

Colorado Legislative Council Staff Fiscal Note
**STATE AND LOCAL
 FISCAL REVISED IMPACT**

(replaces fiscal note dated February 24, 2009)

Drafting Number: LLS 09-0274	Date: March 17, 2009
Prime Sponsor(s): Sen. Morse Rep. Marostica; Court	Bill Status: Senate Third Reading
	Fiscal Analyst: Natalie Mullis (303-866-4778)

TITLE: CONCERNING AN INCREASE IN THE FLEXIBILITY OF THE GENERAL ASSEMBLY TO DETERMINE THE APPROPRIATE USE OF STATE REVENUES.

Fiscal Impact Summary	FY 2009-2010	FY 2010-2011
State Revenue		
State Transfers or Diversions	See the State Transfers or Diversions section	
State Expenditures	See the State Expenditures section	
FTE Position Change		
Effective Date: July 1, 2009.		
Appropriation Summary for FY 2009-2010: None.		
Local Government Impact: Possible change in revenue distributions from the Highway Users Tax Fund to cities and counties. See the Local Government Impact section.		

This note is revised to incorporate new information on the use of SB97-1 moneys to finance transportation bond debt service.

Summary of Legislation

SB 09-228 repeals the 6 percent limit on General Fund (GF) appropriations. The bill also repeals the following:

- automatic SB 97-1 diversions from the GF to the Highway Users Tax Fund (HUTF);
- automatic HB 02-1310 transfers from the GF to the HUTF and the Capital Construction Fund (CCF); and
- the 6 percent limit on off-the-top appropriations from the HUTF to the State Patrol in the Department of Public Safety and the Ports of Entry in the Department of Revenue.

The bill also modifies the following statutes that are contingent on the 6 percent limit on GF appropriations:

- *Transfers from the Limited Gaming Fund* to the State Council on the Arts Cash Fund, Film Incentives Cash Fund, New Jobs Incentives Cash Fund, and the Colorado Travel and Tourism Promotion Fund will depend on whether there is enough revenue in the GF

to cover the amount of GF appropriations budgeted during any particular fiscal year, rather than if there is enough to cover a 6 percent increase and the reserve.

- SB 09-228 retains the trigger that the following *tax credits and exemptions* be available only during years in which there is enough revenue to allow GF appropriations to increase by 6 percent (regardless of actual increases in GF appropriations during any particular year):

Child care facilities income tax credit;
Historic preservation income tax credit;
Income tax credit for those who hire people with developmental disabilities; and
Sales and use tax exemption for cleanroom equipment.

- Potential appropriations of principal from the *Higher Education Maintenance and Reserve Fund* will depend on whether there is enough revenue in the GF to cover the amount of GF appropriations budgeted during any particular fiscal year and the 4 percent statutory reserve, rather than if there is enough to cover a 6 percent increase and the reserve. The Higher Education Maintenance Reserve Fund receives federal mineral lease revenue.

State Transfers or Diversions

Transfers and diversions from the General Fund to transportation and capital construction may be altered by the bill. In addition, the bill may alter transfers from the Limited Gaming Fund to the State Council on the Arts Cash Fund, the Film Incentives Cash Fund, the New Jobs Incentives Cash Fund, the Colorado Travel and Tourism Promotion Fund, and the Clean Energy Fund.

Transportation and Capital Construction. SB 09-228 repeals automatic SB 97-1 diversions and HB 02-1310 transfers. Instead, the bill allows the General Assembly to determine these amounts during the annual budget process. Table 1 shows the amount expected to be automatically diverted or transferred under current law through FY 2011-12, based on the December 2008 LCS forecast. It should be noted that budget decisions for FY 2008-09 and FY 2009-10 will alter these amounts.

Senate Bill 97-1 Diversion. Under current law, SB 97-1 diverts 10.355 percent of sales and use tax revenue from the GF to the HUTF. The diversion only occurs if there is enough money to allow GF appropriations to increase by the 6 percent limit and to fully fund the statutory reserve at 4 percent of GF appropriations.

HB 02-1310 Transfers. Under current law, surplus money in the GF is transferred 1/3 to the CCF and 2/3 to the HUTF. Surplus money, or the excess GF reserve, is any money left over after appropriations have been increased by 6 percent, the 4 percent reserve has been fully funded, and the full SB 97-1 diversion has been made in full.

Table 1. General Fund Diverted or Transferred Under Current Law For Capital Construction and Transportation December 2008 LCS Forecast; Millions of Dollars				
	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
SB 97-1 Diversion to HUTF	\$0	\$0	\$107.8	\$245.8
HB 02-1310 Transfer to HUTF	\$0	\$0	\$0	\$93.0
HB 02-1310 Transfer to CCF	\$0	\$0	\$0	\$46.5

Transfers from the Limited Gaming Fund. The bill may also alter the amount of money transferred each year from the Limited Gaming Fund to the State Council on the Arts Cash Fund, the Film Incentives Cash Fund, the New Jobs Incentives Cash Fund, and the Colorado Travel and Tourism Promotion Fund. Under current law, these transfers are potentially reduced if there is not enough money to allow GF appropriations to increase by the 6 percent limit. Under the bill, these transfers would be potentially reduced if there is not enough money to cover the increase in GF appropriations determined annually by the General Assembly. This provision could also alter the amount of Limited Gaming Fund revenue transferred to the Clean Energy Fund, which receives any revenue remaining in the Limited Gaming Fund after the other transfers are made.

State Expenditures

The bill will not increase total state expenditures, but it may change the purposes for which state money is spent. Changes in the decision-making process for expenditures from the GF and the HUTF are shown in Table 2. It may also alter the amount and timing of potential appropriations from the Higher Education Maintenance and Reserve Fund.

General Fund expenditures. Under current law, spending out of the General Fund on transportation, capital construction, and appropriations to operating programs is statutorily prioritized as shown in Table 2. SB 09-228 would eliminate this statutory prioritization.

Highway Users Tax Fund distributions. Under current law, money in the HUTF is distributed based on statutory formula to the Colorado Department of Transportation (CDOT), counties, and cities. Before anything is distributed, appropriations are made to the Ports of Entry in the Department of Revenue and the State Patrol in the Department of Public Safety for highway-related functions. These, referred to as "off-the-top" appropriations, totaled \$100.6 million in FY 2007-08. Under current law, off-the-top appropriations cannot increase by more than 6 percent each year. SB 09-288 would repeal the limit on 6 percent growth for off-the-top appropriations, and give the General Assembly the ability to appropriate more than that limit for any transportation-related purpose. Should the General Assembly choose to do so, CDOT will receive smaller distributions. The State Constitution requires that all money in the HUTF be expended only for transportation-related purposes.

Table 2. The Decision-Making Process for State Expenditures Under Current Law and SB 09-228		
Fund	Current Law	SB 09-228
General Fund	In order of priority: 1) GF appropriations up to 6% growth and 4% reserve fully funded 2) 10.355% of sales and use taxes to HUTF 2) Surplus money transferred: 1/3 to CCF 2/3 to HUTF	Priority of expenditures determined annually by the General Assembly. A reserve equal to 4% of GF appropriations required.
Highway Users Tax Fund	Distributed as follows: 1) Off-the-top appropriations up to 6% growth 2) Of the remaining, about 62% to CDOT 23% to counties, and 15% to cities.	Distributed as follows: 1) Off-the-top appropriations as determined by the GA 2) Of the remaining, about 62% to CDOT 23% to counties, and 15% to cities.

Potential Appropriations from the Higher Education Maintenance Reserve Fund. The bill may also alter the amount of money appropriated from the principal of the Higher Education Maintenance Reserve Fund. Under current law, the General Assembly can appropriate money from the principal of the fund, which consists of federal mineral leasing revenue, if there is not enough money in the General Fund to allow appropriations to increase by 6 percent and for the 4 percent reserve to be fully funded. SB 09-228 would allow money to be appropriated from the principal if there is not enough money to allow appropriations to increase by the budgeted amount and the 4 percent reserve to be fully funded.

Other State Impacts

In 1999, voters authorized CDOT to borrow up to \$1.7 billion by selling TRANs, with a maximum repayment cost of \$2.3 billion. Colorado owes debt service on the TRANs equal to \$168 million per year through 2014, \$175 million in 2015, and \$284 million in 2016. Colorado and the Federal Highway Administration have agreed to a minimum 50 percent state match on the TRANs debt service payments. Under current law, the Transportation Commission has chosen to use the SB 97-1 diversion to pay the state's portion of annual debt payments on the Transportation Revenue Anticipation Notes (TRANs) during years in which a SB 97-1 diversion occurs. During years in which a SB 97-1 diversion does not occur, money from the Highway Users Tax Fund must be used to pay the state's share of the debt service.

Local Government Impact

Cities and counties that receive distributions from the HUTF would receive smaller distributions if off-the-top appropriations from the HUTF to state departments increase over what would have occurred under current law.

Departments Contacted

Governor Transportation