \$29.8 million more than the FY 2013-14 reserve.

The Executive request proposes that, for FY 2014-15, the TABOR reserve be comprised of the same equity and cash assets as in FY 2013-14 plus an additional \$30.0 million from the CMTF. Because there is currently no significant balance in the CMTF, a total appropriation of \$78.0 million to the CMTF is required.

Controlled Maintenance Trust Fund: Pursuant to Section 24-75-302.5, C.R.S., the purpose of the CMTF is to provide a “stable, predictable, and consistent source of revenues for controlled maintenance”. Revenue for controlled maintenance is to be based on up to fifty percent of the amount of interest earned on the principal of the trust fund up to a maximum of \$35.0 million dollars in any fiscal year. This statute also specifies that the principal of the CMTF may constitute all or some of portion of the state emergency reserve (TABOR reserve). The principal in the CMTF was transferred out during the 2000’s (particularly \$186 million transferred out in FY 2005-06). The General Assembly began appropriating to the CMTF again in FY 2012-13 largely to help build a cash-based TABOR emergency reserve. In recent years the CMTF has not been a functional source of revenue for controlled maintenance.

Disaster Emergency Fund: Pursuant to Section 24-33.5-706, C.R.S., the Disaster Emergency Fund (DEF) is comprised of: (1) moneys appropriated by the General Assembly; (2) moneys transferred to the Fund from other appropriations, if the Governor, with the concurrence of the Disaster Emergency Council, determines that amounts in the DEF are insufficient to cope with a particular disaster; and (3) moneys to reimburse the Fund transmitted to the State Treasurer (e.g., federal disaster reimbursements). As noted above, the Governor has used the authority in this statute to transfer all moneys previously appropriated to the CMTF to the DEF.

The Disaster Emergency Fund statute also provides that if the DEF is credited with reimbursements of moneys previously expended to cope with a disaster, the Governor may transfer moneys to funds to repay amounts originally transferred to the DEF.

Reminder – Statutory Change Options: As discussed during the Capital Construction briefing presentation on November 7, 2013, the Committee could choose to impose some limits on the Governor’s flexibility under the current Disaster Emergency Fund statute. For example:

- OLLS staff have noted that the General Assembly could choose to put some moneys off-limits for transfers, such as Medicaid appropriations (which have overexpenditure authority).
- The General Assembly could also choose to create a new program in statute for funding local agencies for disasters, make associated appropriations, and thus impose certain limits on the proposed new program for providing flood-relief.

The Committee has thus far appeared to have little interest in such options. However, if it were interested, it might make sense to include any large new appropriations for the CMTF and DEF in such substantive legislation to avoid the threat of veto.
