DEPARTMENT OF TRANSPORTATION
FY 2009-10 JOINT BUDGET COMMITTEE HEARING AGENDA

Tuesday, December 2, 2008
9:00 am – 12:00 pm

9:00-10:30 INTRODUCTIONS, OPENING COMMENTS, AND CDOT PRESENTATION

10:30-10:50 QUESTIONS COMMON TO ALL DEPARTMENTS

1. What are your department's three top goals for the current year? How will they be achieved?

The Department's FY 2010 Strategic Plan outlines the Department's top goals. The overarching Departmental goals are to:

- *Create, promote and maintain a safe and secure transportation system and work environment (Safety),*
- *Cost effectively maintain the quality and serviceability of the physical transportation infrastructure (System Quality),*
- *Maintain or improve the operational capacity of the transportation system (Mobility), and*
- *Deliver high quality programs, projects and services in an effective and efficient manner (Program Delivery).*

The Department maximizes its use of limited resources through rigorous internal performance analysis and a transparent performance-based budgeting process. Unfortunately, with an annual FY 2010 budget that is $221 million or 20.3% lower than its FY 2008-09 Transportation Commission-approved budget and the continued erosion of the purchasing power of the Department's revenue streams, the Department's ability to meet its goals is severely constrained.

Safety: *The Department's safety outcomes have been broadly positive in recent years. From 2005 to 2006, motor vehicle fatalities dropped 11.7 percent. In addition, the National Highway Traffic Safety Administration (NHTSA) has set a nationwide safety goal of one fatality per 100 million vehicle miles traveled (VMT) and in Colorado the number of fatalities per 100 million VMT has declined from 1.6 in 2002 to 1.0 in 2007 so we have essentially attained the NHTSA goal. Also, the number of crashes with passenger injury has decreased from 80 per 100 million VMT in 2001 to 69.3 per 100 million VMT in 2007.*

Seatbelt use is a major contributing factor in the incidence of injuries and fatalities on Colorado roads. The declines in fatalities and injuries have occurred at the same time as a steady increase in estimated seatbelt use. Since the advent of the Department's Click It or Ticket enforcement program in 2002, seatbelt use has increased from 72 percent to 81 percent. Other contributing factors to the general improvement in roadway safety include roadway improvements such as wider lanes and shoulders, improved intersections, and advancements in automotive technology such as side impact airbags and stability control. Additional enforcement tools such as primary seatbelt laws would give law enforcement the ability to bring about further advances in roadway safety.

Program Delivery: *The Department has also met its goals regarding program delivery. By implementing a state of the art financial reporting and resource planning system and contracting with consultants to optimize the Department's use of that system, the Department improved its business* *processes and procedures, consequently raising the productivity of its entire support staff. The Department has also improved its timely compliance with over 40 state and federal environmental laws. In 2007, 98.7 percent of the Department's projects have received environmental clearances on time, as opposed to 90 percent in 2003. In addition, the Department has substantially improved its ability to deliver its projects on time. 71.4 percent of projects in FY 2007 met their established schedule, as compared to only 30 percent in FY 2001. Continual improvement in this performance measure is an established objective of the Transportation Commission.*

System Quality: *The Department's performance results in System Quality are mixed. When roadway surfaces are not maintained, they must eventually be rebuilt. Highway reconstruction typically costs $2.6 million per mile as compared to resurfacing which, on average, costs only $120,000 per mile. Therefore, one of the most important Departmental performance measures is the percentage of pavement in good or fair condition on state highways. With over 27,000 lane miles in the state highway system to maintain and a limited budget, the Department simply does not have the resources to maintain the entire system in good condition. Based on projected revenues, the Transportation Commission's current objective is maintaining 60 percent of the state highway system in good or fair condition. The actual percentage has declined from 66 percent in FY 2005 to 59 percent in FY 2007 and the percentage is expected to decline at an accelerated rate in the coming years.*

The Department measures its own performance in maintaining the quality, convenience, and accessibility of the existing state highway system on a letter scale with detailed definitions of each grade. Whereas the Department planned to spend $216.7 million to reach an overall level of "B" on its maintenance levels of service in FY 2007, due to severe winter weather in 2009 the Department actually spent $220.5 million and reached a level of "B-". Within this, the Department fared slightly better than expected in maintaining the roadway surface, bridge maintenance, keeping roadways and shoulders clear, and staff training, slightly worse than expected in tunnel maintenance and snow and ice control, and substantially worse than planned in striping, signs, signals, and guardrail, maintaining equipment, buildings and grounds, and maintaining roadside landscape.

Mobility: *The primary performance measure related to Mobility is the average minutes of delay per traveler in congested segments of the state highway system. The FY 2007 objective was to hold average daily delays to 22 minutes or less. Actual delays averaged 18 minutes, a slight decrease compared to the average of 22 minutes in 2005. Additional lanes due to the completion of the T-REX and COSMIX projects as well as the Department's complimentary Courtesy Patrol towing program for broken down vehicles contributed to this incremental improvement in mobility. In addition, through diligent control of the variable tolls on the I-25 HOT lanes, the Department (through the Colorado Tolling Enterprise) allowed buses using the HOT lanes to achieve a 99 percent on-time rating. However, presuming the state's population continues to grow at historical rates and that driving patterns do not change significantly, the department does not have the resources to increase the capacity of the system to prevent future increases in congestion delays anywhere within the state.*

2. How do your requested decision items tie to your goals?

Decision Item #1 (Gaming Impacts to Transportation) directly impacts the goal of creating a safe and secure state transportation system and will improve mobility within the gaming region.

The large increase in traffic on the roads leading to the gaming communities has caused major problems with pavement, congestion, and safety. The highways most affected include Interstate 70, U.S. Highways 6, 24, and 160/491, and State Highways (S.H.) 172, 46, 119, 279, and 67. The routes leading into the Black Hawk/Central City gaming district are mountainous-type roads, which typically follow drainage ways and are characterized by steep narrow canyons. Whereas total vehicle miles traveled has increased 58 percent on Colorado's state highways since 1991, average daily traffic on

State Highway 67 (Cripple Creek) has increased 109 percent, and daily traffic on State Highway 119 and U.S. 6 near Black Hawk and Central City has increased 349 percent.

The request includes $995,691 for projected FY 2009-10 annual maintenance costs for the state roads leading to gaming towns. Deferral of road maintenance reduces safety and leads to higher maintenance costs in the future and/or expensive road reconstruction. The request also includes $750,000 for rock fall mitigation on S.H. 119 and U.S. 6.

The remaining $8.7 million will partially fund the Main Street South project (State Highway 119) through Black Hawk. This project was approved by the Federal Highway Administration (FHWA) as a categorical exclusion from the National Environmental Policy Act (NEPA) review process due to positive environmental impacts and lack of impacts to land use. The total CDOT commitment to this project is $12.0 million. Once fully funded, this project will leverage up to $14 million in additional funds from federal, state and local governments in order to eliminate substandard curves, strengthen rock fall protection, relieve congestion, and mitigate mine-related environmental damage along the north fork of Clear Creek. This project is discussed more fully in the Department's response to Questions 10, 11, and 12.

Decision Item #2 (Base Adjustment) will aid the department in attaining its goal of efficient and effective program delivery by ensuring that the department's Administration receives an appropriation that is consistent with the evolving structure of the Department. Over the past few years, the Department has spent a disproportionate amount of resources calculating and explaining the gradual differences that have accumulated over time in the composition of the Department's Administration as compared to the staffing assumptions used in the annual figure setting process. By settling on a consistent method of allocating the Department's indirect costs between Administration and Construction, Maintenance, and Operations (CMO) and by agreeing to reflect future structural changes in decision items, the Department can focus staff resources on the effective and efficient financing of a safe and reliable transportation system while increasing the transparency and accountability of its budget to the General Assembly.

Within Decision Item #2, the Department has also requested that future appropriations to the Department from the First Time Drunk Driving Offenders Account created in H.B. 08-1194 be reflected in a separate line item in the Long Bill. Although this is a technical request, any appropriation received by the Department will be used to enhance the Department's high visibility DUI enforcement actions. Federal research suggests that a well publicized high visibility DUI enforcement program can lead to significant reductions in fatal alcohol-related crashes and their associated significant economic damages. This outcome directly supports the Department's safety goals. Further information is provided in the Department's response to Question 15.

Decision Item #3 (Rulemaking FTE) directly supports the Department's goal of efficient and effective program delivery by ensuring that permanent, full-time resources are dedicated to the important task of promulgating procedural and policy directives. Rulemaking is a crucial step between legislative intent and the actual execution of the department's responsibilities.

The person within CDOT who has historically been responsible for creating and updating the Department's rules and regulations is primarily responsible for overseeing the Department's permitting section for overweight and oversized vehicles, a crucial part of maintaining a safe transportation system. In FY 2008, the Department issued nearly 55,000 of these permits. Due to new legislation granting rulemaking authority to the Department, a backlog of existing rules and regulations which must be updated to remain consistent with state and federal law, and a substantial increase in permitting volumes, the Department believes it will be increasingly difficult for the person currently responsible for permitting and rulemaking to do both. Given the large number of rules, regulations, *and policy and procedural directives within the Department, it would be optimal to have an employee whose attention could be solely focused on rulemaking.*

3. Could your department shift to a four day work week that begins on Wednesday and ends on Saturday? If not, why not? If only a portion of the department can go to a four day week, what portion can and what portion cannot and why?

   The Department cannot shift to a four day week without incurring significant overtime costs and logistical problems that would far exceed any operating savings. The majority of Departmental employees are maintenance workers working in eight-hour and in some cases twelve hour shifts covering all 24 hours of the day. A ten hour work day would present logistical problems that could not be accommodated by the Department or its employees. In addition, most of the Department's employees are not exempt from earning overtime for working more than eight hours per day. Therefore, under a four day work week the Department's unit labor costs would increase 10% for all nonexempt employees[1].

   Furthermore, the engineering staff is also unable to move to a four day work week. The schedules of construction projects are timed to minimize traffic disruptions, so engineers often work at night and on weekends. Requiring the engineering staff to work four 10-hour days per week would lead to significant traffic disruptions and limit their ability to properly supervise their contractors.

   The remainder of the Department's staff supports the engineering and maintenance sections. The Department could identify many individuals whose work duties would allow them to work a four day week. However, this would not be the case for entire divisions and therefore would not lead to any savings from having state facilities open one less day per week.

4. Has your department been able to fill new or vacant positions? Can your department quantify the benefits it has seen as a result of adding additional FTE or filling vacant positions?

   With respect to the new positions approved by the General Assembly in the 2008 Long Bill, the Department was unable to fill the Human Resources (HR) positions as quickly as it had hoped due to several factors. The department hired a new HR Director in January 2008. Following a review of services provided by the Department's Center for Human Resources Management, she implemented a major internal reorganization. Key elements of this ambitious effort were a change in section managers and the installation and implementation of a newly acquired applicant tracking and on-line application system that required extensive training for staff. The goal of these changes is to improve application tracking, documentation, and management. Doing so will aid business units in reviewing applications, result in fewer lost documents, and, improve the entire process.

   At the time the reorganization commenced, the section had six vacancies - four HR specialists, a support staff supervisor, and a receptionist. Since July, three of the four specialist positions, the support staff supervisor position and the receptionist position have been filled. The two HR specialists who are currently on staff are entry level and require close supervision and training. The new hire starting in February is an experienced HR professional and very familiar with the state personnel system.

   The vacancy saving from the last unfilled HR position as well as the delayed start has been used to hire a temporary support staff. Doing so has allowed the support and professional staff to focus on

[1] Time-and-a-half per hour of overtime * 2 hours of overtime per day per nonexempt employee * 4 days per week = equivalent of 4 additional paid hours per week, divided by 40 hours per week = 10% increase in labor costs for nonexempt employees

their core duties by picking up routine duties such as filing and data entry. A job offer and acceptance was made for one of the two positions approved for FY08-09. The new employee has a delayed start date of 2/2/09 because she is currently working for another agency.

With respect to vacant positions, the Department has been generally able to fill its vacant positions but has had regional difficulties based on competition from the energy sector for employees with commercial driver's licenses and due to the cost of living in mountain communities as compared with what the Department can afford to pay. The Department currently has 220 vacant FTE positions (6.6% vacancy rate). Irrespective of the statewide hiring freeze, due to CDOT-specific funding challenges the Department will be especially conservative about scrutinizing projected work loads to determine whether vacant positions should be filled.

5. What is the status of your department's implementation of S.B.08-155, Centralize IT Management in OIT? Is your department experiencing any difficulties?

   This is a subject of ongoing discussion with OIT. An initial meeting was held with OIT on November 7, 2008 to discuss this and other issues related to the shift of the department's IT personnel to OIT. For the purposes of preparing its FY10 budget the department's current presumption is that the three FTE identified in the appropriations clause of S.B. 08-155 do come out of total number of employees allotted to within the department's administrative budget to IT. CDOT and OIT are only now beginning the process of negotiating the intergovernmental agreement under which they will ultimately operate.

6. If you have submitted a General Fund decision item, justify why it must be funded in FY 2009-10 and why it cannot be postponed until FY 2010-11.

   The Department does not have any FY 2009-10 General Fund decision items.

7. How many employees, especially among upper management, are assigned a state vehicle for them to use to travel between home and work? How many state vehicles does your department use to transport staff? Would it be more cost effective to reimburse employees for using their personal vehicles for these purposes?

   Upper management leave assigned vehicles at the work location. None commute in state vehicles. The Department currently has 240 employees who take their assigned state vehicles to and from work. Procedural Directive 9.1 says in part;

   > *"The department believes it is essential and in the best public interest of the State to allow specified personnel to take their assigned vehicle home so they can respond to roadway emergencies from their homes in order to assess or handle roadway or project emergencies twenty-four hours per day, seven days per week, and to protect and safeguard the traveling public and retain the structural integrity of the Colorado transportation infrastructure."*

   There are about 3,762 road units in the CDOT capital fleet, about half of them truck-type and half specialized equipment units. There are 888 State Fleet Management vehicles currently assigned for use within CDOT. Pool vehicles are located at CDOT HQ and at Camp George West. There are 21 pool vehicles at HQ and 5 at Camp George. Regions may have a few vehicles used as "pool" vehicles but this is not centrally tracked.

   Reimbursement of mileage and letting employees use personal vehicles for business purposes is fraught with other considerations regarding traffic safety, communications, insurance liability on the *part of the individuals (most insurance companies will charge higher rates if a vehicle is used for work.) and CDOT, etc. Current specifications and policy require amber warning lights on all vehicles in a construction zone, making it problematic to take personal vehicles into a work zone.*

10:50-11:00 DECLINING REVENUES FOR TRANSPORTATION

State Highway Users Tax Fund Revenues
[see briefing document issue pp. 10-12]

8. Please discuss the potential revenue benefits increasing in the State's motor fuel excise taxes. For example, how much revenue does CDOT currently receive from motor fuel taxes and how much would CDOT's share increase with a 1 cent ($0.01) increase in the taxes on motor fuels?

   The Department projects that it will receive $414.3 million in Highway Users Tax Fund (HUTF) revenue in FY 2008-09, of which $290.7 million is projected to be from motor fuel taxes.

   According to the 2007 Department of Revenue Annual Report, 2.05 billion net gallons of gasoline, 549.7 million net gallons of diesel, and 3.5 million net gallons of alternative fuels were sold in FY 2007, totaling 2.60 billion total net gallons of motor fuels. Assuming that vehicle miles traveled and fuel efficiency have not changed significantly since FY 2007 and that a one cent tax increase would not significantly affect demand, a one cent increase in each of these motor fuel taxes would generate an additional $20.5 million in gasoline tax revenues, $5.5 million in diesel tax revenues, and $35,000 in alternative fuels tax revenues, or $26.0 million in total revenue.

   Pursuant to Section 43-4-205(6)(b), C.R.S. (2008), 60 percent ($15.6 million) of the $26.0 million in additional revenues would be transferred to the State Highway Fund, 22 percent ($5.7 million) would be transferred to county treasurers, and 18 percent ($4.7 million) would be transferred to municipalities.

Federal Funds
[see briefing document issue page 13]

9. Please discuss the Department's anticipated allocation of federal funds in FY 2008-09 and FY 2009-10. Specifically, how much unearmarked funding is the Department anticipating for each year?

   Federal FY08 Apportioned Federal Funds to CDOT were $573 million. Actual Federal Funds received by the Department were $533 million due to obligation limits. Of this, congressional earmarks consisted of $69.1 million (authorization plus appropriations)

   Federal FY09 Apportioned Federal Funds to CDOT were $527 Million. Actual Federal Funds received by the Department were $337 million due to the insolvency of the federal Highway Trust Fund and annual rescissions. Of this, congressional earmarks consisted of $55.8 million.

   It is difficult to project how much federal Highway Trust Fund revenues Colorado will receive in federal FY10. The existing multi-year authorization bill for transportation funding known as the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) expires *at the end of Federal FY09. It appears unlikely that a reauthorization will be adopted by Congress before then, so the Department has planned in its budget to receive $330 million, which is roughly what the Department received annually from the prior authorization (TEA-21) and which presumably would come via a continuing resolution. The department had planned to set aside $37.1 million for Congressional earmarks, but this was cut to zero by the Transportation Commission due to significant projected funding shortfalls.*

11:00-11:20 DECISION ITEM #1 – CDOT LIMITED GAMING FUNDS

[see briefing document issue pp. 14-18]

10. The request for Limited Gaming Funds includes no funding for gaming roads in Region 5. According to the request, the Gaming Commission no longer approves requests for Region 5 because the tribal casinos do not pay taxes into the Limited Gaming Fund. Please describe the affected tribes' response to the elimination of Limited Gaming Fund projects on gaming highways in Region 5. As a related question, if the tribes were to begin paying casino taxes into the Limited Gaming Fund, is it the Department's understanding that Region 5 would again receive funds for projects on the gaming highways?

When the Limited Gaming Control Commission altered its policies to exclude Region 5 projects from consideration for receiving Limited Gaming Funds in 2007, the Department informed tribal leadership of the decision. To date, the Department has received no formal or informal response from the tribes to this policy change, nor is it aware of any formal response from the tribes to the Limited Gaming Control Commission on this matter.

The Department respectfully defers to the Limited Gaming Control Commission as to policy decisions the Commission might make if the tribes were to voluntarily pay state gaming taxes.

11. The request submitted to the General Assembly reduced funding for the S.H. 119 Main Street South project from $12.0 million to $8.7 million. Please discuss the rationale for the reduction. If funding is provided at the requested level, will the Main Street South project be able to go forward, or would the reduced funding level stop the project? Why? What additional funding is at risk if the project does not go forward?

The June 2008 OSPB forecast for Limited Gaming Fund revenues was $132.3 million. Due to formulaic distributions of Limited Gaming Fund revenues in Article X, Section 18 of the state constitution and Sections 12.47.1-701(4)(a)(IV)(A) through 12.47.1-701(4)(a)(V)(C), C.R.S. (2008), all but $17.4 million of projected FY 2009-10 Limited Gaming Fund revenues are already committed. In light of competing budget priorities the decision was made to request the reduced amount of funding.

The Silver Dollar Metro District is not prepared to shoulder the entire burden of completing this project. To start, it certainly will not take on the environmental and ecological improvements and it is reluctant to set a precedent of paying 100%, as opposed to partnering with and sharing costs, for the improvements made to state highways. One possibility if this project proceeds as scheduled is an actual expansion of it. Gilpin County has expressed interest in joining the project team and there have been preliminary discussions about adding a multi use bicycle/pedestrian trail to the project that it may be willing to fund out of its share of gaming impact funds.

While not impossible, a delay in funding makes it a challenge to hold together the current funding *team. The longer it takes for the state to come up with its share, the more opportunity there is for other partners to commit their funds to other projects. It may be possible to build part of the project if full funding is not available but this will also cause an increase in total cost to the project. The greatest threat of delaying the project is to the EPA commitment that will ultimately clean the water in North Clear Creek. Since Clear Creek is a major water source for the Denver Metro Area additional costs continue to be incurred by these communities to remove the metals in the water.*

12. Has the Department had any conversations with the Silver Dollar Metropolitan District since the election to discuss the potential impacts of Amendment 50? Given the likely increased revenue to local entities, and the potential increases in traffic resulting from increased visitation to the gaming communities, have the locals shown a willingness to contribute additional funds to construction projects? If not, what other options does the state have to manage increased traffic on the gaming highways if there is insufficient revenue available for CDOT to complete projects? Finally, have the locals considered that the state may not be able to afford projects to handle the congestion resulting from additional development in the gaming communities?

Region 1 (Central City and Blackhawk) has scheduled meetings with the casinos to review their traffic expectations but they have not yet occurred. A preliminary conversation with representatives of the Silver Dollar Metro District leads the region to expect that the passage of Amendment 50 will lead to considerable capital expansion. Black Hawk is only half built out and projections indicate that the number of gaming devices could double. The city has already been approached by developers with several concepts for both new projects and expansions. These projects typically include hotel rooms which will help mitigate the traffic peaks somewhat, but that will be offset by substantially increased volumes as it is presumed that most of the gamblers drawn by the higher limits will prefer to drive rather than take the bus.

According to the 2008 State Ballot Information Booklet, gaming municipalities will receive an additional $29 million in Limited Gaming Fund revenues in the first five years after the passage of Amendment 50, assuming that those municipalities vote to raise their bet limits, hours of operation and choice of games. In addition, it is projected that the counties containing those municipalities will receive an additional $34 million in the first five years of expanded operations. According to the ballot language, the local governments are to use these additional moneys to "address gaming impacts". If revenues come in as projected, local governments in gaming areas may be better able to provide funding for projects on the state roads leading to the gaming towns. Whether the local county and municipal governments will use their additional funds for these purposes or to meet other competing gaming impacts is unknown.

11:20-11:30 DECISION ITEM #2 – CDOT BASE ADJUSTMENT
[see briefing document pp. 19-23]

13. The decision item states that two temporary positions were converted to permanent FTE within the Office of Financial Management and Budget (OFMB) and that the change increased OFMB's costs by $50,000. What are the positions? Are those positions still performing the same functions? Why did the Department elect to convert them to permanent FTE?

a) The change in head count within the Office of Finance Management and Budget (OFMB) did not directly lead to the increase in OFMB's administrative budget. To respond to the question, however, during FY06 a significant reorganization occurred within the department. Specifically the department created the Division of Accounting and Finance headed by a Chief Financial Officer (CFO). The CFO now supervises the Office of Finance Management and Budget (OFMB) and the Center for Accounting. In creating this new division, the responsibility for Project Accounting was shifted to OFMB from the Center for Accounting and a work load evaluation was conducted. The CFO concluded that to better address project accounting, OFMB needed two additional FTE. These two FTE were needed to accelerate and improve the accuracy of department's billing and collection from the federal government and local agencies for their share of project costs. The increase in interest income more timely billing and collection it was determined would offset the cost of the additional positions. Based on these factors, the CFO asked the Transportation Commission for two additional FTE. The Commission, rather than approving additional FTE, chose to direct the transfer of one funded temporary FTE position each from Region 6 program engineering sections central and south to OFMB. An analysis had determined that these two positions were not being fully utilized so the Commission chose to transfer them rather than increase the FTE count. The Commission also approved the conversion of these two positions from funded temporary positions to permanent FTE.

b) These two positions are not performing the same functions they performed when assigned to Region 6 program engineering. Since the transfer of these positions to OFMB they have been used as the Commission intended to improve the project accounting process, billing, and collection. These two positions still reside in the construction, maintenance, and operation (CMO) budget.

c) The increase administrative cost of the OFMB budget is separate and distinct from the decision to increase the total FTE within OFMB. In FY07 the new manager of OFMB and the CFO reviewed the distribution of the section's FTE between the administrative and the commission budget. This review was based upon their reading of what tasks are most appropriately performed by FTE within the administrative budget and those within the CMO budget. The goal was to assign to the CMO budget those FTE whose duties are most directly related to CMO activities. The result of the review was a shift of two senior supervisory members of the office (two Budget Analyst Vs) from the CMO budget to the administrative budget. To balance the overall number of FTE, two employees whose compensation is significantly less (two Accountant I) and whose duties are entirely related to project accounting were moved to the CMO budget.

d) The shift of personnel between the administrative and the CMO budgets did not increase the overall costs of the department or of OFMB since the office received both administrative and CMO funding. The move of the employees simply increased the administrative budget of the office by $50,000 and decreased the CMO portion of its budget by a like amount while better aligning personnel with the duties appropriate designated for their functions. Also, the changes did not increase the compensation of any of these already existing employees.

This adjustment is just one example of organizational changes that have occurred in recent years for organizational efficiency and for the Department to remain in compliance with the legislative intent of the composition of the Department's Administration, as enumerated in Section 43-1-113(2)(c)(III), C.R.S. (2008).

<u>First Time Drunk Driving Offender Account</u> (program established pursuant to H.B. 08-1194)
[see briefing document issue page 23]

14. The First Time Drunk Driving Offender program provides funds for local jurisdictions to conduct high visibility drunk driving enforcement activities. Please explain how the First

Time Drunk Driving Offender program works. For example, is it set up as a grant program for local jurisdictions or are funds distributed by formula?

Funds from the First Time Drunk Driving Offender program will supplement the Department's existing funding for high visibility law enforcement actions, which comes from fines paid by DUI offenders that are deposited into the Law Enforcement Assistance Fund for the Prevention of Drunken Driving (LEAF) created in Section 43-4-401, C.R.S. (2008).

In Section 43-4-402, C.R.S. (2008), the General Assembly granted the Department continuous spending authority from an account within LEAF in order to carry out high visibility DUI enforcement actions. Section 43-4-403, C.R.S. (2008) further grants the Department rulemaking authority regarding the requirements for local governments to participate in LEAF actions. These requirements are set forth in 2 CCR 602-1. This regulation also codifies the application and review process. Local governments apply to the Department's Office of Transportation Safety (OTS) to receive funding. Funding is based on available funds and the relative merits of applications received, and the funds are then awarded by the Department in the form of contracts for the purchase of a specified number of law enforcement overtime hours at a specified total cost.

Section 43-4-404, C.R.S. (2008) imposes formulaic restrictions on how the Department may allocate LEAF funds between municipalities and counties. However, H.B. 08-1194 does not require the use of LEAF formulae or any other formula for the distribution of funding from the First Time Drunk Driving Offenders Account. Therefore, the Department will allocate funds from the First Time Drunk Driving Offenders Account to best supplement the existing enforcement activity funded through LEAF. OTS will identify areas of the state where enhanced enforcement is most cost effective and will contact agencies in those areas to coordinate enforcement episodes. Should continued funding be made available, these enforcement episodes will become an ongoing program carried out statewide in conjunction with Colorado State Patrol and other enforcement agencies. This will allow OTS to adjust the enforcement episodes as trends dictate.

15. H.B. 08-1194 calls for CDOT to oversee twelve high visibility events per year, as compared to the seven CDOT has historically undertaken. Please describe the anticipated effect of additional high visibility drunk driving enforcement events. How does the Department expect spending $2 million additional dollars to affect highway safety? How have the previous events affected safety? If previous events successfully improved safety, is there a point of diminishing returns where adding more events ceases to have much of an impact? Does the Department have an estimate of where such a point would be and whether we have reached it? Finally, where did the $2 million estimate originate?

The goal of the high visibility law enforcement actions funded through LEAF and the First Time Drunk Driving Offenders Account is to reduce fatal accidents resulting from driving under the influence of alcohol and other impairing substances. Since the LEAF program first began in 1995, 53,071 DUI arrests have been made during high visibility law enforcement actions, including an average of 5,325 annually in calendar years 2005 through 2007. In order to make the best use of available funding, the Department has concentrated its high visibility law enforcement actions to occur around holidays and other dates with historically high levels of fatal accidents. For example, 417 DUI arrests were made during the 2008 Halloween weekend (the most recent high visibility law enforcement action).

According to the National Highway Traffic Safety Administration (NHTSA)'s "The Economic Impact of Motor Vehicle Crashes 2000" *study*[2]*, each fatality resulting from a motor vehicle crash results in $977,000 of economic costs, including property damage, medical expenses, lost productivity, and travel delays. Roughly 9 percent of these costs are borne by government (6% federal, 3% state) and three fourths of all costs are paid for by parties other than those directly involved in crashes. Alcohol impairment is involved in fully half of all motor vehicle fatalities and accounts for 22 percent of the $230.6 billion in estimated economic damages that occurred nationwide in 2000 due to motor vehicle crashes.*

According to the NHTSA study, economic damages from motor vehicle crashes in Colorado were $3.27 billion in 2000. Using the nationwide averages calculated in the study, the damages that can be attributed to DUI fatalities in Colorado were $719.4 million, of which $21.6 million was borne by state government. It is therefore a rational fiscal proposition for state government to use its resources to reduce the incidence of alcohol-related motor vehicle crash fatalities.

The NHTSA study "Evaluation of Seven Publicized Enforcement Demonstration Programs to Reduce Impaired Driving: Georgia, Louisiana, Pennsylvania, Tennessee, Texas, Indiana, and Michigan"[3] *studied the effectiveness of several well-publicized high visibility DUI enforcement programs. In a majority of the states studied, high-visibility DUI enforcement was correlated with a statistically significant decline in both the ratio of drinking to non-drinking driver fatal crashes and alcohol-related fatalities per 100 million vehicle miles traveled. When compared to patterns in surrounding states, the study concluded that the impact of the successful enforcement programs was an 11 percent to 20 percent decrease in annual alcohol-related fatalities. A corresponding decrease in Colorado would have saved between 25 and 45 lives in 2007, avoiding between $29.1 million and $53.0 million in economic damages. In fact, the 4,966 DUI arrests made by Colorado law enforcement during high visibility DUI enforcement actions in CY 2007 was significantly higher than in any of the states studied, with the exception of Texas.*

Without a time-consuming econometric study specific to Colorado, it is difficult to quantify directly what the impact of existing high visibility enforcement has been, and it is similarly difficult to calculate the point at which additional outlays on DUI enforcement would not be justified. There are two ways in which high-visibility DUI enforcement can be effective: increased enforcement and increased deterrence. To date, the number of DUI arrests during high visibility enforcement periods is 12 percent lower than in 2007, and total DUI arrests during high visibility enforcement periods in 2007 were 11 percent below 2006. Although DUI arrests are down, it is likely that the public outreach and regular schedule of the enforcement actions are having a beneficial deterring effect on drunk driving. Again, as there are many factors that determine the number of fatal alcohol-related accidents on Colorado's roads, without a cross-sectional study involving multiple states it is not possible to convincingly estimate the true impact of high visibility DUI enforcement or the point at which diminishing returns set in. The enormous societal costs associated with fatal motor vehicle accidents and the large number of annual high-visibility DUI arrests in Colorado suggests that the funds used for DUI enforcement represent money well spent.

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[2] http://www.nhtsa.dot.gov/staticfiles/DOT/NHTSA/Communication%20&%20Consumer%20Information/Articles/Associated%20Files/EconomicImpact2000.pdf

[3] http://www.nhtsa.dot.gov/portal/site/nhtsa/menuitem.18e416bf1b09b6bbbf30811060008a0c/

Currently, the level of DUI enforcement increases as the number of DUI convictions and guilty pleas increase. It is reasonable to think that a steady state will be reached with a high level of deterrence and a residual number of DUI arrests that result from drunk drivers taking their chances (with impaired decision-making) that they will not be caught. At that time, one could ascertain with greater ease whether the level of funding for high visibility DUI enforcement was optimal. However, as we have yet to experience the additional enforcement actions required by H.B. 08-1194, we cannot yet say whether we have gone past the point where the added costs exceed the added benefits.

With an additional $2 million, the Department will be able to increase the scope of existing regularly-scheduled high visibility DUI enforcement actions in addition to increasing the number of actions. Although these actions are statewide events, as a practical matter they are more concentrated in areas with the highest DUI fatalities, namely Denver, Jefferson, Arapahoe and Adams counties. Additional funding will allow the Department to make enforcement more stringent elsewhere in the Front Range, the mountain communities and the Western Slope.

11:30-11:45 CDOT REVENUES – ALLOCATING COSTS AMONG USERS
[see briefing document pp. 24-28]

16. Does the Department have information regarding how other states have allocated costs among the various users of their transportation systems (e.g., between passenger cars and commercial trucks)? At the briefing, JBC staff referenced a study from Oregon. Does the Department have similar data from other states? If so, how do Colorado's allocations compare to those in other states?

*The best source for information on state-level cost allocation studies is the National Cooperative Highway Research Program (NCHRP)'s Synthesis 378 paper "*State Highway Cost Allocation Studies"[4]. *Colorado has not completed a cost allocation study since it repealed its Gross Ton Mile Tax in 1989. Under its current budget constraints, the Department has not planned to expend any resources for the extensive research necessary to perform an updated cost allocation study and compare the results to those of other states.*

Since 1989, fuel efficiency standards, vehicle weights, engineering practices, construction costs, and the transportation-related tax structure have all changed significantly so the 1981 Colorado Department of Highways cost allocation study that estimated that commercial vehicles were responsible for 37% of the costs of the state highway system is almost certainly out of date. Some more recent studies have resulted in a range from a low of 18.9 percent in a 1997 California study and high of 55.8 percent in a 1999 Wyoming study. Key issues in comparing and evaluating cost allocation studies are the assumptions input and the models used. Certainly, more recent cost allocation studies are more sophisticated than those done by Colorado in the past due to increasing computing power, better data, and methodological benchmarking from federal research such as the 1997 Federal Highway Administration (FHWA) cost allocation study[5].

[4] http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_378.pdf
[5] http://www.fhwa.dot.gov/policy/otps/costallocation.htm

17. What is the Department's position on the appropriate allocation of costs among users of the highway system? Is the current distribution of costs (in percentage and/or per mile terms) between passenger vehicles and commercial trucks adequate? Is there a system-wide fix that would address the Department's revenue problems and meet the needs of the various users? If so, what is that fix and how would it spread the costs among users?

Without having detailed, Colorado-specific analysis and information resulting from a major research effort, the Department cannot speculate as to the adequacy of the current cost distribution between passenger and commercial vehicles, nor can it recommend specific policy prescriptions. The Department can say that, in the aggregate, its existing revenue streams are not sufficient just to maintain the existing transportation infrastructure.

11:45-11:50 DECISION ITEM #3 – TRANSPORTATION RULE MAKING FTE

[see briefing document page 8]

18. The Department argues that an increased rule making workload has made the current situation of doing rule making work as ancillary duties in the permit office unsustainable. Please discuss the specific factors contributing to the Department's increased workload that would require an additional FTE.

Rulemaking is undertaken for a variety of reasons, including conformance to state law changes or new statute; conformance to changes in federal law or new federal mandates; the existing rule is antiquated and out of date causing it to be not useful; responding to the needs and demands of those stakeholders impacted by the rule.

The duties for rule making have changed and shifted within CDOT over time, but generally have been coordinated by the same CDOT position for the past two decades. That position now also manages the Permit Office. The CDOT Permit Office, including its manager, consists of 9.0 FTE and issued 54,849 permits in FY2008. The manager of the office directly supervises 8.0 FTE and ensures the smooth operation of her office. As time permits, she continues to direct rules promulgation on behalf of the Transportation Commission, the Office of Safety headed by the Chief Engineer, and the Executive Director.

Until recently, this additional responsibility was not overly burdensome because rule making historically occurred only once per year or less. However, several rules are now outdated and new rules must be promulgated resulting due to new legislation. During FY 2007-08, the Permit Office director coordinated the promulgation of six different sets of rules. With sufficient resources, the Department would have completed an additional five other pending rule changes during that year. Due to her workload, however, only six rules went forward, leaving a substantial backlog.

CDOT anticipates promulgating at least eight more rules in FY 2008-09, with no indication that the trend will subside. A key element of this combination of a higher backlog of older rules that need to be updated and an increased requirement to promulgate new rules is that the department finds itself unable to issue updated or new rules in as timely a manner as it should. The department currently expects that to keep rules timely it will need to promulgate about eight new rules annually.

Estimated CDOT Rulemaking Occurrences by Fiscal Year

FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09
1	2	4	8	6	8

The rise in rule making has corresponded with a comparable increase in permit processing during this manager's tenure. In FY 2001-02, CDOT issued approximately 28,000 permits. In FY 2007-08, the department issued 54,838. Although though this number may have stabilized (57,588 permits were issued in FY 2006-07) and though the process has become more automated, the responsibilities of managing this office and working with the motor carriers currently consume more than 2,080 hours annually forcing the manager of the Permit Office to conduct rule making entirely as additional uncompensated work.

CDOT is governed in large part by three levels of "rules" that are often created as a result of State or federal legislation, or as directives from the Transportation Commission or Executive Director: (1) rules, (2) policy directives, and (3) procedural directives. These three levels of rules are very similar in nature yet the management of these functions currently resides in different areas within the department. Bringing rule making, policies, and procedures under one FTE would generate efficiencies within CDOT that do not exist today.

Listed below are CDOT's planned for and recently promulgated rules, along with the reasons each of the rules are being updated or created.

<u>CY 2003</u>
1. 2 CCR 601-4 ExtraLegal Vehicles and Loads: Changed due to industry demand for new permit type/conformance with state law change.
2. 2 CCR 601-16 Harvest of Native Grasses in the ROW: Emergency Rule - Changed due to inquiry from legislator who had constituent wanting to get the permit. Emergency rulemaking was agreement in lieu of legislator running bill to change statute.
3. 2 CCR 601-16 Harvest of Native Grasses in the ROW: Permanent Rule - Emergency rules had to be made permanent.
4. 2 CCR 603-1 Implementation of Section 5311 Program of Federal Transit Laws: Conformance to change in federal laws.

<u>CY 2004</u>
1. 2 CCR 603-1 Implementation of Section 5311 Program of Federal Transit Laws: Conformance to change in federal laws.
2. 2 CCR 603-2 Implementation of Section 5310 Program of Federal Transit Laws: Conformance to change in federal laws.

<u>CY 2005</u>
1. 2 CCR 602-4 Safe Routes to Schools: Implemented new state legislation.

<u>CY 2006:</u>
1. 2 CCR 604-2 Statewide Planning: Changes were made to include FHWA into the 2030 planning process and make other rule changes desired by staff to clarify the process.
2. 2 CCR 601-10 PreQual, Bidding Rules: Update to rules; rules had not been updated since 1999.
3. 2 CCR 601-12 TODS (Emergency rule): Update to meet industry demand for changes for 2006 harvest season for wineries.
4. 2 CCR 601-12 TODS (Permanent rule): Made emergency rule permanent.

5. 2 CCR 602-3 MOST: Rulemaking to support industry demand for CDOT to adopt the Motorcycle Safety Foundation training curricula [to expand the current rule].

CY 2007:
1. 2 CCR 602-3 MOST: Rule section was invalidated by OLLS and this rulemaking was to re-adopt the rule.
2. 2 CCR 601-6 Pilot Escort Certification Program: Rulemaking was to adopt national Best Practices Guidelines of the WASHTO Committee on Highway Transport [make Colorado compliant with National standards]
3. 2 CCR 601-4 Pilot Escort Requirements (contained in OSOW Rule): Rulemaking to conform overlapping rule to 2 CCR 601-6.
4. 2 CCR 602-4 Safe Routes to Schools: Rule change to conform the rule parameters to align to CDOT organizational structure for administering the rule.
5. 2 CCR 603-4 Repeal Old Haz Mat Rule: Rule no longer valid.
6. 2 CCR 601-0 Access Category Schedule: Periodic changes to the schedule were required.

CY 2008
1. 1 CCR 208-28 Establishing and Regulating Use of HOV/HOT lanes for Certain Hybrid Vehicles: Conform to change in state law.
2. 2 CCR 601-17 Noise Mitigation Rules Conform to change in state law.
3. 2 CCR 601-8 Regulations Governing Use of Tunnels on the State Highway System: Update to the Tunnel rule that had not been modified since 1992 [to put current clearances of tunnels in the rules and remove structures no longer on the highway system].
4. 2 CCR 601-12 Tourist Oriented Directional Signs: Conform to changes in state and federal law.

RULES IN QUEUE
1. NEW RULE - Utility Code into Rule: Implement an Audit Recommendation from May 2004.
2. 2 CCR 602-4 Extra Legal Vehicles & Loads: Effort to conform to industry requests.
3. 2 CCR 601-9 LVC: leg. chg and conforming to Tunnel change to conform to industry demands and make conforming amendments to 2 CCR 601-4.
4. 2 CCR 601-7 LOGOS: To conform to changes in federal law.
5. 2 CCR 601-3 Road Side Advertising: Legislative change driving rule change.
6. 2 CCR 602-1 Law Enforcement Assistance Fund – Staff desire changes to a more workable timeline contained in the rule.
7. 2 CCR 605-1 Colorado State Infrastructure Bank: Rule has not changed since 2000, update is necessary.
8. 2 CCR 601-5 Regulations for Special Events on State Highways: Antiquated rule needs repealed.
9. 2 CCR 601-11 Rules of the Transportation Commission: Antiquated rule needs updated.
10. 2 CCR 602-2 Authorized Service Vehicles on Public Streets and Highways: Antiquated rule needs updated to conform to Policy Directive of same topic.

11:50-12:00 GENERAL QUESTION
[see briefing document page 8]

19. Please describe how the current state hiring freeze has affected CDOT. For example, how many positions (and what percentage of the Department's FTE) have been affected by the freeze? Has the Department had positions exempted from the freeze? If so, what positions and have they been filled?

All but two of the Department's 3,366.5 FTE are at least partially funded with state funds and therefore are affected by the hiring freeze (the Department has no General-Funded FTE). The Department has received a criteria-based exemption for vacancies within the Maintenance unit (1,900+ FTE) due to the fact that the CDOT Maintenance staff is crucial to the safety and reliability of the state's transportation system. In order to maintain safe road conditions, maintenance must be fully staffed and on the job 24 hours per day. In addition, the Department has received permission to fill some of its key non-maintenance related positions, such as the Departmental Controller, but none have yet been filled pending further review by the Department. Since the freeze, CDOT has filled 10 permanent Transportation Maintenance Worker I positions and 17 Temporary Transportation Maintenance Workers.