MEMORANDUM

JOINT BUDGET COMMITTEE

TO	Members of the Joint Budget Committee
FROM	Steve Allen, JBC Staff (303-866-4961)
DATE	May 14, 2020
SUBJECT	CDOT balancing options in OSPB's comeback

During the OSPB comeback on May 11, the OSPB made four budget balancing recommendations related to the Colorado Department of Transportation (CDOT):

OSPB Recommendation 1: OSPB recommends the Committee carry legislation to amend Section 24-75-219 (5)(c) to suspend for two years the $50M (million) annual transfer from the General Fund to CDOT. This transfer provides CDOT with the money it needs to pay its share of the debt service on the Certificates of Participation (COPs) issued pursuant to S.B. 17-267.

JBC staff recommendation 1: JBC staff has recommended that the JBC carry such a bill. Staff also recommended that the bill either (1) delay until November 2021 the TRANs (Tax Revenue Anticipation Notes) ballot measure that is scheduled to go to voters in November 2020 or (2) cancel the ballot measure. The Committee has requested that two bills be drafted. Both would suspend the $50 million transfer. One would delay the ballot measure, the other would cancel it.

Analysis: This bill would reduce General Fund obligations by $50 million for two years beginning in FY 2020-21. Staff has discussed these recommendations in earlier memos.

OSPB Recommendation 2: OSPB recommends "the Committee consider offsetting the GF obligation for the lease-purchase agreements executed in FY 2018-19 and FY 2019-20 to be paid for from the State Highway Fund for two-years, totaling $12M per year, after accounting for the repurposing of the COP payments for controlled maintenance and capital construction projects."

JBC staff recommendation 2: JBC staff recommends that the Committee carry a bill to implement this OSPB recommendation.

Analysis: This recommendation, which requires a bill, would reduce General Fund obligations by $12 million for two years beginning in FY 2020-21.

If a second tranche of COPS's with a principal value of $500 million is issued later this month (as anticipated) total debt service payments on the COP's will equal $75 million, $37.5 million on each tranche. This $75 million payment divides into 3 parts: a $9 million payment by the General Fund, a $50 million payment by CDOT, and a $16 million payment by the General Fund.

Under current law, the first $9 million of these debt service payments is paid by the General Fund. The $9 million payment from the General Fund reflects the fact that $120 million of the first tranche of COP borrowing was used to finance non-CDOT capital projects and the remainder financed CDOT projects. The $9 million pays the debt service on the $120 million. The next $50 million of debt service payments is paid by CDOT, however the current $50 million transfer from the General Fund to CDOT compensates CDOT for this debt service payment, meaning that under current law, the General Fund effectively makes the $50 million payment. The final $16 million of debt service payments comes from the General Fund.

The OSPB recommendation is that CDOT for two years, beginning in FY 2020-21, pay $12 million of the $16 million payment, thus reducing General Fund obligations by $12 million.

OSPB Recommendation 3: OSPB recommends the Committee carry a bill to utilize $49 million of the proceeds from the COP issue (which is expected to occur later this month) and use the $49M to pay for State controlled maintenance and capital construction projects, which are discussed below.

JBC staff recommendation 3: Staff recommends that the Committee carry a bill to utilize $49 million of the proceeds from the upcoming COP issue, *if the Committee wants the state to undertake the OSPB-recommended controlled maintenance and capital construction projects or some other set of controlled maintenance and capital construction projects.*

Analysis: Senate Bill 17-267 utilized $120m of the proceeds from its first tranche of borrowing to pay for state capital projects. Subsequently the state has annually paid $9 million from the General Fund to cover the related debt service obligation on this $120 million. OSPB recommendation 3 is similar: $49 million of the proceeds from the second tranche of borrowing would be used to pay for state capital and controlled maintenance projects and the state will pay $4 million annually from the General Fund to cover the related debt service obligation. This $4 million is related to the $12 million that is the subject of Recommendation 2. Under current statute, the $75M of total debt service payments on two tranches of S.B. 267 debt can be divided into three components: $9 million paid by the General Fund, $50 million paid by CDOT (with $50M transferred from the General Fund to CDOT to compensate for this payment), and a final $16 million paid by the General Fund. OSPB Recommendation #2 requires CDOT to pay $12 million of the final $16 million for two years, meaning that the General Fund is paying the remaining $4 million of the debt service.

How much will a $49M diversion of COP proceeds from the second tranche leave for CDOT to spend on its projects? In September 2018 when tranche 1, which had a principal value of $500M, was issued, interest rates were low and the proceeds equaled $545 million. Tranch 2 is expected to bring in between $550M and $590M. (It's a very favorable time for borrowers with good credit ratings to issue debt.) This means that even with a $49 million diversion to the state capital projects, CDOT is expected to receive between $501M and $541M.

Before describing the capital projects that the $49M would fund, staff wants to strongly recommend that the borrowed money be used only to finance capital or controlled expenditures, which both yield streams of benefits that last for a number of years. Staff strongly recommends that borrowed money not be used to finance operating expenditures. If the COP proceeds pay FY 2020-21 operating expenses, then in FY 2039-40 the state will still be paying for today's economic decline.

Use of the $49 million: Quoting from the OSPB comeback request:

> OSPB respectfully requests a higher level of funding to appropriately care for State capital assets. OSPB, in discussion with the State Architect's office, believes this amount of funding approved in May 2020 by the Committee is dangerously low to maintain the upkeep and viability of the State's capital assets. These programs are life safety related and are required by other statutes and regulations to maintain building codes. Controlled maintenance projects related to life safety, such as repairing a fire protection system at Gilliam Youth Services Center and Lookout Mountain Youth Services Center, replacing a fire alarm system at the King Center at the Auraria Higher Education Center, and installing fire sprinkler lines at Red Rocks Community College, are projects that cannot be skipped without impairing the basic safety of those utilizing these state assets.
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> The Capital Development Committee writes "spending less on controlled maintenance and recapitalization in a given year does not save the State money". According to industry resources, "Every $1 deferred in maintenance costs $4 of capital renewal needs in the future." Therefore delaying $28M in maintenance could result in $112M in capital renewal requests in subsequent years. Also, not providing sufficient controlled maintenance on an ongoing basis typically means reducing the lifecycle of an asset by as much as one-third.

If recommendation #3 is approved, the implementing bill must pass quickly. If the Committee decides that it wants to utilize $49M of the proceeds from the second COP tranche for capital needs, the bill must be passed quickly after the General Assembly comes into session.

The Preliminary Offering Statement (POS) for the COP's is expected to be issued on May 19 or May 20 and the transaction is expected to close on June 4. A POS is an informational document released prior to the sale of a debt instrument that describes the pertinent facts about the proposed issue and the issuer. It is used by rating agencies like S&P or Moody's as they assess the issue and the financial strength of the state. It is also used to set the final interest rate and price for the offering. The POS must accurately describe the issue; if the pertinent facts described in the POS change materially after the POS is issued and before the transaction closes, it will complicate the offering, perhaps reducing the offering price and increasing the interest rate. For this reason, the portion of the bill that implements recommendation #3 should not change materially after introduction. If the bill passes quickly, it minimizes the uncertainty in the minds of potential investors.

In its comeback, OSPB wrote: "In order to allow the funds the flexibility to be used towards controlled maintenance, the legislature would need to immediately pass legislation to permit such use of funds and allow time for the pre-filing documents to be updated." The Treasurer reiterated this in his comeback presentation to the Committee.

How many bills are needed to implement recommendations 1, 2 and 3? All three recommendations could be combined in a single bill *if there is a high degree of certainty that the bill will pass quickly*. If parts of the bill may pass slowly, elements that slow passage should be placed in a separate bill. For example, if the decision to delay or cancel the November TRANs bond issue may slow passage, it should be placed in a separate bill.

OSPB Recommendation 4: OSPB recommends the Committee

- Transfer $10M from the Multi-Modal Transportation Options Fund (the "Multimodal Fund") to the General Fund.
- "Reallocate" $1M of this amount in order to offset cuts to transportation services for vulnerable populations, which includes seniors

JBC Staff Recommendation 4: Staff recommends the Committee approve this request. Staff further recommends that the requested reallocation take the form of a $1 million General Fund appropriation to CDOT on a new and temporary line item in the "Special Purpose" section of CDOT's Long Bill. The title of the new line item would be "Transportation services for vulnerable populations, including seniors."

Analysis: While the local portion of the balance in the Multimodal Fund is nearly fully committed, CDOT has not yet allocated the statewide portion of the balance. Thus transferring the state portion to the General Fund is preferable to transferring the local portion. The Multimodal fund has a sufficient uncommitted balance to accommodate the transfer.

The $1 million General Fund appropriation to CDOT is designed to offset cuts to transportation services for vulnerable populations, which includes seniors, in light of equity having been an important aspect of the original intent of the multimodal options fund.

Background on the Multimodal Fund: Senate Bill 18-001 created and funded the Multimodal Transportation Options Fund (the "Multimodal Fund", see Section 43-4-1103 (1)(a), C.R.S.). The bill added Section 43-4-1102 to statute, which defines multimodal projects to include capital or operating costs for fixed route and on-demand transit, transportation demand management programs, multimodal mobility projects enabled by new technology, multimodal transportation studies, and bicycle or pedestrian projects. Money in the Fund is allocated 85 percent for local multimodal projects and 15 percent for state multimodal projects.

For FY 2018-19, S.B. 18-001 transferred a net of $71.75 million from the General Fund to the Multimodal Fund, which is subject to annual appropriation by the General Assembly. Senate Bill 19-125 (the CDOT supplemental bill) appropriated the entire $71.75 million to CDOT with a roll forward provision that allows the Department to expend the appropriation through the close of FY 2022-23.

For FY 2019-20, S.B. 18-001 transferred an additional $22.5 million from the General Fund to the Multimodal Fund. Senate Bill 19-207 (the 2019-20 Long Bill) appropriated the entire $22.5 million to CDOT with a roll forward provision that allows the Department to expend the appropriation through the close of FY 2023-24.