

# MEMORANDUM



## JOINT BUDGET COMMITTEE

TO Joint Budget Committee  
FROM Carolyn Kampman, JBC Staff Director (303-866-4959)  
DATE March 17, 2023  
SUBJECT Designation of State Emergency Reserve Assets for FY 2023-24

**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 2023-24.** Yesterday, the JBC approved staff recommended changes to the “headnotes” contained in section one of the 2023 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 2023-24, staff recommends an SER of \$543.0 million based on the March 2023 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.**

	FY 2022-23 DESIGNATION	FY 2023-23 RECOMMENDATION
<b>Cash Assets:</b>		
Disaster Emergency Fund	\$66,000,000	\$44,000,000
State Emergency Reserve Cash Fund	232,200,000	286,600,000
Marijuana Tax Cash Fund	100,000,000	100,000,000
Controlled Maintenance Trust Fund	38,800,000	49,400,000
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 Construction Fund	33,000,000	33,000,000
<b>Total</b>	<b>\$500,000,000</b>	<b>\$543,000,000</b>

### Staff recommends the following actions:

- Continue the current practice of designating cash assets only (no capital assets).
- Decrease by \$22.0 million 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, 2023.
- Maintain existing designations for the following cash funds:
  - Marijuana Tax Cash Fund (\$100.0 million)
  - Unclaimed Property Tourism Promotion Trust Fund (\$5.0 million)
  - Major Medical Insurance Fund (\$25.0 million)
  - Colorado Water Conservation Board Construction Fund (\$33.0 million)
- Increase the designation for the Controlled Maintenance Trust Fund from \$38.8 million to \$49.4 million.

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- Increase the designation for the State Emergency Reserve Cash Fund to an amount sufficient to constitute a total reserve of \$543.0 million<sup>1</sup>, and sponsor legislation to transfer to the State Emergency Reserve Cash Fund:
  - \$40.0 million from the General Fund; and
  - \$10.0 million from the Revenue Loss Restoration Fund (an amount that originated as General Fund)<sup>2</sup>.

Background information concerning the TABOR reserve requirement and the cash funds listed above is included at the end of this memo.

#### CONSIDERATIONS

**The General Assembly should plan to transfer additional General Fund into the State Emergency Reserve Cash Fund annually for three reasons:**

- **Growing Reserve Requirement.** The size of the reserve will increase over time as state revenues increase. Based on the March 2023 economic and revenue forecasts, the reserve needs to increase by \$43.0 million for FY 2023-24, and by another \$31.0 million for FY 2024-25.
- **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.

#### OTHER OPTIONS TO CONSIDER

**If the Committee does not choose to sponsor legislation as recommended above, or does not choose to transfer the full recommended \$50.0 million, staff recommends increasing the designation for the Controlled Maintenance Trust Fund (CMTF).**

This fund currently has a balance of \$111.9 million. House Bill 22-1340 (the JBC's annual capital transfer bill) transferred \$110.0 million from the General Fund to the CMTF on July 1, 2021. Staff is uncertain about the policy goal(s) of this transfer. Please note that if the General Assembly intends for the CMTF to make funds available for controlled maintenance needs during an economic

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<sup>1</sup> The TABOR Reserve Requirement is identified on page 24 of the Legislative Council Staff March 2023 *Economic and Revenue Forecast* (\$542.2 million) and on page 73 of the OSPB March 2023 *Colorado Economic & Fiscal Outlook* (\$542.7 million).

<sup>2</sup> House Bill 22-1411 included a number of transfers related to the Federal Coronavirus State Fiscal Recovery Fund, including a \$10.0 million General Fund transfer to the Revenue Loss Restoration Cash Fund. This amount appears to have initially been transferred into the Economic Recovery and Relief Cash Fund. [Section 24-75-228 (3.7), C.R.S.] This amount remains available for appropriation or transfer.

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downturn, designating money in this fund as part of the SER is an effective way of ensuring it is not used for other purposes prior to a downturn. However, when the General Assembly chooses to use this fund to pay for controlled maintenance projects during an economic downturn, it would also need to identify one more other assets for the SER.

## STAFF ASSUMPTIONS AND CALCULATIONS

Tables 2, 3, and 4 provide calculations related to the State Emergency Reserve Cash Fund.

TABLE 2 STATE EMERGENCY RESERVE CASH FUND CALCULATION OF AVAILABLE FUND BALANCE	
Fund established by S.B. 21-227	\$0
<b><i>Transfers and Appropriations to the Fund</i></b>	
Transfer from the General Fund (6/30/2021)	101,000,000
Transfer from the Controlled Maintenance Trust Fund (6/30/2021)	<u>100,000,000</u>
Subtotal	<b>201,000,000</b>
<b><i>Transfers Related to Disasters</i></b>	
Transfers out pursuant to Executive Orders	
<u>FY 2021-22</u>	
D2021 141	(84,720,784)
D2022 004	(40,431,226)
D2022 012	10,000,000
D2022 024	(1,835,000)
D 2022 029	(291,006)
D2022 030	<u>(810,000)</u>
Subtotal	<b>(118,088,016)</b>
<u>FY 2022-23</u>	
D2022 022	(1,000,000)
D2023 002	<u>(120,000)</u>
Subtotal	<b>(1,120,000)</b>
Reimbursements for prior expenditures or transfers pursuant to Section 24-77-104(7), C.R.S.	
FY 2021-22	0
FY 2022-23 (as of March 1, 2023)	<u>10,871,449</u>
Subtotal	<b>10,871,449</b>
<b><i>Interest Income</i></b>	
Interest and income derived from the Fund balance (subject to TABOR)	
FY 2021-22	1,675,167
FY 2022-23 (as of March 1, 2023)	<u>1,787,330</u>
Subtotal	<b>3,462,497</b>
Interest and income derived from money originating from the federal Coronavirus State Fiscal Recovery Fund pursuant to Section 24-75-226 (4)(c)(II), C.R.S. (Exempt from TABOR)	
Interest accrued for FY 2020-21, credited in FY 2022-23	
FY 2021-22	3,017,064
FY 2021-22	34,114,380
FY 2022-23 (through January 2023)	<u>28,273,947</u>
Subtotal	<b>65,405,391</b>
<b>Fund Balance (3/1/23)</b>	<b>\$161,531,321</b>

TABLE 3 STATE EMERGENCY RESERVE CASH FUND CALCULATION OF AVAILABLE FUND BALANCE	
Fund Balance as of March 1, 2023	\$161,531,321
<i>Expenditures and Transfers Related to Disasters</i>	
Transfers out related to disasters (3/1/23 - 6/30/23)	0
Estimated reimbursements for prior expenditures or transfers pursuant to Section 24-77-104(7), C.R.S. (OSPB estimate)	59,222,863
<i>Interest Income</i>	
Interest and income derived from the Fund balance (subject to TABOR)	
Estimated interest earned 3/1/23 - 6/30/23	1,415,748
Interest and income derived from money originating from the federal Coronavirus State Fiscal Recovery Fund pursuant to Section 24-75-226 (4)(c)(II), C.R.S. (Exempt from TABOR)	
Estimated interest earned 3/1/23 - 6/30/23	14,447,015
<b>Estimated Fund Balance (June 30, 2023)</b>	<b>\$236,616,947</b>

TABLE 4 STATE EMERGENCY RESERVE CASH FUND CALCULATION OF NEEDED TRANSFERS	
Fund balance needed for State Emergency Reserve	\$286,600,000
Less: Estimated Fund Balance as of June 30, 2023	236,600,000
<b>Required Transfer Into Fund</b>	<b>\$50,000,000</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>3</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

<sup>3</sup> See Section 20 (5) of Article X of the Colorado Constitution and Section 24-77-104, C.R.S.

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.

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 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>4</sup>. This fund was first designated as part of the SER in FY 2021-22.

**Controlled Maintenance Trust Fund** [Section 24-75-302.5 (2)(a), C.R.S.]

This fund was established in 1993 to provide a “stable, predictable, and consistent source of revenues for controlled maintenance projects”. The principal of the trust fund “shall not be expended or appropriated for any purpose other than use as part of the state emergency reserve”. The General Assembly has periodically modified this provision to allow the fund principal to be appropriated for controlled maintenance, and to authorize multiple transfers between the General Fund and this fund. Prior to FY 2021-22, the General Assembly typically transferred General Fund into this fund to increase the cash assets designated for the SER.

**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.

**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 546 open claims, and benefit payments are projected to continue through 2046. 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.

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<sup>4</sup> See Section 39-28.8-501 (2)(b)(IV), C.R.S. for a list of allowable purposes.

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.

Prior to FY 2022-23, the designation for this fund was significantly higher (\$59.0 million for FY 2021-22). If the designation is too high, the Department increases the premium surcharge to cover both the required program reserve and 12 months of operating expenses. For FY 2022-23, the General Assembly reduced this designation to \$25.0 million, which allowed the Department to eliminate the existing related premium surcharge of 0.1 percent, effective July 1, 2022. That surcharge reduction was anticipated to reduce related revenues for FY 2022-23 by \$1,364,724. As state revenues are projected to exceed the TABOR limit, this action reduced the projected TABOR refund by the same amount.

**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.