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MEMORANDUM

November 29, 2016

TO: Interested Persons
FROM: Larson Silbaugh, Senior Economist, (303) 866-4720
SUBJECT: Colorado Transportation Finance

Summary

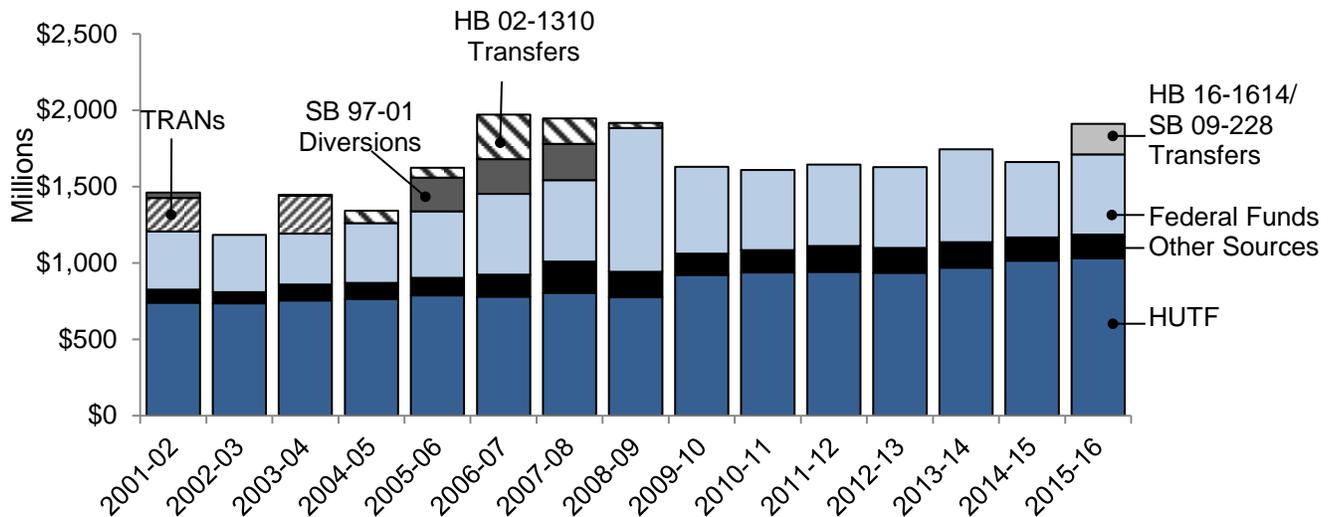
Colorado's transportation system consists of a network of roads, highways, bridges, mass transit lines, airports, and rail systems. State and local governments maintain the system with funding from federal, state, and local government sources. Subject to certain constitutional limitations, the General Assembly has determined the methods of financing Colorado's transportation system and delegated transportation planning to the Colorado Department of Transportation (CDOT) and local governments. This memorandum provides an overview of:

- revenue sources and financing for state highway construction and maintenance;
- the distribution of state funding to CDOT and Colorado's local governments;
- the role of enterprises in transportation funding;
- the state transportation planning process; and,
- the roles and responsibilities of the Colorado Department of Transportation (CDOT) and the Transportation Commission.

State Transportation Funding

The Colorado transportation system receives revenue from several sources including motor fuel taxes, registration fees, other transportation-related taxes and fees, federal funds, and the General Fund. These funds are distributed according to statutory formulas. Figure 1 shows a 15-year history of the major state sources of funding for Colorado's transportation system. Each funding source is described in greater detail below.

Figure 1
Major Sources of Funding for the Colorado Transportation System
FY 2001-02 through FY 2015-16
Dollars in Millions



Source: Office of the State Controller and Colorado Department of Transportation.

Note: Funding sources exclude revenue to regional transit authorities, local governments, and enterprises.

¹CDOT sold Transportation Revenue Anticipation Notes (TRANs) as a means of generating revenue between FY 1999-00 and FY 2003-04. All TRANs revenue has been spent. Debt service on TRANs is paid with money from the federal government and state matching funds; the final debt service payment is scheduled in FY 2016-17.

²House Bill 02-1310 transfers were repealed during the 2009 legislative session.

³House Bill 16-1416 replaced the first two years of Senate Bill 09-228 transfers with fixed dollar amounts to provide certainty in the budget process.

⁴Federal funds include \$404.2 million in American Recovery and Reinvestment Act (ARRA) funds in FY 2008-09.

⁵HUTF revenue includes additional registration fees paid pursuant to Senate Bill 09-108 (FASTER) beginning FY 2009-10.

Highway Users Tax Fund. The Highway Users Tax Fund (HUTF) is the primary source of highway funds in Colorado. Preliminary estimates of revenue to the fund totaled \$1.0 billion in FY 2015-16. Revenue from the HUTF comes from the following sources:

- **Motor fuel taxes.** State motor fuel excise taxes make up the largest share of HUTF revenue. Excise taxes are levied on a per-gallon basis at 22 cents per gallon for gasoline and 20.5 cents per gallon for diesel fuel. In FY 2015-16, revenue from these taxes totaled \$609.7 million. The Colorado Constitution requires that any motor fuel taxes be used for the construction, maintenance, and supervision of the state's highways.¹
- **Registration fees.** The Colorado Constitution requires that all vehicle registrations, fees, and fines charged with respect to the operation of a motor vehicle on Colorado's public highways be used for the construction, maintenance, and supervision of the state's highways. Motor vehicle registration fees make up the second largest share of HUTF revenue. Registration fees are based on the age and weight of the vehicle registered. Notably, registration fees differ from the specific ownership tax, revenues

¹ Colo. Const. art. X, § 18.

from which are apportioned to local governments in a manner similar to property taxes. Registration fees include the apportionment of interstate motor carrier fee revenue under the International Registration Plan, a reciprocal agreement among states.² In FY 2015-16, registration fee revenue totaled \$356.0 million, which includes additional registration fees passed in 2009.³

- *Other HUTF receipts.* Other HUTF revenue comes from driver's license fees, court fines, and interest earnings. In FY 2015-16, revenue from these sources totaled \$64.5 million.

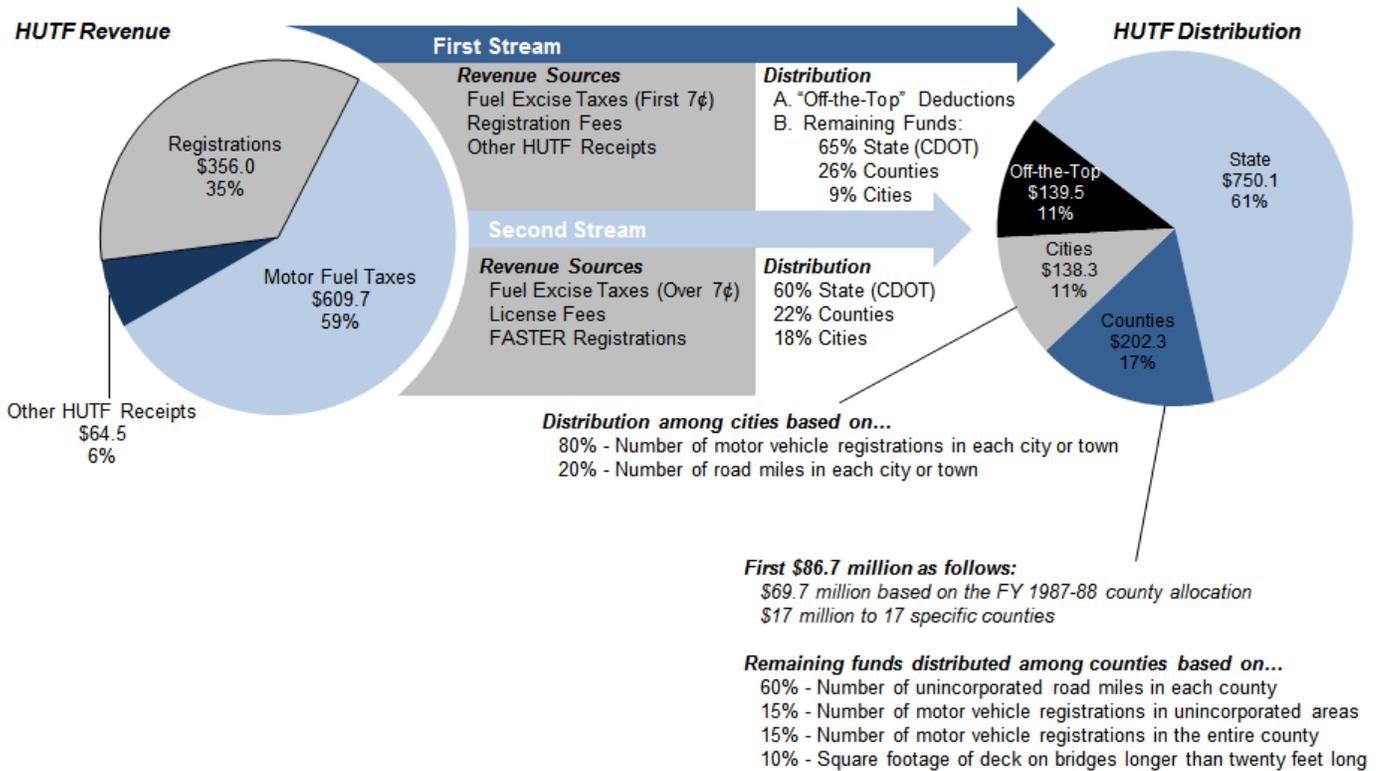
HUTF funds are allocated to CDOT, counties, and municipalities, based on statutory formulas.⁴ Figure 2 shows the sources and distribution of revenue in the fund. The terms "first stream" and "second stream" are commonly used when explaining the distribution of revenue from the HUTF. Prior to the first stream distribution, appropriations are made to the Department of Revenue, for highway-related functions, and to the Department of Public Safety, for the State Patrol. These appropriations are referred to as "off-the-top" deductions. Remaining first stream revenue is distributed to CDOT (65 percent), counties (26 percent), and municipalities (9 percent). Second stream revenue is distributed to CDOT (60 percent), counties (22 percent), and municipalities (18 percent).

² Section 42-3-304 (10)(c), C.R.S.

³ During the 2009 legislative session, the General Assembly adopted Senate Bill 09-108, Funding Advancement for Surface Transportation and Economic Recovery (FASTER).

⁴ Sections 43-4-205, 43-4-206, 43-4-207, and 43-4-208, C.R.S.

Figure 2
HUTF Revenue and Distributions, FY 2015-16
Dollars in Millions



Source: Office of the State Controller and Office of the State Treasurer.

State Highway Fund. The State Highway Fund is administered by CDOT and receives the state's share of HUTF distributions and federal funds. The fund also generates its own revenue, primarily from interest earnings on the fund balance and local government matching funds to federal transportation funding programs. The State Highway Fund is the primary account used for maintenance of the state's highway system. In FY 2015-16, \$52.2 million in revenue from these sources was deposited into the fund.

Other sources of transportation revenue. Smaller sources of transportation revenue include the aviation fuel tax, highway safety-related fees and fines, and other registration fees.

- **Aviation Fund.** Aviation Fund revenue includes revenue from a 6 cent per gallon fuel excise tax on fuel used by smaller propeller-driven aircraft, a 4 cent per gallon jet fuel excise tax, and a 2.9 percent sales tax on the retail cost of jet fuel. Any taxes charged on aviation fuel must be used exclusively for aviation purposes.⁵ Aviation Fund revenue is shared between the local governments that own airports and CDOT. Local governments use their share of aviation fuel tax revenue to maintain and operate 74 airports across the state. CDOT uses its share of this revenue to provide discretionary grants to airports and fund the operation of the CDOT aeronautics division. In FY 2015-16, \$15.2 million in revenue was generated to this fund.

⁵ Colo. Const. art. X, § 18.

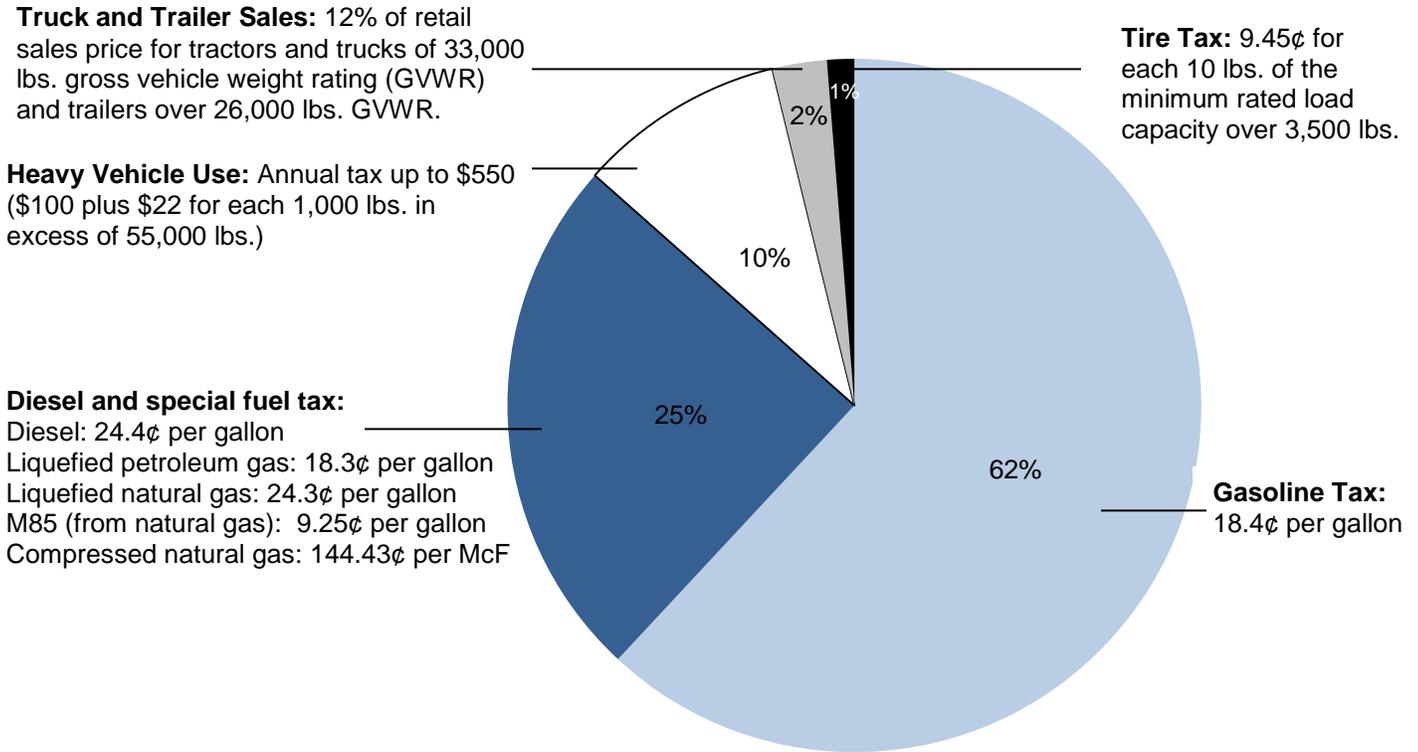
- *Highway safety revenue.* Revenue to transportation also comes from statutory fees charged for the Law Enforcement Assistance Fund, and from fines for driving under the influence or driving while ability impaired. Revenue from these sources is generally used to fund traffic signals and statewide public safety campaigns. Revenue is shared with the Judicial Branch, the Department of Public Health and Environment, and the Division of Motor Vehicles in the Department of Revenue. In FY 2015-16, revenue from these fees and fines totaled \$9.3 million.
- *Other registration fees.* In addition to the registration fees paid to the HUTF, a number of additional fees are charged when a motor vehicle is registered. These include: Emergency Medical Services fees, emissions inspection fees, motorcycle and motor vehicle license fees, and Police Officer Standards and Training Board fees. Revenue from these fees totaled \$77.9 million in FY 2015-16.⁶

Federal funds. Congress authorizes the expenditure of federal funds by state and local governments through multi-year transportation funding acts. The most recent authorization, the Fixing America's Surface Transportation Act (FAST) Act, was signed into law in December 2015. The FAST Act is a \$305 billion, five-year authorization of federal surface transportation programs. In FY 2015-16, Colorado received \$573.1 million from the FAST Act.

Federal funds are distributed to states from the federal Highway Trust Fund, which collects motor fuel taxes and truck-related taxes (truck and trailer sales, truck tires, and heavy vehicle use). Highway Trust Fund disbursements are paid to states based on formulas in federal law. Figure 3 shows the sources of revenue to the fund.

⁶ This figure includes driver's license registration fees diverted from the HUTF to the Licensing Services Cash Fund, as required pursuant to Section 42-2-113, C.R.S. HUTF diversions to the Licensing Services Cash Fund continue through FY 2014-15.

Figure 3
Revenue Sources to the Federal Highway Trust Fund
Federal Fiscal Year 2015



Source: Congressional Budget Office.

General Fund. The General Assembly has used various mechanisms to provide General Fund revenue for transportation. Since 1979, the General Assembly has used statutory mechanisms to transfer General Fund revenue to the HUTF when sufficient funds are available.⁷ Beginning July 1, 2003, House Bill 02-1310 required that two-thirds of excess General Fund reserves from the prior fiscal year be transferred to highways, with the remaining one third transferred to the Capitol Construction Fund. The excess General Fund reserve was any money left over after appropriations had been increased by 6 percent, a 4 percent reserve had been fully funded, and a diversion of 10.355 percent of sales and use tax revenue was made the HUTF. In 2009, the General Assembly passed Senate Bill 09-228, which transfers General Fund money for five consecutive fiscal years to transportation when certain conditions are met.

Senate Bill 09-228⁸ requires that transfers equal to 2.0 percent of General Fund revenue be made to the HUTF during certain years. Statute requires that this revenue be deposited in the State Highway Fund, where it must be spent to implement the current Statewide Transportation Improvement Plan.⁹ Further, no more than 90 percent of transfers may be spent on highways

⁷ Senate Bill 79-536; Senate Bill 97-1; House Bill 02-1310; SB 09-228, HB 16-1416.

⁸ [Senate Bill 09-228 Issue Brief](#)

⁹ Section 43-4-206 (2)(a), C.R.S. Statute refers to the strategic transportation project investment program which is also referred to as the statewide transportation improvement plan.

and highway-related capital improvements, while at least 10 percent must be spent on transit and transit-related capital improvements.¹⁰

The transfers may be reduced or eliminated during any year in which state revenue exceeds the constitutional spending limit contained in the Taxpayer's Bill of Rights (TABOR) amendment.¹¹ Transfers are cut in half if the TABOR surplus during a fiscal year is greater than 1.0 percent and less than or equal to 3.0 percent of General Fund revenue. If the TABOR surplus exceeds 3.0 percent of General Fund revenue, transfers are eliminated for that year. A surplus less than or equal to 1.0 percent of General Fund revenue does not affect the transfers. Transfers that are dependent on the size of the TABOR surplus and General Fund revenue create uncertainty in the budget process because small changes in any revenue source can have a large impact on the size of the transfers.

The first Senate Bill 09-228 transfer of \$199.2 million was scheduled to occur in FY 2015-16 with transfers in the following four fiscal years. However, House Bill 16-1416 set transfers at fixed dollar amounts of \$199.2 million in FY 2015-16 and \$158.0 million in FY 2016-17.

Current revenue projections forecast a full Senate Bill 09-228 transfer in FY 2017-18 of \$217.7 million and a half transfer of \$114.9 million in FY 2018-19. Small margins of error in the forecasts for General Fund revenue and the TABOR surplus have a large impact on the size of the transfers. These errors include the impact of legislation enacted in the future by the General Assembly or the U.S. Congress that affect General Fund revenue or cash fund revenue subject to TABOR. Thus, these transfers may occur in full or not at all.

Enterprises

The state constitution defines an enterprise as a government-owned business that has authority to issue revenue bonds and receives less than 10.0 percent of its revenue from state and local government sources.¹² Revenue to enterprises is exempt from the state's constitutional revenue limit, usually called the TABOR limit. Two enterprises created in Senate Bill 09-108 operate under CDOT.

Statewide Bridge Enterprise. The Statewide Bridge Enterprise was created to "finance, repair, reconstruct, and replace designated bridges in the state."¹³ The enterprise is authorized to impose a bridge safety surcharge at rates reasonably calculated to defray the costs of completing bridge projects. Currently, a charge of between \$13 and \$32 is collected when vehicles are registered, depending on vehicle weight. Revenue from this TABOR-exempt fee totaled \$107.3 million in FY 2015-16. Members of the Transportation Commission serve as the board of directors of the enterprise.

High-Performance Transportation Enterprise. The High-Performance Transportation Enterprise (HPTE) replaced a predecessor enterprise, the Colorado Tolling Enterprise. The HPTE is tasked with pursuing innovative means of transportation finance, including through public-private partnerships, operating concession agreements, and fee-based projects.¹⁴ Revenue to the HPTE comes from tolls paid and fines collected on the express lanes on US 36,

¹⁰ Section 43-4-206 (2)(a)(I), C.R.S.

¹¹ Colo. Const. art X, §20 (7).

¹² Colo. Const. art X, §20 (2)(d).

¹³ Section 43-4-805 (1)(b)(I), C.R.S.

¹⁴ Section 43-4-806, C.R.S.

C-470, and I-25, the peak period shoulder lane in the I-70 mountain corridor, federal grants, interest income, and miscellaneous smaller sources. Total revenue from all sources to the HPTTE totaled \$5.6 million in FY 2014-15, while toll revenue was \$4.0 million.

Statewide Transportation Planning

The General Assembly has a limited role in determining how transportation dollars are spent across the state. The responsibility for building and maintaining the state's highway system belongs to CDOT and is directed by the Colorado Transportation Commission with input from each region in the state. Since 1991, state and federal laws have required CDOT to compile both long-range and short-range transportation plans. State law requires CDOT, in cooperation with the 15 local transportation planning regions to produce a 20-year plan every five years.¹⁵ The current "2040 Plan" estimates a shortfall of \$24.9 billion in existing revenue sources and projected needs between 2016 and 2040.¹⁶

Colorado Department of Transportation. The responsibilities of CDOT are outlined in statute.¹⁷ Generally, responsibilities include the construction and maintenance of the state highway system, which totals over 23,000 lane miles and includes federal interstate highways, U.S. highways, state highways, and 3,454 bridges. CDOT also coordinates the integration of different modes of transportation including automotive, aviation, transit, and rail, with local governments.

Colorado Transportation Commission. The decision-making authority for the majority of state transportation revenue rests with the Colorado Transportation Commission, as outlined by statute.¹⁸ The 11 nonpartisan commissioners, each representing one of 11 statutorily defined geographical districts of the state, are appointed by the Governor and confirmed by the Senate. The commission sets budgetary priorities for and gives policy direction to CDOT.

While the commission serves a fiduciary role by declaring and adopting transportation construction and program budgets, it does not have the authority to raise tax revenue; this power is retained by the General Assembly and the voters. It does have the authority to change its short-term and long-term priorities, thus shifting funding among projects and regions within the state.

Regional transportation plans. There are ten transportation planning regions and five metropolitan planning organizations. These planning organizations identify transportation priorities within their region, which are incorporated into the statewide transportation plan. Figure 4 shows the transportation planning regions and metropolitan planning organizations.

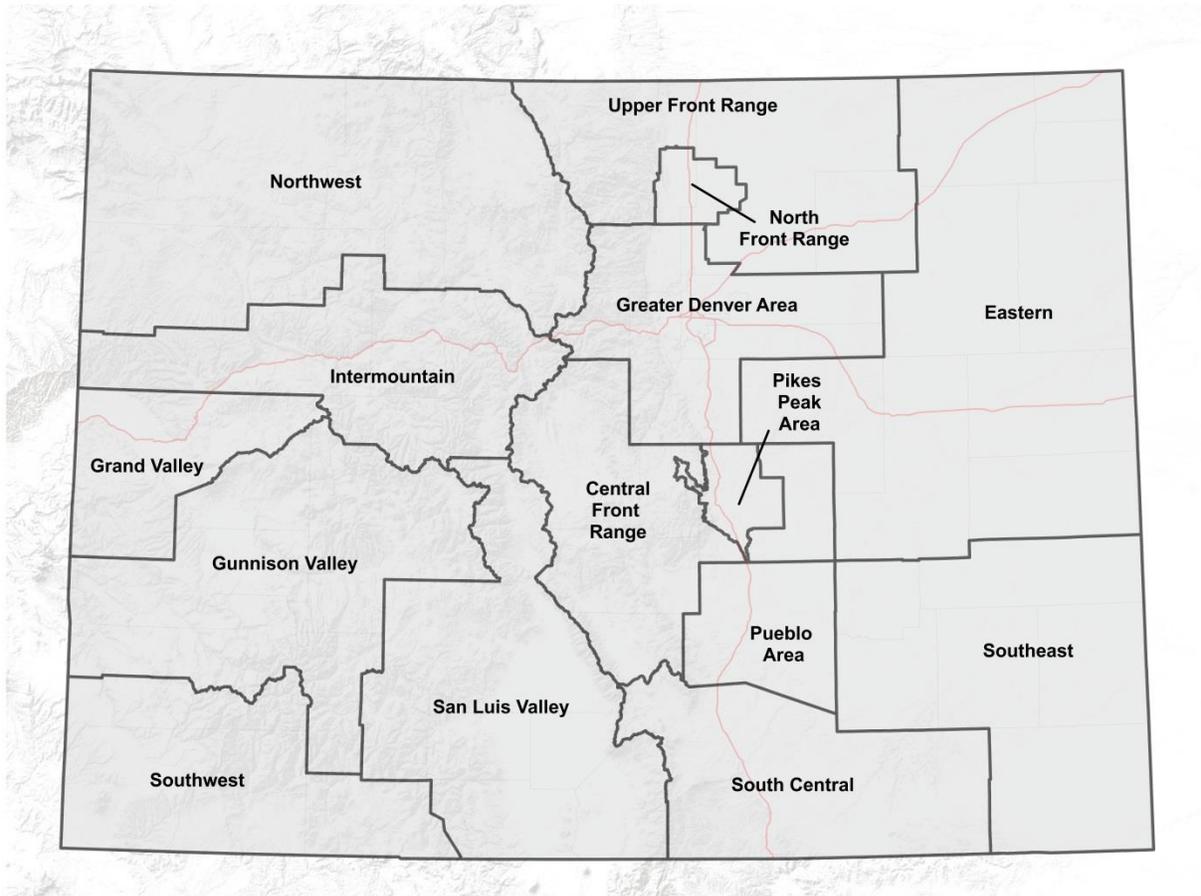
¹⁵ Section 43-1-1103, C.R.S.

¹⁶ Link to "[2040 Plan](#)"

¹⁷ Sections 43-1-103, -104, and -105, C.R.S.

¹⁸ Section 43-1-106, C.R.S.

Figure 4
Colorado Transportation Planning Regions



Source: Colorado Department of Transportation

Statewide Transportation Advisory Committee. The Statewide Transportation Advisory Committee advises the Colorado Department of Transportation on statewide transportation needs and offers review and comments on all Regional Transportation Plans and the Statewide Transportation Plan. There are 17 members on the Statewide Transportation Advisory Committee, including a representative from each of the state's 15 transportation planning regions, and a representative from the Southern Ute Indian Tribe and the Ute Mountain Ute Indian Tribe in southwest Colorado. The committee meets monthly in Denver. In addition to the long-range plan, federal law requires a statewide transportation improvement plan that identifies short-term project needs and priorities.¹⁹ CDOT has chosen to publish a six-year plan, updated every four years.

¹⁹ [Link to most recent Statewide Transportation Improvement Plan](#)