COLORADO
Department of Transportation
Office of Policy and Government Relations

4201 East Arkansas Avenue, Room 275
Denver, CO 80222-3406

DATE: April 29, 2014
TO: STAC
FROM: Herman Stockinger & Kurtis Morrison, Office of Policy & Government Relations
RE: Senate Bill 09-228 Transfers

Action Needed

No action needed. Memorandum is for informational purposes only.

Summary

In 2014, personal income growth is expected to reach over 5.0 percent, thereby triggering Senate Bill 09-228 (SB 228) transfers from the General Fund to CDOT. These transfers would continue for five consecutive years, in an amount equal to two percent of total General Fund revenue. Current projections are that this would deliver approximately $200 million per year to CDOT over five years, beginning in FY 2015-16 (otherwise known as FY16, beginning July 1, 2015). However, this amount could be reduced – either by half or in entirety – if the economy experiences significant growth resulting in greater than expected tax collections. To expend these dollars, SB 228 requires the Transportation Commission to allocate monies to the Strategic Transportation Project Investment Program (known as the 7th Pot). However, it does allow the Commission to define what projects are contained in that program.

Senate Bill 09-228 Transfers

Background. In 2009, the General Assembly enacted SB 228, which updated state laws governing General Fund transfers. Among its provisions, the new law requires that when personal income reaches or exceeds five percent, a five-year block of transfers is made from the General Fund to: (1) the Highway Users Tax Fund (HUTF); (2) the Capital Construction Fund; (3) and the General Fund statutory reserve.[1] This transfer continues throughout the five years, even if personal income growth falls beneath five percent. For transportation, the transfer is equivalent to two percent of total annual General Fund revenue.

The Transportation Commission adopted baseline revenue projects in April 2013, for the Statewide Plan that assumes these SB 228 transfers taking place. As you will read below, transfers are expected to begin in FY 2015-16, beginning July 1, 2015.

SB 228 also repealed two older pieces of legislation that provided, in good economic years, transfers from the General Fund to transportation, including Senate Bill 97-1 (SB 1) and House Bill 02-1310 (HB 1310). SB 1 provided funding for the Transportation Commission's Strategic Project

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[1] COLO. REV. STAT. § 24-75-219(2)(e).

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Investment Program. HB 1310 monies were more flexible, but that law also included a provision that 10 percent of SB 1 funds must be used to deliver strategic transit projects to the state.

Who Receives SB 228 Funds and How Must They Be Spent? State law directs that all SB 228 monies (dedicated for transportation) transferred to the HUTF be paid to CDOT via the State Highway Fund.[2] Those funds must be expended for the implementation of the Strategic Transportation Project Investment Program, with the following parameters:[3]

- no more than 90 percent of transfer revenue may be spent for highway purposes, including high-occupancy vehicle lanes, park-and-ride facilities, and transportation management systems; and
- no less than 10 percent may be used for transit purposes or transit capital improvements.

These requirements mirror those prescribed by the repealed SB 1 and HB 1310 laws.

How is the Transfer Triggered? Under SB 228, transfers to the HUTF begin once Colorado personal income meets or exceeds five percent.[4] Once triggered, an amount equal to two percent of total General Fund revenue will transfer to CDOT.[5]

When Will the Trigger be Met and How Much will CDOT Receive? According to the most recent Legislative Council Staff (LCS) Economic Forecast released in March 2014, personal income growth is expected to increase by 5.6 percent in 2014. This would trigger the five-year block of transfers, beginning in FY 2015-16. LCS economists predict that, due to expected growth in General Fund revenue, the transfers will provide an estimated $204.8 million to the HUTF.[6] Appendix 1 summarizes, based on current revenue patterns and projections, anticipated SB 228 transfers to CDOT once the personal income trigger is met.

Possible SB 228 Transfer Reductions Due to a TABOR Surplus

What is a "TABOR Surplus?" Section 20, Article X of the Colorado Constitution ("Taxpayer's Bill of Rights" or "TABOR") limits the total revenue that the state may spend during a single fiscal year. Revenue collected beyond this limit – also referred to as a "TABOR surplus" – is required to be returned to the taxpayers. The TABOR limit is calculated as a formula of: prior fiscal year spending multiplied by inflation, plus population growth, plus 1.[7] Simply stated, state revenue cannot grow at a rate that exceeds that of inflation plus population growth.

How Will a TABOR Surplus Affect SB 228? If an SB 228 transfer occurs during a TABOR surplus year, the SB 228 transfers to CDOT may be reduced or eliminated. This reduction in SB 228 dollars are based on how large the surplus is. According to the bill:[8]

- if the TABOR refund is between 1 and 3 percent of total General Fund revenues, CDOT's SB 228 transfer is reduced by 50 percent for that year; or

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[2] COLO. REV. STAT. § 43-4-206(6.5).
[3] COLO. REV. STAT. § 43-4-206(2)(a)(I).
[4] COLO. REV. STAT. §§ 24-75-219(2)(c), (d).
[5] COLO. REV. STAT. § 24-75-219(2)(c)(I).
[6] LEGIS. COUNCIL STAFF, STATE OF COLO., *Economic and Revenue Forecast*, 56 (Mar. 2014).
[7] COLO. CONST. art. X, § 20(7)(a).
[8] COLO. REV. STAT. § 24-75-219(4).

- if the TABOR refund exceeds 3 percent of the total General Fund revenue, the SB 228 transfer is eliminated for that year.

If a TABOR surplus occurs, only those SB 228 transfers that occur in that year shall be reduced.[9]

Is There Expected to be a TABOR Surplus Once SB 228 Monies Start to Flow to CDOT? Currently, the LCS Economic Forecast predicts that revenue will not be sufficient to produce a TABOR refund through, at earliest, FY 2015-16. However, if the economy and revenue collections improve faster than currently expected, a TABOR surplus could occur as early as the current fiscal year.[10] The possibility of a TABOR surplus occurring should be weighed by the Commission when evaluating options to spend SB 228 funds.

Table 1 summarizes potential SB 228 scenarios that may occur due to a TABOR surplus, should the economy produce better than expected revenue. As shown in the table, the latest LCS Economic Forecast predicts that revenue will fall short of the TABOR limit by $43 million in FY 2015-16. This means that, if left unchanged by the General Assembly, CDOT will receive the full SB 228 transfer currently in law. However, it is very possible that <u>a TABOR surplus of one to three percent for FY 2015-16 will be included in the next Economic Forecast</u>. If realized, this means that <u>CDOT's SB 228 transfer will be closer to $100 million in FY 2015-16, rather than $200 million</u>. Additional scenarios are provided in Table 1, should revenue collections exceed the latest forecasts, thereby resulting in reduced or eliminated SB 228 transfers to CDOT.

Table 1
Potential Senate Bill 09-228 Transfer Reductions Based on TABOR Refunds

Fiscal Year	Projection/ Hypothetical	TABOR Revenue**	SB 228 Transfer to CDOT
FY 2015-16	Current Forecast	$43.0 million below TABOR Limit ***(No TABOR Surplus)***	$204.8 million
	Hypotheticals for Stronger Than Anticipated Revenue Collections	Up to $129.2 million above TABOR limit ***(0 – 1.0% of TABOR Surplus)***	$204.8 million
		$129.2 – $387.6 million above TABOR Limit ***(1.0 – 3.0% of TABOR Surplus)***	$102.4 million (50% reduction)
		More than $387.6 million above TABOR Limit ***(Greater than 3.0% TABOR Surplus)***	$0 (transfer eliminated)

* None of the revenue collections projected by Legislative Council Staff until FY 2015-16 are significant enough as to trigger a TABOR refund. LEGIS. COUNCIL STAFF, STATE OF COLO., *Memorandum: Overview of Senate Bill 09-228, Concerning an Increase in the Flexibility of the General Assembly to Determine the Appropriate Use of State Revenues.* 4 (Nov. 13 2013).
**Currently, the TABOR spending limit is expected to be $12.97 billion in FY 2015-16, and projected revenue is approximately $12.92 billion.

Transportation Commission Decisions

What Decisions Will the Commission Have if SB 228 Funds Flow? In 1996, the Transportation Commission approved a set of 28 High Priority Statewide Projects, which constituted the Strategic Project Investment Program (7th Pot) because the Commission traditionally allocated its resources to each of CDOT's six engineering regions, or six "pots". The new program became the 7th

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[9] COLO. REV. STAT. § 24-75-219(4)(a).
[10] LEGIS. COUNCIL STAFF, STATE OF COLO., *Economic and Revenue Forecast*, 13 (Mar. 2014).

Pot. Thanks to the General Fund transfers through SB 1 and the voter-approved TRANs bond program in November, 1999, CDOT has been able to complete twenty-one of the twenty-eight strategic projects.

Because SB 228 requires the Transportation Commission to allocate monies to the Strategic Transportation Project Investment Program, but allows the Transportation Commission to define what projects are contained in that program, the starting point for conversation is the current list of uncompleted strategic corridors. However, if the Transportation Commission chooses, the list could be adjusted to address additional, or different, projects and priorities.

Please contact Herman Stockinger or Kurt Morrison, Office of Policy and Government Relations, at herman.stockinger@state.co.us or kurtis.morrison@state.co.us with questions regarding SB 228. For additional information regarding past Transportation Commission decisions and history regarding the 7th Pot, please contact Debra Perkins-Smith or Sandi Kohrs, Division of Transportation Development, at sandi.kohrs@state.co.us.

Appendix 1
Senate Bill 09-228 General Fund (GF) Transfers to the Highway Users Tax Fund (HUTF)
Anticipated Transfer Amounts and Dates
(presumes 5% personal income growth in 2014)

Transfer Year	GF Revenue****	HUTF Transfer	Transfer Dates/Amounts				
FY 2013-14	$9.12 billion	$0	n/a				
FY 2014-15	$9.73 billion	$0	n/a				
SB 228 Transfers Commence							
FY 2015-16 *(begins July 1, 2015)*	$10.24 billion	**$204.8 million** *(or $102.4 million*)*	**April 2016 (80%)** $163.8 million *(or $81.9 million*)*				**Dec. 2017*** (20%)** $41.0 million *(or $20.5 million*)*
FY 2016-17	$10.44 billion**	**$208.8 million**	**July 2016 (20%)** $41.8 million	**Oct. 2016 (20%)** $41.8 million	**Jan. 2017 (20%)** $41.8 million	**Apr. 2017 (20%)** $41.8 million	**Dec. 2018*** (20%)** $41.8 million
FY 2017-18	$10.65 billion**	**$213.0 million**	**July 2017 (20%)** $42.6 million	**Oct. 2017 (20%)** $42.6 million	**Jan. 2018 (20%)** $42.6 million	**Apr. 2018 (20%)** $42.6 million	**Dec. 2019*** (20%)** $42.6 million
FY 2018-19	$10.86 billion**	**$217.2 million**	**July 2018 (20%)** $43.4 million	**Oct. 2018 (20%)** $43.4 million	**Jan. 2019 (20%)** $43.4 million	**Apr. 2019 (20%)** $43.4 million	**Dec. 2020*** (20%)** $43.4 million
FY 2019-20	$11.08 billion**	**$221.6 million**	**July 2019 (20%)** $44.2 million	**Oct. 2019 (20%)** $44.2 million	**Jan. 2020 (20%)** $44.2 million	**Apr. 2020 (20%)** $44.2 million	**Dec. 2021*** (20%)** $44.2 million
TOTAL CDOT Transfers		**$1.07 billion**					

*Transfer amounts may be reduced by 50 percent if a TABOR surplus of 1.0 to 3.0 percent occurs that year.
** Figures presume a two percent annual growth in General Fund revenue.
***Twenty percent transfers occur on the date that the State Controller provides the Comprehensive Annual Financial Report of the State. This typically occurs in December of each year.
**** LEGIS. COUNCIL STAFF, STATE OF COLO., *Economic and Revenue Forecast*, 16 (Sept. 2013).