



To: HPTE Board of Directors
Date: July 15, 2015
From: Maria Sobota, Acting Chief Financial Officer
Subject: Update on Current Recording of Transportation Commission Loans

Purpose:

This memo provides information to the High Performance Transportation Enterprise (HPTE) Board of Directors regarding staff efforts to clarify the Enterprises liability. This update is intended to address concerns raised at the previous Board meeting regarding the difference of the recorded HPTE liability on audited financial statements and the Transportation Commission (TC) loan balance reflected on Stifel's proforma cash flow projection report.

Action:

No Board action is required this month and the purpose of this memo is informational only. Staff will bring a recommended course of action to the Board next month in August.

Background:

The Colorado Tolling Enterprise (CTE) was established as a government-owned nonprofit business operating within, and as a division of the Colorado Department of Transportation (CDOT). The Colorado Tolling Enterprise was authorized by House Bill 02-1310 and created by the Transportation Commission, Department of Transportation, State of Colorado, pursuant to Section 43-4-803(1), C.R.S., by a resolution adopted on August 15, 2002.

The CTE requested a Transportation Commission (TC) loan of \$1,000,000 and interagency agreement (IAA- attached and approved March 2003) from CDOT which was approved by the TC to pay for start-up costs in connection with the formation and operation of the CTE. The loan was to be repaid by the CTE when it receives sufficient bond proceeds or toll revenues. When the loan and IAA were approved, an Attorney General (AG) opinion was obtained which considered the transfer as a contingent liability. The contingent liability was not characterized as a loan, thus not recording the transfer as an actual liability to the CTE. The following statute C .R.S 43-4-805 is the primary reason of the accounting treatment of the recording of the TC loans as a transfer and not a liability. "When the enterprise receives sufficient bond proceeds or toll revenues, the enterprise shall reimburse the state highway fund for the full amount of any transfer made by Commission plus interest at a rate set by Commission".

Since the terms of the repayment were not clearly defined which created the possibility that it could take decades for the CTE to repay the Commission or not being able to repay at all, the State Controller at that time did not want to carry a liability on the financial statements for an undetermined period of a time, thus characterized the transfer as a contingent liability (with no liability booked). Per the State Controller's office and the AG's office, it was the only way to comply with both GAAP requirements and the intent of the statute. The CTE was disqualified as an enterprise due to this transfer being more than 10% of revenue in Fiscal Year 2003.

The second and third transfer from CDOT to the CTE took place in FY 2006: \$2,000,000 and \$4,000,000 were recorded the same way. CTE was disqualified as an enterprise for Fiscal Year 2006 due to this transfer being more than 10% of revenue. When the HPTE was created in 2009, the CTE's powers, duties, functions and financial balances were transferred to the HPTE and the CTE was abolished.

When the HPTE was created by C.R.S 43-4-806 (please see below), the legislation language was drafted specifically to deter the HPTE from losing its enterprise status as the CTE did, due to the recording of TC loans as revenue.

C.R.S. 43-4-806

(4) The commission may transfer moneys from the state highway fund created in section 43-1-219 to the transportation enterprise for the purpose of defraying expenses incurred by the transportation enterprise prior to the receipt of bond proceeds or revenues by the enterprise. **The transportation enterprise may accept and expend any moneys so transferred, and, notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, such a transfer shall constitute a loan from the commission to the transportation enterprise and shall not be considered a grant for purposes of section 20 (2) (d) of article X of the state constitution.** As the transportation enterprise receives sufficient revenues in excess of expenditures, the enterprise shall reimburse the state highway fund for the principal amount of any loan made by the commission plus interest at a rate set by the commission. Any moneys loaned to the transportation enterprise pursuant to this section shall be deposited into a fund to be known as the statewide transportation enterprise operating fund, which fund is hereby created, and shall not be deposited into the transportation special fund. Moneys from the transportation special fund may, however, be used to reimburse the state highway fund for the amount of any loan or any interest thereon.

During the subsequent years some of the transfers from CDOT to the CTE have been repaid. Table 1 below shows a current CTE repayment summary.

Table 1: CTE Repayment Summary

| | Total CTE Loan Balance | \$7,000,000 | |
|--------------------|----------------------------------|-----------------------|-------------------------|
| Fiscal Year | 2008 | <i>(\$ 2,500,000)</i> | Repayment Amount |
| | 2008 | <i>(\$ 930,000)</i> | |
| | 2009 | <i>(\$ 301,822)</i> | |
| | 2010 | <i>(\$ 301,822)</i> | |
| | 2011 | <i>(\$ 905,464)</i> | |
| | Remaining Unpaid Balance* | \$2,060,892 | |

*CTE loans were not charged interest

Following the creation of the HPTE and the abolishment of the CTE, the HPTE took out additional TC loans of \$1,000,000 annually for Fiscal Years 2012, 2013, 2014 and 2015. The TC loans of \$4,000,000 were recorded as a liability based on the C.R.S 43-4-806 and reflected in the HPTE’s annual financial statements. Until the HPTE has a sufficient revenue stream to allow it to repay the outstanding balance of CTE balance of \$2,060,892, the outstanding balance is being manually tracked by the Enterprise Accountant.

The total outstanding balance of \$6,947,692 (interest included) was used as the basis for the calculations provided in the Stifel proforma cash flow projections and was used to determine the current Fiscal Year 2016 repayment amount of \$750,852.

Current Status:

The Acting Chief Financial Officer (CFO), CDOT Controller, and Enterprise accounting staff have been actively researching this issue and have contacted the Office of the State Controller as well as the Attorney General’s office. All parties are participating in discussions to determine the appropriate accounting and reporting requirements regarding the CTE transactions for Fiscal Year 2016.

Next Steps

Staff is currently considering the advice of the State Controller and the Attorney General's offices to determine the best course of action and will bring forth a recommendation to the Board during the August meeting.