

CAPITAL CONSTRUCTION

Budget Balancing

Senate Bill 09-279 (Enacted)
*Cash Fund Transfers Augments
General Fund*

Senate Bill 09-280 (Enacted)
*Supplemental Appropriations
Capital Construction*

Senate Bill 09-208 (Enacted)
*Augment FY 2008-09 General
Fund Revenues*

House Bill 09-1154 (Postponed Indefinitely)
*Eliminate Reductions in Senate Bill 97-1
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Senate Bill 09-278 (Enacted)
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Senate Bill 09-043 (Enacted)
*San Juan Community College
Merger*

Senate Bill 09-086 (Enacted)
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House Bill 09-1333 (Enacted)
State Historical Fund Museum Transfers

House Bill 09-1272 (Enacted)
*Limited Gaming Amendment
50 Community College
Funding*

A number of the bills considered by the General Assembly during the 2009 legislative session affected capital construction and the duties of the Capital Development Committee (CDC).

Budget Balancing

The economic recession created a state budget shortfall for FY 2008-09 and FY 2009-10, leading the General Assembly to consider a number of budget balancing bills during the 2009 session. These bills affected funding for both past and future capital construction and controlled maintenance.

Cash fund transfers. Senate Bill 09-279 authorizes the transfer of \$28.1 million from the Capital Construction Fund and \$0.1 million from the Controlled Maintenance Trust Fund on July 1, 2009, in order to augment state General Fund revenue for FY 2008-09 through FY 2010-11. The moneys transferred from the Capital Construction Fund were reverted to the fund pursuant to **Senate Bill 09-280** from 61 prior years' capital construction projects that were frozen by the Governor. The combined impact of the 61 frozen projects is a reversion of \$85.4 million state funds to the Capital Construction Fund. Of the \$85.4 million state funds reverted to the Capital Construction Fund, \$28.1 million was transferred to the General Fund for budget balancing purposes, and \$57.3 million was made available for FY 2009-10 capital construction and controlled maintenance projects.

Another bill, **Senate Bill 09-208**, transfers money from 38 different cash funds to augment General Fund revenue in order to help address the state's budget shortfall. The bill transfers up to \$33.7 million from the Higher Education Federal Mineral Lease Maintenance and Reserve Fund to the General Fund, to be used toward FY 2009-10 operating expenses for higher education institutions. The Higher Education Federal Mineral Lease Maintenance and Reserve Fund earns revenue primarily from one-time "bonus" payments made by mineral and gas companies to lease federal lands for mineral development. The principal of the fund cannot be transferred or appropriated, unless there is insufficient General Fund revenue for a 4 percent reserve, in which case the legislature can authorize the expenditure of the principal for higher education operating expenses, which occurred during the 2009 session.

Changes to existing transfer of excess General Fund reserve for capital construction. Under current law, up to 10.355 percent of sales and use tax revenue is diverted to the Highway Users Tax Fund annually after General Fund appropriations have increased by 6 percent over the prior fiscal year and a 4 percent reserve has been fully funded. Pursuant to House Bill 02-1310, any remaining excess General Fund reserves are then transferred two-thirds to highways and one-third to capital construction. **House Bill 09-1154**, which was postponed indefinitely, would have mandated the transfer of 10.355 percent of sales and use tax to the Highway Users Tax Fund regardless of the amount of available revenue in the General Fund. Over time, this could have increased the amount of General Fund excess reserves available for highways and capital construction because it would have triggered a reduction in General Fund appropriations pursuant to existing laws limiting the growth of the state budget.

Senate Bill 09-228 repeals the 6 percent growth limit in General Fund appropriations from one fiscal year to the next, and sets the growth limit equal to 5 percent of Colorado personal income. Senate Bill 09-228 also repeals the automatic House Bill 02-1310 transfer. Another bill, **Senate Bill 09-278**, also repeals the House Bill 02-1310 transfer, but only for FY 2008-09 and FY 2009-10. In lieu of the House Bill 02-1310 transfer, Senate Bill 09-228 sets a five-year statutory transfer from the General Fund to the Capital Construction Fund. The statutory transfer for capital construction begins in FY 2012-13, provided Colorado personal income increases by 5 percent or more. If personal income increases by less than 5 percent, the entire five-year block of transfers is postponed until the first fiscal year in which personal income increases by at least 5 percent during the calendar year in which the fiscal year originated. According to the fiscal note, the scheduled transfer to the Capital Construction Fund may total between \$369 million and \$439 million for the five-year period. The scheduled transfer to the Capital Construction Fund is 0.5 percent of General Fund revenue in FY 2012-13 and FY 2013-14, or between \$42 million and \$47 million per year, and 1.0 percent in FY 2014-15 through FY 2016-17, or between \$95 million to \$115 million per year.

Capital Construction Projects

Spending on capital construction. **Senate Bill 09-259** (the Long Bill) provides funding for FY 2009-10 for 89 capital construction and controlled maintenance projects totaling \$442.3 million, including \$50.7 million in state funds, and \$391.6 million in cash and federal funds. The bill funds 3 certificates of participation payments, 3 state-funded capital construction projects, 35 state-funded controlled maintenance projects, and 48 cash projects. Senate Bill 09-280 makes supplemental capital construction appropriations for 15 projects, including 2 requests for extensions of time only, and 2 requests to amend information about the source of cash funds listed in the 2008 Long Bill. The combined impact of the 15 supplemental requests from all funding sources is \$60.5 million in cash and federal funds. No state-funded supplemental appropriations for capital construction were funded during the 2009 session for any prior fiscal years.

Figure 1 lists all FY 2009-10 state-funded capital construction projects by agency, including the total state funds and project type.

Figure 1
FY 2009-10 State-Funded Capital Construction by Agency
(Listed in descending order of amount of state funds received in millions)

Agency	Total State Funds	Capital Construction Projects	Controlled Maintenance Projects	Certificates of Participation	Total Projects
State Departments					
Corrections	\$11.6	1	6	1	8
Revenue	\$7.4	1	0	0	1
Military and Veterans Affairs	\$6.5	1	1	0	2
Personnel	\$3.5	0	4	0	4
Human Services	\$3.1	0	4	0	4
Agriculture – Colorado State Fair	\$0.7	0	1	0	1
Colorado Historical Society	\$0.5	0	2	0	2
Public Health and Environment	\$0.2	0	1	0	1
Treasury*	\$0.0	0	0	1	1
State Departments Subtotal	\$33.5	3	19	2	24
Higher Education Institutions					
University of Colorado - Denver	\$5.1	0	0	1	1
Colorado State University	\$2.5	0	3	0	3
University of Colorado - Boulder	\$2.5	0	2	0	2
Pikes Peak Community College	\$1.2	0	1	0	1
Auraria Higher Education Center	\$1.1	0	1	0	1
Arapahoe Community College	\$0.9	0	1	0	1
University of Northern Colorado	\$0.8	0	1	0	1
Trinidad State Junior College	\$0.7	0	2	0	2
Pueblo Community College	\$0.7	0	1	0	1
Colorado School of Mines	\$0.6	0	1	0	1
Red Rocks Community College	\$0.4	0	1	0	1
Western State College	\$0.4	0	1	0	1
Mesa State College	\$0.3	0	1	0	1
Higher Education Institutions Subtotal	\$17.2	0	16	1	17
Total	\$50.7	3	35	3	41

*The Long Bill funded the certificates of participation payment for the Various Higher Education Projects – November 2008 Issue (COP Project) project from cash fund sources; however, the project is categorized as a state-funded project by the CDC and the Joint Budget Committee.

Revenue for capital construction. Moneys for capital construction and controlled maintenance projects approved during the 2009 session were provided by transfers from the General Fund to the Capital Construction Fund, reversions to the Capital Construction Fund from prior years' projects frozen by the Governor, and Capital Construction Fund interest earnings. Senate Bill 09-259 provides \$23.2 million in revenue for FY 2009-10 projects, including \$8.8 million from the Capital Construction Fund balance and interest earnings, and \$14.4 million of excess General Fund reserves transferred to the Capital Construction Fund pursuant to House Bill 02-1310. Senate Bill 09-280 provides \$57.3 million for FY 2009-10 capital construction and controlled maintenance projects from prior years' appropriations frozen by the Governor.

Duties of the Capital Development Committee

House Bill 09-1169 extends the repeal of the Capital Development Committee (CDC) to July 1, 2014. Without a change in law, the CDC was scheduled to sunset on July 1, 2009. Senate Bill 09-228 requires the CDC to develop and make recommendations concerning new methods of financing the state's ongoing capital construction and controlled maintenance needs by January 1, 2016. (See the Budget Balancing section for a more complete discussion of Senate Bill 09-228.)

Changes to reporting requirements and encumbrance deadlines. Two bills considered during the 2009 session clarify reporting requirements to the CDC regarding certain types of projects. **House Bill 09-1168** clarifies the order of approval for real property transactions submitted by the Division of Parks and Outdoor Recreation and the Division of Wildlife. The bill requires that real property transactions be submitted to the CDC after the Wildlife Commission or State Parks Board has approved the transaction, but before the transaction has been finalized. **Senate Bill 09-096** adds language to current law to exempt capital construction projects at institutions of higher education that are funded with federal moneys from the requirement that a contract be executed and encumbered within six months after the date of the appropriation. Pursuant to legislation passed during the 2008 session, capital projects at institutions of higher education that are constructed solely from cash funds held by an institution of higher education are already exempt from the six-month encumbrance deadline.

Legislation Concerning Property Transactions

Changes to existing law regarding property transactions. Under current law, a lease-purchase agreement that costs more than \$50,000 over the length of the lease agreement must be authorized by bill, other than a supplemental appropriations bill or the annual appropriations bill. **House Bill 09-1218** raises the payment threshold for lease-purchase agreements that must be authorized by bill from \$50,000 to \$500,000. It also changes the definition of lease-purchase agreement to conform to the federal definition of capital lease in the Generally Accepted Accounting Principles issued by the Governmental Accounting Standards Board. The responsibility to ascertain whether a lease-purchase agreement conforms to these standards is vested in the Office of the State Controller. The bill does not change the responsibilities of the CDC regarding the review of reports submitted prior to the acquisition of property through a lease-purchase agreement.

Property transactions authorized during the 2009 session. The General Assembly considered and approved several property transactions concerning the sale, lease, and/or purchase of state property during the 2009 session. **Senate Bill 09-056** authorizes the executive director of the Department of Human Services to sell the Trinidad State Nursing Home. **Senate Bill 09-043** authorizes the merger of Pueblo Community College located in Pueblo, and the San Juan Basin Area Vocational School located in Mancos just east of Cortez. The vocational school will be called Southwest Colorado Community College, a division of Pueblo Community College, and will be eligible for state funds for controlled maintenance beginning July 1, 2009. **House Bill 09-1083** authorizes the Department of Personnel and Administration (DPA) to acquire, through lease-purchase, an office warehouse building in Pueblo for continued use by the DPA's Integrated Document Solutions operations. The annual lease-purchase payments will be made from the department's operating budget.

Another bill, **Senate Bill 09-235**, makes changes to existing law regarding the purchase of conservation easements. The CDC is statutorily charged to review and comment on proposed property transactions. The bill prioritizes the expenditure of funds generated from the sale of habitat stamps and wildlife passports to include protecting big game winter range and migration corridors, and acquiring public access to wildlife-related recreation, including fishing, hunting, and wildlife viewing. The bill prohibits the use of habitat stamp fee proceeds for the purchase of a third-party conservation easement unless 15 percent or more of the purchase price comes from a source other than the Division of Wildlife.

Legislation Impacting Higher Education Capital Construction

Changes to laws affecting funding for higher education capital construction. Under current law, auxiliary facilities operated on the campuses of state-funded higher education institutions, such as parking operations or recreation centers, may be designated as enterprises. **House Bill 09-1229** eliminates the automatic expiration of enterprise status for an auxiliary facility so long as the auxiliary facility meets the requirements of an enterprise. An enterprise is defined by the Colorado constitution as a government-owned business that has the authority to issue bonds and receives less than 10 percent of its annual revenues from state and local government grants combined. Under current law, enterprise status must be reauthorized each year, by bill, by the General Assembly. Revenue earned from the operation of auxiliary facilities may be used as a funding source for capital projects on college campuses.

House Bill 09-1272 provides additional revenue to community colleges to supplement existing state funding and gives colleges the authority to issue bonds for capital projects from the new source of revenue. The bill implements Amendment 50, the initiated measure approved by Colorado voters at the November 2008 General Election, and by members of three gaming communities in a separate election, which expands the definition of limited gaming in the state to include the games of roulette and craps and to increase the maximum single bet limit for all games to \$100. The bill directs the Limited Gaming Commission to distribute 78 percent of any new revenue attributable to extended limited gaming to 15 public community colleges, junior colleges, and local district colleges. The bill also distributes new revenue to two-year programs at Mesa State College and Adams State College. The new revenue will be distributed to colleges in proportion to the number of full-time equivalent students enrolled during the previous fiscal year at each college, as reported by the Colorado Commission on Higher Education.

New review process and requirements for higher education institution cash-funded capital construction. The CDC worked with representatives from various higher education institutions throughout the 2009 session to make changes to the review process for cash-funded capital construction projects and to identify what types of cash-funded projects may qualify for future state dollars for controlled maintenance. **Senate Bill 09-290** directs higher education institutions to annually submit two-year projections for all capital projects to be constructed using cash funds, and costing more than \$2 million. The bill directs the CDC to review and approve the two-year projections annually. Any capital project listed and reviewed as part of an institution's two-year projection may commence construction upon approval of an institution's governing board, and without further legislative review, unless it is subject to the higher education revenue bond intercept program. The higher education revenue bond intercept program directs the state treasurer to make payments of principal and/or interest on bonds, on behalf of a state-supported institution of higher education, in the event a higher education institution does not make a scheduled payment. Pursuant to the bill, higher education cash-funded projects can fall into one of four categories, as follows:

1. non-academic buildings that are to be constructed, operated, and maintained solely from cash funds;
2. academic buildings to be constructed from cash funds and operated and maintained from such cash funds, or from state moneys appropriated for such purposes;
3. non-academic buildings subject to the higher education revenue bond intercept program that are to be operated and maintained solely from cash funds; or
4. academic buildings subject to the higher education revenue bond intercept program to be constructed from cash funds and operated and maintained from such cash funds, or from state moneys appropriated for such purposes.

The bill requires that any cash-funded capital construction project at a higher education institution that is eligible for future state dollars for operating or maintenance must comply with the provisions of the high performance certification program.

Senate Bill 09-290 states that it is the responsibility of each higher education institution's governing board to ensure cash-funded projects are planned and constructed in accordance with the institution's mission, are of a size and scope to provide for the defined program needs, and are designed in accordance with all applicable building codes and accessibility standards. Another bill, **Senate Bill 09-295**, which was deemed lost, would have made the same changes to the review process and requirements for higher education institution cash-funded capital projects, in addition to expanding the control of operating budgets for higher education institutions, and lessening legislative control over setting tuition rates and student financial aid calculations.

Expanded academic authority for certain higher education institutions. These bills extended or defined the academic authority of certain higher education institutions. Changes in academic programs can drive future capital need because of programmatic shifts and/or increased overall student enrollment. Senate Bill 09-043 limits the authority of Fort Lewis College to issue two-year associate's degrees to only an associate's of arts degree in agricultural science. **Senate Bill 09-086** creates the Colorado State University – Global Campus online university which

will offer baccalaureate and graduate degrees. The online university will be operated under the supervision of the Board of Governors of Colorado State University (CSU) and will be the third campus in the CSU system. **House Bill 09-1295** authorizes Metropolitan State College of Denver (Metro) to offer master's degree programs that address the needs of its urban service area. Prior to the adoption of new graduate programs at Metro, the college is required to seek approval from the Colorado Commission on Higher Education.

Legislation Impacting the Colorado Historical Society

Two bills considered by the General Assembly during the 2009 session impact future funding for Colorado Historical Society (CHS) capital projects. **House Bill 09-1333** reduces the cash funds transfer amount from the State Historical Fund to the State Museum Cash fund for FY 2009-10 and FY 2010-11 in order to accommodate lower-than-expected gaming revenue in FY 2008-09. Moneys in the State Museum Cash Fund will be used to make certificates of participation payments for the New Colorado History Museum, which is currently under design. House Bill 09-1272 may reduce future available revenue for the CHS operating expenses and state historic preservation grants. Under current law, the CHS receives 28 percent of limited gaming revenue in the state. House Bill 09-1272 limits the growth in transfers to the State Historical Fund from limited gaming revenue to the prior year's transfer plus up to 6 percent of the revenue attributable to extended limited gaming. (See the Legislation Impacting Higher Education Capital Construction section for a more complete discussion of House Bill 09-1272.)