

# **Fiscal Stability Commission**

## **2009 Report to Legislative Council**

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# Fiscal Stability Commission

## **Commission Charge**

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Pursuant to Senate Joint Resolution 09-044, the Fiscal Stability Commission is charged with studying the fiscal stability of the state, including but not limited to:

- solutions for higher education and transportation funding;
- affordable access to health care;
- kindergarten through twelfth grade education;
- state-owned assets; and
- the creation and adequate funding of a state rainy day fund.

The commission is also charged with developing a strategic plan for state fiscal stability that may be amended yearly to reflect existing economic realities and to consider other needed issues.

## **Commission Activities**

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The Fiscal Stability Commission held 11 meetings during the 2009 interim. The meetings focused on Colorado's revenue structure, fiscal policies in the state constitution, services provided by state government, and the cost drivers and budgets of major state programs. The commission heard testimony and presentations by legislative staff, regional economists, university spokespersons, representatives of state agencies and local governments, economic development organizations, businesses, educational institutions, trade groups, environmental groups, and other interested parties.

The commission's first meetings were devoted to providing the members with a broad overview of the state's budget issues from a variety of perspectives. Following these first sessions, the commission spent two meetings engaged in round-table dialogues discussing the core values the members shared regarding the characteristics of an ideal state in which to live, the vision it had for Colorado's future, and the role of government in this future.

At subsequent meetings, the commission focused in greater detail on the state's core programs. The commission engaged department staff with the following three questions:

- What is the department's current funding level and what consequences, if any, have there been to the department's mission as a result of budget cuts?
- What minimum funding level is needed to maintain the department's current level of services?
- What is the "ideal" funding level needed to provide the highest quality services for the people of Colorado?

The funding levels developed by the commission as a result of these discussions follow. At their final meetings, the commission reviewed commonly discussed themes and members discussed their views of the state's fiscal stability issues and possible solutions. The commission chair noted that the commission's broad work would serve as a foundation for further discussion

across the state that could ultimately lead to measures that would ensure the state's long-term fiscal stability.

The commission heard testimony on the volatility of the state revenue structure and the benefits of creating a rainy day fund. As a result of this testimony, the commission recommended Bill B, which replaces the current General Fund reserve with a Budget Stabilization Reserve Fund and that gradually increases the fund level over time to 15 percent of General Fund appropriations. Under current law, the General Fund reserve is scheduled to increase from 4.0 percent in FY 2012-13 to 6.5 percent by FY 2016-17, subject to a trigger on personal income growth in Colorado. Because of the current budget shortfall, the reserve is temporarily equal to 2.0 percent of General Fund appropriations.

The commission heard testimony on a wide spectrum of opinions related to the state's tax structure and constitutional fiscal policies. A spokesperson from the University of Denver noted that it has been 50 years since a comprehensive tax study was completed in Colorado. As a result of this testimony, the commission recommends two resolutions. Concurrent Resolution D refers a measure to the voters asking for the creation of a commission charged with reviewing the state's constitutional fiscal policies and empowered to refer constitutional measures to the ballot. Joint Resolution E requests a comprehensive study of the state's revenue structure and fiscal policies.

The commission discussed the potential for public agencies to partner with the private and nonprofit sectors to increase efficiencies in state programs. As a result, the commission recommends Bill C, which permits state agencies to consider proposals for "public-private initiatives," or agreements between a state agency and a nonprofit organization.

The following paragraphs describe commission discussions and recommendations related to major state programs.

**Transportation.** The commission received testimony from private citizens, representatives of local governments, and the Department of Transportation on issues related to transportation construction, historical transportation revenue and spending, the current budget outlook, and future transportation-related revenue and spending needs. The commission discussed potential new or expanded transportation revenue sources including a gas tax increase, bonding, fees for vehicle miles traveled, tolling, and leveraging public-private partnerships.

The current department budget for FY 2009-10 totals \$973.5 million. Department representatives noted that to maintain the current transportation system, the annual funding need is \$1.5 billion. Based on the recommendations of the Governor's Blue Ribbon Panel on Transportation Finance and Implementation, "ideal" transportation funding is \$2.5 billion annually. This amount could fund transportation infrastructure consistent with the panel's vision for 2050.

**Capital construction.** The commission heard testimony about capital construction and controlled maintenance for state-owned facilities from legislative staff, the chair of the Capital Development Committee, and the Colorado State Architect. The commission was presented with a five-year funding history for capital construction and controlled maintenance, and a brief history of revenue available for capital projects. Staff explained that there is presently no significant, dedicated funding stream for future capital projects.

The commission considered a recommendation made by the Office of the State Architect that between 2 and 4 percent, or \$152.4 million to \$304.8 million, of the current replacement value of the state's existing General Fund building inventory be appropriated annually to maintain and

improve facilities. The commission also heard testimony about annual lease payments for certificates of participation (COP), another area of capital need.

The current level of state funding for capital construction totals \$75.1 million. An "ideal" funding level of \$834 million, including about \$353 million in cash funds, would allow the state to fund annual COP payments, the full 4 percent of the current replacement value of all General Fund buildings to maintain and improve the state's existing inventory, and newly requested facilities and information technology upgrades for state departments and higher education institutions.

**K-12 education.** Representatives from educational organizations, private citizens, and the Colorado Department of Education (CDE) provided testimony regarding K-12 education in Colorado. The commission reviewed educational outcomes and performance measures, existing programs, and the school finance funding structure. The discussion focused on whether available resources were adequate to educate all students at the expected proficiency level. CDE discussed options to offer more high-outcome programs by eliminating less efficient programs and testified that the state's current tax structure falls short of supporting all public education programs.

K-12 education was appropriated \$8.2 billion in FY 2009-10 from state, local, and federal sources. State General Fund appropriations total \$3.2 billion. An additional \$1.2 billion is required to bring school funding up to the national average, while the "ideal" educational system would require \$2.8 billion more than current funding levels, according to CDE. Among other things, the ideal educational system would fund teacher salaries at the national average, fund a concurrent high school and community college enrollment program, and provide full-day kindergarten at all schools and half-day preschool to all four-year-old children.

**Judicial.** The commission was provided an overview of the Judicial Department, which oversees the state's court system, administers the state probation system, and houses three independent agencies: the Public Defender's Office, the Office of Alternate Defense Counsel, and the Office of the Child's Representative. The department discussed recently implemented programs and efficiencies. The department emphasized the difficulty it has making budget cuts as 88 percent of its budget is personnel. Therefore, furlough days or staff reductions are the only option when faced with budget cuts.

For FY 2009-10, the Judicial Department was appropriated \$451 million, with \$336 million coming from the General Fund. According to the department, about \$46 million additional dollars, or about \$497 million in total, is needed to restore recent cuts, address the current backlog in cases, and provide quality service. "Ideally," the department requires total funding of \$535 million, which would help enable it to create a rainy day fund to address future budget shortfalls. Currently, there are 216 vacant positions in the department.

**Higher education.** Private citizens and representatives from the Colorado Commission on Higher Education (CCHE), the Department of Higher Education, and the state's institutions of higher education addressed the commission. Discussion focused on the current funding and governance structures for higher education. Information on degree programs, enrollment, graduation rates, and the ethnic minority gap in post-secondary educational attainment was also presented.

The commission discussed several proposals to give schools flexibility to respond to recent General Fund budget cuts, including privatization and granting institutions more control over tuition, financial aid, negotiation of capital projects, and the ratio of resident, non-resident, and international enrollment. As a result, the commission recommends Bill A, which would grant higher education

institutions greater flexibility in many areas relating to their operations and administration. Institutions would be granted more control over formulating articulation agreements between institutions, the ratio of foreign to resident students enrolled at their schools, the distribution of financial aid, accounting and information technology procedures, and the maintenance and construction of infrastructure.

The FY 2009-10 total budget for the department is \$2.8 billion, of which \$661 million is appropriated from the General Fund. Because of the current budget situation, the Governor has allocated money from the American Recovery and Reinvestment Act (ARRA) to higher education. This amount is currently expected to be \$231 million and could go as high as \$377 million. In order to maintain the current level of services in the future, it is estimated higher education will require additional revenue equal to the amount of dollars supplied by ARRA. For an "ideal" budget, the department indicated it would require an additional \$750 million over current funding levels.

**Corrections.** The Department of Corrections briefed the commission on its services and budget. The department's main budget drivers include inmate and parole population growth, changes to criminal laws, and capacity issues. Currently, the department has 23,000 inmates, operates 22 state facilities, and contracts with 5 private facilities. Pilot projects to evaluate individuals released from parole and to expedite release to parole were a focus of the discussions.

The department's FY 2009-10 budget is approximately \$761 million, of which \$678 million is from the General Fund. An additional \$67 million is needed to maintain the department's current level of services, for a total of \$828 million. An "ideal" scenario for the department would include an additional \$198 million for a total budget of \$959 million. This amount would fully fund most of the department's programs, including mental health and educational programs.

**Health care.** Private citizens and representatives from the Department of Health Care Policy and Financing (DHCPF) testified about health care in the state. DHCPF focused on a historical review of Medicaid and programs administered by the department that provide health insurance coverage to eligible populations. Medicaid funding is shared equally between the state and the federal government. Currently, enhanced federal assistance from ARRA is supplementing the state's share of Medicaid costs.

Data concerning the health status of Coloradans and of the state's poorest citizens was provided. DHCPF representatives suggested several reforms including improved enrollment procedures to insure more eligible citizens, implementation of managed care models for health care delivery, and increased accountability for health care providers.

The department reported that its FY 2009-10 funding totals \$4.0 billion, of which \$1.5 billion is appropriated from the General Fund. An additional \$200 million would allow the department to keep pace with caseload, increase provider rates, and fund understaffed priorities. An additional \$2.5 billion would permit the department to implement numerous "ideal" reforms, including enhancing enrollment structures to insure more clients through Medicaid and the Children's Basic Health Plan, establishing managed care models of health care delivery, and expanding waiver programs.

**Human services.** Department of Human Services' staff reviewed the services it offers and how the services are funded. Commission members discussed the administration of the department and ways to maximize efficiencies, such as through coordinating services with community partners and other state departments. The impact of preventative programs was also discussed.

The department reported that its FY 2009-10 funding totals \$2.2 billion, including \$661 million from the General Fund. The department noted an "ideal" funding level of close to \$3.0 billion would allow it to eliminate waiting lists for services and expand preventative programs.

## **Strategic Plan**

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Senate Joint Resolution 09-044 required the commission to develop a strategic plan for state fiscal stability. The commission's recommended legislation, discussed in the next section, will serve as its strategic plan. Most notably, the commission decided that in order to best address the complex issues under its charge, further study involving more in-depth discussion and analysis of the state's revenue structure and fiscal policies was necessary. Thus, part of its strategic plan is to introduce resolutions requesting completion of a comprehensive tax study of the state revenue system and the creation of a commission to review fiscal policy in the state constitution.

**Dissenting opinion.** Senate Joint Resolution 09-044 requires staff, upon request by a member of the commission, to include a summary of dissenting opinions to the strategic plan adopted by the commission. In a prepared statement to staff, minority members of the commission expressed disappointment that the commission failed to develop a plan for long-term fiscal stability. Minority commissioners were concerned the commission instead focused on the expansion of government spending. They expressed disagreement with the creation of an unelected commission empowered to refer constitutional amendments to the voters and indicated that it could result in the further expansion of government. Despite bipartisan effort on much of the commission's work, minority commissioners also expressed disappointment in the breakdown of bipartisan support for minority proposals, especially on a bill to create a rainy day fund.

## **Commission Recommendations**

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As a result of the commission's discussion and deliberations, it recommends 3 bills, a concurrent resolution, and a joint resolution for consideration in the 2009 legislative session.

**Bill A — Higher Education Flexibility.** This bill makes several changes to state law concerning state institutions of higher education.

*Articulation agreements.* On or before January 1, 2011, this bill requires that the Council for a Common Course Number System (council), in cooperation with the state institutions of higher education, develop statewide articulation agreements for five common degree programs. Such agreements guarantee that a student who receives an associate's degree from a two-year school in a degree program with an articulation agreement may enroll with junior status at a four-year school. The council and the schools must develop additional agreements following the 2011 deadline.

*Foreign students.* Under current law, 55 percent of incoming freshman and 66 percent of all students must be resident students. If a school continues to admit all resident first-time freshman applicants who meet admissions criteria, the school is permitted to exclude foreign students from the calculation of non-resident students.

*Financial aid.* Current law requires that the Colorado Commission of Higher Education (CCHE) annually determine the amount of financial aid for each institution, but the bill permits the

schools to administer the programs and distribute the aid according to their own policies and procedures.

*State fiscal rules.* The bill permits state institutions to adopt their own fiscal procedures and to be exempt from the fiscal rules of the state controller.

*IT rules.* The bill permits state institutions to adopt their own information technology rules and procedures and to be exempt from technology rules of the state chief information security officer.

*Financial reporting.* When schools are required to provide financial data to a state entity, the school must provide audited financial statements.

*Capital construction.* Under current law, state institutions must have capital construction projects reviewed and authorized by the General Assembly. This bill allows the schools to construct buildings without approval, although the schools must notify both the CCHE and the Capital Development Committee of each of their capital construction projects.

**Bill B — Create Budget Stabilization Reserve Fund.** This bill replaces the General Fund Reserve with a State Budget Stabilization Reserve Fund (rainy day fund) in the State Treasury. Under current law, the General Fund reserve will gradually increase by 0.5 percent a year over a five-year period beginning in FY 2012-13 from 4.0 percent of General Fund appropriations to 6.5 percent, assuming a trigger based on Colorado personal income growth is met. Under Bill B, these increases would occur in the newly-created State Budget Stabilization Reserve Fund. Once the fund reaches 6.5 percent, the bill requires that the fund increase 1.0 percent each year until the fund is equal to 15 percent of General Fund appropriations. All interest and income generated by the fund is required to remain in the fund.

Should a budget shortfall occur, current law requires the Governor to formulate a plan to balance the budget after the fund has been drawn down to half of its value. Bill B requires the Governor to take action after the fund has been drawn down by a third of its value during any year in which the fund originally totaled more than 4.0 percent of General Fund appropriations.

**Bill C — Expand Public Private Initiatives.** This bill permits state agencies to consider proposals for "public-private initiatives," or agreements between a state agency and a private, nonprofit organization. Such agreements may include:

- the acceptance of a nonprofit contribution in exchange for an agency grant of a right or interest in an agency project;
- sharing resources and the means of providing projects or services; or
- cooperation in researching, developing, and implementing projects or services.

The bill specifies the requirements for considering, evaluating, and accepting an unsolicited proposal for a public-private initiative received by a state agency from a private, nonprofit agency. If a state agency is able to achieve cost-savings in a fiscal year through the initiative, that agency is eligible to retain a portion of the savings resulting from the agreement.

**Concurrent Resolution D — Fiscal Policy Constitutional Commission.** This concurrent resolution refers a question to voters to create a 19-member Fiscal Policy Constitutional Commission for the purpose of reviewing the fiscal policy in the state constitution and, if it believes it appropriate, submitting one or more measures to the voters to amend the state constitution at the 2012 general election. A measure to amend the state constitution may be submitted only if

the measure relates to fiscal policy, the commission conducts public meetings in each congressional district in the state, and the measure is approved by a majority of the commission members. Measures may include more than one subject and all measures must be published in the 2012 ballot information booklet ("blue book") and session laws.

Commission members will be appointed by representatives from the legislative, executive, and judicial branches of state government for a term just over one year long. Members of the General Assembly and statewide officeholders are not eligible to serve on the commission. However, the General Assembly must hold public hearings on any measure developed by the commission and make a recommendation to voters on whether to approve or reject the measure. The General Assembly will not be able to alter the measure.

**Joint Resolution E — Request for Comprehensive Tax Study.** This joint resolution requests that a comprehensive tax study on the state's tax and fiscal policies be conducted by the University of Denver and be funded by the private sector. The study is required to consider several aspects of the state's tax structure and policies, such as the distribution of the tax burden among taxpayers and the state and local governments, how the tax system affects the economy, recommendations for tax policy to ensure adequate financing for public services, and revenue and spending limits. The study is not limited to consideration of only the issues outlined in the resolution. The resolution requests that the study be provided to the General Assembly in January 2011.