

MEMORANDUM

TO: Members of the Transportation Legislation Review Committee
FROM: David Meng, JBC Staff
SUBJECT: Highway Users Tax Fund "Off-the-Top"
DATE: August 21, 2012

Background

Section 18 of Article X of the Colorado Constitution limits expenditures from gas taxes, license and registration fees, and fines and fees resulting from the operation of motor vehicles on the highways exclusively to the construction, maintenance, and supervision of state highways. The primary fund that the State uses for transportation related purposes is the Highway Users Tax Fund (HUTF), which includes revenues from gasoline and special-fuel taxes, traffic and DUI fines, special license plate fees, driver's license fees, motor vehicle title and registration fees, and passenger-mile taxes.

In addition, there are also a number of special purpose sub-accounts of the HUTF such as the AIR Account, the Colorado State Titling and Registration Account, the Driver's License Administrative Revocation Account, the First Time Drunk Driving Offender Account, and the Motorist Insurance Identification Account.

The HUTF "off-the-top" refers to the portion of HUTF moneys that are appropriated by the General Assembly for highway supervision. The term "off-the-top" refers to the fact that these appropriations are made before the statutory distributions of HUTF moneys to the State Highway Fund and to counties and municipalities. Pursuant to Section 42-4-201 (3) (a) (III) (C), C.R.S. (2011), off-the-top appropriations are limited to: (1) the Colorado State Patrol in the Department of Public Safety; (2) the Ports of Entry Program in the Colorado State Patrol; and (3) related capital projects.

This section was first added to statutes in 1979. House Bill 79-1445 did not place any restrictions on the appropriation of HUTF moneys beyond the constitutional restrictions on appropriations of transportation related revenue, but did restrict HUTF appropriations **by the General Assembly** to no more than 23.0 percent of the net HUTF revenue and any year-to-year increase was limited to 7.0 percent.

A significant change occurred in the 1990 session where S.B. 90-190 placed restrictions on what HUTF moneys could be appropriated for (more restrictive than what Section 18 of Article X of the Colorado Constitution requires). These purposes were:

- To the Office of Transportation Safety;
- To the Transportation Development Division;
- To the Department of Labor and Employment for costs related to the oil inspection program;
- To the Department of Personnel for costs related to telecommunications support;
- To the Department of Corrections for costs related to the production of license plates by the

- Division of Correctional Industries;
- To the Department of Revenue for highway-related programs, such as the Ports of Entry and driver's license offices, and including related capital construction costs;
 - To the Department of Public Safety for highway related programs, such as the State Patrol, and including related capital construction costs;
 - To the Highway Crossing Protection Fund; and
 - To the Department of Personnel for costs of short-term disability benefits related to the departments or programs listed above.

In 1995, S.B. 95-047 was enacted, further restricting appropriations of HUTF moneys, this time to the current *permanent* purposes of the HUTF off-the-top: the Colorado State Patrol and the Ports of Entry. In addition, the annual growth of off-the-top moneys was reduced from 7.0 percent annually to 6.0 percent annually.

Various bills (S.B. 03-267, H.B. 05-1196, S.B. 09-274, H.B. 10-1387, and H.B. 11-1161) over the last 10 years have authorized the use of HUTF moneys or to supplement or replace General Fund to provide moneys for the operation of driver's license offices for specified fiscal years.

In the latest economic downturn, starting with S.B. 09-274, the General Assembly authorized the use of HUTF off-the-top moneys and diverted fees for driver's licenses, which had been credited to the HUTF, to the LSCF. Between using HUTF moneys for driver's license offices and the LSCF, the General Assembly was able to replace \$16.2 million General Fund in FY 2009-10, and \$20.0 million in FY 2010-11 and FY 2011-12.

House Bill 12-1216 continues the temporary diversion of fees paid by applicants for driver's licenses from the HUTF to the LSCF. The diversion continues until FY 2014-15, after which time the fees for driver's licenses will be credited to the HUTF and General Fund will be required to operate driver's license offices.

Table 1 on the following page provides detail of off-the-top appropriations since FY 2000-01.

Fiscal Year	HUTF Total Revenue	Allowable Off-the-top Appropriation	Total Off-the-top Appropriation	Under/ (over)	Percentage of Total HUTF	Off-the-top Percent Growth
2000-01	\$718,376,093	\$71,216,208	\$71,216,208	\$0	9.91%	6.00%
2001-02	739,703,912	75,489,180	75,489,180	0	10.21%	6.00%
2002-03 /a	736,666,507	80,018,531	79,955,627	62,904	10.85%	5.92%
2003-04 /b	752,506,680	84,752,965	84,752,744	221	11.26%	6.00%
2004-05 /b	776,718,965	89,837,909	89,837,909	0	11.57%	6.00%
2005-06 /b	734,100,000	95,228,184	95,217,800	10,384	12.97%	5.99%
2006-07 /c	746,300,000	91,445,591	91,445,591	0	12.25%	-3.96%
2007-08	767,563,495	96,932,326	96,932,326	0	12.63%	6.00%
2008-09 /d	862,381,858	102,748,266	102,748,266	0	11.91%	6.00%
2009-10 /d	903,926,111	108,913,162	108,913,162	0	12.05%	6.00%
2010-11 /d	938,352,968	115,447,952	115,447,951	1	12.30%	6.00%
2011-12	943,308,715	122,374,828	112,247,504	10,127,324	11.90%	-2.77%
2012-13	957,600,000	118,982,354	118,064,012	918,342	12.33%	5.18%

/a The appropriation was under the 6.0 percent limit because of a capital construction reversion.

/b Senate Bill 03-267 authorized the use of HUTF to fund driver's license office operations for FY 2003-04 and FY 2004-05. House Bill 05-1196 extended that authorization for FY 2005-06.

/c After the provisions of H.B. 05-1196 expired, the off-the-top appropriation was reduced by \$8,948,375.

/d Senate Bill 09-274 authorized use of HUTF to fund driver's license office operations for FY 2009-10. House Bill 10-1387 extended that authorization for FY 2010-11 and H.B. 11-1161 extended the authorization for FY 2011-12.

Table 2, on the following page, details the FY 2012-13 appropriation for the off-the-top appropriation.

Table 2 - Statutory HUTF Off-the-Top Appropriations Limit and FY 2012-13 Appropriations	
Description	Appropriation
FY 2011-12 HUTF Off-the-Top appropriation	\$112,247,504
Multiplied by 6.0 percent allowable growth	<u>1.06</u>
FY 2012-13 HUTF Off-the-Top appropriation limit	118,982,354
FY 2012-13 HUTF Off-the-Top appropriations:	
Department of Public Safety, State Patrol (H.B. 12-1335)	\$105,474,910
Department of Revenue, Ports of Entry (H.B. 12-1335)	10,186,163
Capital Construction (H.B. 12-1335)	2,263,218
H.B. 12-1019 (Transfer Ports of Entry to Department of Public Safety - Colorado State Patrol)	194,778
H.B. 12-1216 (Refinances Drivers License Office Operations in the Department of Revenue)	<u>(55,057)</u>
Total FY 2012-13 HUTF Off-the-Top appropriations	\$118,064,012
Over/(Under) FY 2012-13 HUTF Off-the-Top appropriations limit	\$918,342

Fuel Tracking System

There is one additional authorization of HUTF moneys that is before the statutory distributions, but outside of the off-the-top moneys. Section 43-4-201(3) (a) (V), C.R.S. authorizes the appropriation of moneys to the Department of Revenue for data collection services. These moneys are for the Fuel Tracking System which tracks gasoline and special fuel movement in order to expedite the collection of gasoline and special fuel taxes. This program generally costs about \$500,000 per year.