

# MEMORANDUM



## JOINT BUDGET COMMITTEE

TO Joint Budget Committee  
FROM Craig Harper, JBC Staff Director (303-866-3481)  
DATE March 20, 2024  
SUBJECT Designation of State Emergency Reserve Assets for FY 2024-25

**This memorandum includes recommendations and information for the Joint Budget Committee (JBC) to take action to designate assets to constitute the State Emergency Reserve for FY 2024-25.** Yesterday, the JBC approved staff recommended changes to the “headnotes” contained in section one of the 2024 Long Bill. The headnotes include 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”). The Committee approved staff’s recommendation to continue designating the SER in the Long Bill headnotes, but has not yet acted on the specific assets or amounts to include in this section.

### STAFF RECOMMENDATION

**For FY 2024-25, staff recommends an SER of \$574.0 million based on the March 2024 revenue forecasts from Legislative Council Staff and the Office of State Planning and Budgeting (OSPB). The specific amounts and assets recommended by staff are listed in Table 1.** Staff is offering two broad options:

- *No Capital Assets:* Staff recommends that the Committee continue the current practice of designating cash assets only (and not capital assets). In collaboration with the Governor’s Office, staff has identified \$533.0 million in available cash assets spread among multiple cash funds (see Table 1). That amount leaves a “gap” of \$41.0 million below the required reserve amount. To maintain an entirely cash reserve, the Committee could consider General Fund (as a transfer to the State Emergency Reserve Cash Fund). In addition, the Committee could designate \$16.5 million currently projected to remain in the Controlled Maintenance Trust Fund as part of the reserve (which would then require a transfer of \$25.0 million General Fund).

TABLE 1 DESIGNATED STATE EMERGENCY RESERVE - CASH ASSETS		
	FY 2023-24 DESIGNATION	FY 2024-25 DESIGNATION
<b>Cash Assets:</b>		
Disaster Emergency Fund	\$44,000,000	\$133,000,000
State Emergency Reserve Cash Fund	266,600,000	202,000,000
Marijuana Tax Cash Fund	100,000,000	100,000,000
Controlled Maintenance Trust Fund	69,400,000	0
Unclaimed Property Tourism Promotion Trust Fund	5,000,000	5,000,000
Major Medical Insurance Fund	25,000,000	25,000,000
Colorado Water Conservation Board Perpetual Base Fund	0	35,000,000
Colorado Water Conservation Board Construction Fund	33,000,000	33,000,000
<b>Total</b>	<b>\$543,000,000</b>	<b>\$533,000,000</b>

- *Capital Asset Scenario:* The Governor’s Office has officially proposed including \$29.0 million of the value of the State Services building (1525 Sherman St.) in the emergency reserve. Combined with \$12.0 million of the Controlled Maintenance Trust Fund amount discussed above (or \$12.0 million

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General Fund) that would complete the emergency reserve. In further consultation with JBC Staff, the Governor's Office has offered inclusion of the Merrick Parking Garage (estimated value of \$12.0 million). The combination of the \$29.0 million associated with State Services and \$12.0 million for the parking garage would eliminate the need for additional cash in the reserve beyond the amounts identified in Table 1. Table 2 summarizes the option if the Committee elects to use \$41.0 million of "hard assets" in the reserve for FY 2024-25.

TABLE 2 DESIGNATED STATE EMERGENCY RESERVE – HARD ASSET SCENARIO		
	FY 2023-24 DESIGNATION	FY 2024-25 DESIGNATION
<b>Cash Assets:</b>		
Disaster Emergency Fund	\$44,000,000	\$133,000,000
State Emergency Reserve Cash Fund	266,600,000	202,000,000
Marijuana Tax Cash Fund	100,000,000	100,000,000
Controlled Maintenance Trust Fund	69,400,000	0
Unclaimed Property Tourism Promotion Trust Fund	5,000,000	5,000,000
Major Medical Insurance Fund	25,000,000	25,000,000
Colorado Water Conservation Board Perpetual Base Fund	0	35,000,000
Colorado Water Conservation Board Construction Fund	33,000,000	33,000,000
<b>Total</b>	<b>\$543,000,000</b>	<b>\$533,000,000</b>
<b>Capital Assets: State Properties up to:</b>	<b>\$0</b>	<b>\$41,000,000</b>
<i>Value of State Properties Listed in Headnote:</i>		
<i>State Parking Garage (1350 Lincoln Street, Denver)</i>	<i>\$0</i>	<i>\$12,000,000</i>
<i>State Services Building (1525 Sherman Street, Denver)</i>	<i>0</i>	<i>29,000,000</i>
<b>Subtotal</b>	<b>\$0</b>	<b>\$41,000,000</b>
<b>TOTAL</b>	<b>\$543,000,000</b>	<b>\$574,000,000</b>

## CONSIDERATIONS

While the scenarios for FY 2024-25 may not require a transfer to the State Emergency Reserve Cash Fund, staff continues to recommend that the plan to make annual transfers for three reasons:

- **Growing Reserve Requirement.** The size of the reserve will increase over time as state revenues increase. Based on the March 2024 economic and revenue forecasts, the reserve needs to increase by \$31.0 million for FY 2024-25, and by another \$21.0 million for FY 2025-26.
- **Transfers Out Need to Be Replenished.** When the Governor transfers money out of the designated cash funds to pay for disaster emergency-related expenses, only a portion of those funds are reimbursed back to the original cash fund. Thus, additional cash assets are needed to backfill these annual transfers.
- **One Existing Cash Asset is Time-limited and Can Affect TABOR Refunds.** The Major Medical Fund currently constitutes \$25.0 million of the SER. The source of revenue for this fund is a surcharge assessed to insurance carriers and self-insured employers. The amount designated from this fund will need to decrease over time to ensure that the Department of Labor and Employment is able to make payments to eligible injured workers (546 are currently eligible) without imposing a workers' compensation premium surcharge. Any money remaining in this fund

when the last of the liabilities have been paid will revert to the General Fund. The Department currently estimates that this will occur in 2046.

## 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

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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.

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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.

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 Controlled Maintenance Trust Fund.
- In all other fiscal years, the SER has included amounts in multiple cash funds.
- Since FY 2003-04, the SER has also often included capital assets. In all but one fiscal year these assets have comprised less than 40.0 percent of the SER.