SB09-228

Colorado Legislative Council Staff Fiscal Note

STATE
FISCAL REVISED IMPACT

(replaces fiscal note dated April 24, 2009)

Drafting Number:	LLS 09-0274	**Date:**	April 24, 2009
Prime Sponsor(s):	Sen. Morse	**Bill Status:**	House Appropriations
	Rep. Marostica; Court	**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: None.		

This note is revised to incorporate amendments adopted in the House Transportation and Energy Committee.

Summary of Legislation

SB 09-228 alters the limit on General Fund (GF) appropriations, repeals the SB 97-1 diversion and HB 02-1310 transfers, and requires alternative transfers (subject to triggers) to transportation, capital construction, and the General Fund statutory reserve. Each of these provisions is described below.

General Fund Appropriations Limit - Altered. Under current law, General Fund appropriations are limited to the lesser of a 6 percent increase from the previous year's appropriation level and 5 percent of Colorado personal income. SB 09-228 sets the limit equal to 5 percent of Colorado personal income.

Required General Fund Transfers - Established. Transfers from the General Fund to transportation, capital construction, and the General Fund statutory reserve are required by the bill in the amounts and during the years shown in Table 1. Transfers to transportation and capital construction are specified as percentages of total General Fund revenue. Transfers to the reserve are specified as a percent of General Fund appropriations. Once the five-year period of transfers is complete, the General Fund statutory reserve will equal 6.5 percent of General Fund appropriations.

The five-year block of transfers is subject to a trigger on personal income growth. If personal income increases by less than 5 percent in 2012, the entire five-year block of transfers is postponed until the first fiscal year in which personal income increases by at least 5 percent during the calendar year in which the fiscal year originated. For example, if 2014 were the first year in which personal income increased by at least 5 percent, the five-year block of transfers would begin in FY 2014-15. If personal income growth were to fall below 5 percent during the five-year period, the transfers would continue to occur without pause.

Table 1. Required General Fund Transfers
Transportation and Capital Construction Transfers Are A Percent of General Fund Revenue
Statutory Reserve Transfers Are A Percent of General Fund Appropriations
Subject to Applicable Triggers

Fiscal Year	Transportation	Capital Construction	Reserve
FY 2012-13	**2%**	**0.5%**	**0.5%**
FY 2013-14	**2%**	**0.5%**	**0.5%**
FY 2014-15	**2%**	**1%**	**0.5%**
FY 2015-16	**2%**	**1%**	**0.5%**
FY 2016-17	**2%**	**1%**	**0.5%**

During FY 2012-13 (or the first year of the transfers), 80 percent of the transfers are scheduled to occur on April 15th, 2013 (or on the applicable April 15th of a future fiscal year). The remaining 20 percent will be transferred when the state controller's office closes the books for that fiscal year, usually in December. During the remaining four fiscal years, 80 percent will be transferred in equal installments on a quarterly basis, with the remaining 20 percent transferred when the books are closed for that fiscal year.

Each individual transfer is subject to a trigger based on the size of future TABOR refunds. If a TABOR refund equal to between 1 percent and 3 percent of General Fund revenue is expected to occur, transfers will be reduced by 50 percent. If the TABOR refund is equal to more than 3 percent of General Fund revenue, the transfer will not occur. In FY 2011-12, 1 percent is equal to $80 million and 3 percent is equal to $240 million.

Senate Bill 97-1 Diversion - Repealed. 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. SB 09-228 repeals this mechanism.

HB 02-1310 Transfers - Repealed. Under current law, surplus money in the GF is transferred 1/3 to the Capital Construction Fund (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 reserve has been fully funded, and the full SB 97-1 diversion has been made in full. SB 09-228 repeals these transfers.

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

1. *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.

2. 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.

3. 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 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 are altered by the bill and new transfers to the General Fund statutory reserve are required. 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.

General Fund Diversions/Transfers. SB 09-228 repeals automatic SB 97-1 diversions and HB 02-1310 transfers and replaces them with a five-year period of transfers to the HUTF, the CCF, and the General Fund statutory reserve. During years outside of the five-year period in which the transfers are required, the bill allows the General Assembly to determine funding for these items during the annual budget process.

Current Law. Under current law and assuming enactment of the JBC Budget Package as it was approved by the House, no money is available via the SB 97-1 diversion and the HB 02-1310 transfer through FY 2010-11. Any amount that may be available in FY 2011-12 and thereafter is contingent on future budgetary decisions and revenue performance. Since these are unknown, the amount of money that will be available via the SB 97-1 diversion and HB 02-1310 transfers is also unknown.

SB 09-228. Transfers from the General Fund to transportation, capital construction, and the General Fund statutory reserve are required by the bill in the amounts and during the years shown in Table 1. These transfers are subject to the triggers described in the summary of legislation above. Although a forecast is not available for the time period in which the transfers will occur, annual transfers are likely to fall within the following ranges:

- Transportation: $170 million and $230 million (2 percent of GF revenue)
- Capital Construction: $42 million to $47 million (0.5 percent of GF revenue)
  $95 million to $115 million (1 percent of GF revenue)
- General Fund reserve: $35 million and $47 million (0.5 percent of GF appropriations)

Limited Gaming Fund Transfers. 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.

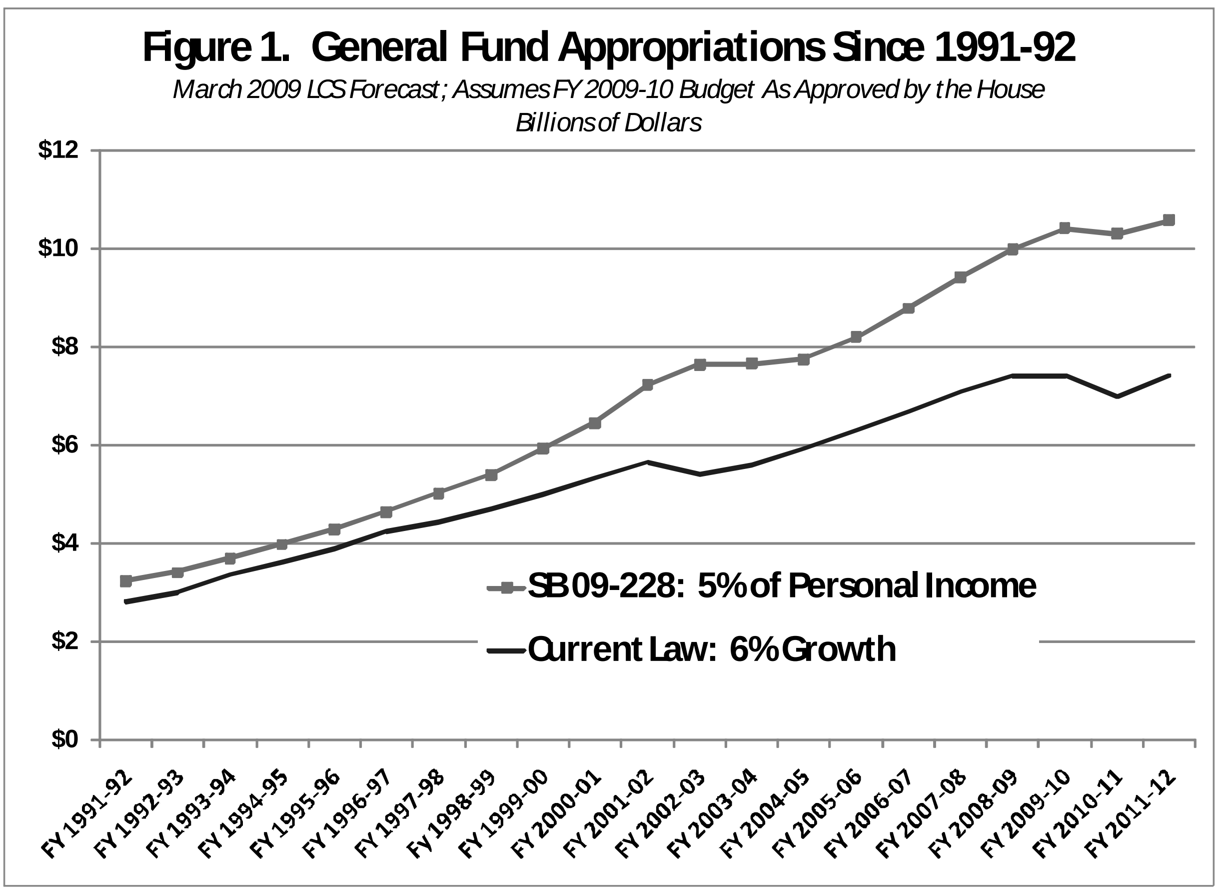
State Expenditures

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 General Fund expenditures 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 operating programs is statutorily prioritized. Table 2 shows how spending in the General Fund is prioritized under current law and under SB 09-228. In addition, Figure 1 illustrates how the limit on General Fund appropriations would change under SB 09-228.

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 statutory 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 statutory reserve to be fully funded.

Table 2. Priorities for General Fund Expenditures Under Current Law and SB 09-228		
Fund	**Current Law**	**SB 09-228**
General Fund	In order of priority: 1) TABOR refunds 2) GF appropriations up to 6% growth and 4% reserve fully funded 3) 10.355% of sales and use taxes to HUTF 4) Surplus money transferred: 1/3 to CCF 2/3 to HUTF	In order of priority: 1) TABOR refunds 2) GF appropriations up to 5% of Colorado Personal Income, a fully funded reserve, and any required transfers to the HUTF, CCF, and the reserve (subject to applicable triggers).



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. The transfer provided to transportation under SB 09-228 is expected to equal approximately the amount required to pay annual debt service payments through 2015.

Departments Contacted

Governor Transportation