Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Memorandum

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TO: Interested Persons

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SUBJECT: Funding Mechanisms and Fiscal Notes

Summary

This memorandum is intended for use by policymakers, legislative drafters, and budget analysts to understand the different funding mechanisms that may be used in legislation. It describes how different funding mechanisms in legislation impact the state budget and how they are shown in fiscal notes. These funding mechanisms include appropriations, transfers, diversions, and warrants on state funds, as well as fee revenue and gifts, grants, or donations. The memorandum concludes with a list of funding mechanisms for which voter approval is required.

General Fund and Cash Funds

State revenue from income taxes, sales taxes, and many other sources is deposited into the General Fund and used to support general government operations. The General Fund has very few restrictions on how the General Assembly may appropriate or use this money.

Fees and other dedicated revenue sources are often deposited into a specific cash fund. There are thousands of cash funds used by state agencies. State statute outlines the sources of revenue that may be deposited into a cash fund and the purposes for which it may be used.

Fiscal notes will use the language in a bill, or rely on general statutory guidance and agency practices, when deciding whether a cost should be paid from the General Fund or a cash fund. If no cash fund can be clearly identified, then General Fund is assumed. Bills often create new cash funds to receive revenue that is transferred, diverted, or collected through the imposition of a fee or via gifts, grants, or donations. The Office of Legislative Legal Services has a post on its LegiSource blog that explains why and how new cash funds may be created.

Federal Funds

Federal funds are available for a variety of programs, usually based on a funding formula or to cover certain eligible expenses. The state often has to contribute matching funds paid from the General Fund or cash funds to draw down federal funding. Fiscal notes show federal funding as an expenditure, rather than as new revenue, since the state is spending these funds for specific federally approved purposes and cannot use these funds for general government purposes. In most cases, federal funds do not require an appropriation, but are often shown in appropriations clauses and the Long Bill for informational and tracking purposes.

Appropriations

In order for a state agency to spend state funds, it must receive an appropriation. Appropriations provide spending authority to the agency for a specific fiscal year, from a specified funding source, and for a specified amount and purpose. The majority of appropriations for agencies each year are outlined in the state budget in the General Appropriations Act, also known as the Long Bill. Appropriations may also be made in other bills, typically through an appropriation clause. The Colorado Constitution prohibits appropriations to private or religious groups; however, state agencies may use an appropriation to purchase services from, or make grants and loans to, private groups or individuals. A bill's fiscal note estimates the appropriations that will be required for the bill to be implemented.

Sometimes, bills are drafted with an appropriations clause at introduction. More often, the appropriation amount estimated in the bill's fiscal note is amended into the bill by the House or Senate Appropriations Committee. Ultimately, the amount appropriated in any bill is determined by the General Assembly.

If an agency does not use an entire appropriation, state law specifies what happens with the unspent money. In most cases, money that is appropriated and not spent, including from the General Fund, reverts to the original fund from which the appropriation was made. Sometimes, an appropriation will provide spending authority across multiple fiscal years, referred to as roll forward spending authority. Less commonly, state law may specify that unspent appropriations be transferred to a different fund or otherwise used for another purpose.

Continuous Appropriations

The General Assembly may specify in statute that money in a cash fund is continuously appropriated to an agency. This allows the agency to spend any revenue received in the fund without a specific annual appropriation. Relative to annual appropriations, continuous appropriations offer the General Assembly less control over budget items in future fiscal years. Appropriations are most easily tracked and controlled when they are annual, rather than continuous.

Appropriations Between Funds

In some cases, the General Assembly may appropriate money from the General Fund or a cash fund to another cash fund. This has a similar effect to a transfer (see below), but is technically different and accounted for differently in budget and forecast documents. One of the primary differences between an appropriation and a transfer is that appropriations from the General Fund to another fund require that additional money be set aside in the statutory reserve. Additionally, when money is moved using an annual appropriation, the amount moved may be adjusted in the future through the annual budget process, without the need for additional legislation.

Because appropriations between funds have a very similar effect to transfers, fiscal notes show these transactions on the line labeled "Transfers" in Table 1 and include a footnote to explain that the funds are actually being moved via an appropriation. The State Appropriations section of the fiscal note may identify that the funds need to be appropriated twice, first from one fund to another and then from the receiving fund for use by the agency. These amounts may also appear twice in budget documents, with the second expenditure identified as an expenditure of reappropriated funds.

Reserve Requirements

General Fund

Under current law, the state must maintain a year-end General Fund reserve equal to 15 percent of General Fund appropriations. This statutory reserve is available in case expenditures are higher, or revenue is lower, than expected. In recent years, the General Assembly has acted to increase the reserve requirement to better accommodate budget pressures that would arise in a future economic recession, when revenue collected in the General Fund would decrease. Any unspent funds in the General Fund reserve roll forward and are available for use in the following fiscal year. The General Fund reserve impact of legislation does not require an appropriation, as it is accounted for as part of the annual budget process.

Cash Funds

For cash funds, which are typically supported by fees or other dedicated sources of revenue, state law specifies a maximum amount of uncommitted cash fund reserves that may be held: 16.5 percent. This reserve limit prevents agencies from collecting excess fee revenue above what they spend. The cash fund reserve limit may be waived in statute.

Transfers

Transfers move money between funds. Typically, a bill or provision of statute will direct the State Treasurer to move a specific amount of money from one fund to another on a specific date. In some cases, whether or not a transfer occurs or the amount transferred will depend on, or be triggered by, certain criteria being met, such as the amount of revenue collected, the unspent balance in a fund, or some other factor outlined in statute. A transfer does not require an appropriation, except that a state agency will typically require spending authority from the fund to which the money is transferred in order to spend it. When money is transferred from the General Fund, the 15 percent reserve requirement does not apply. Transfers are most easily tracked when the statute clearly specifies the amount to be transferred, the originating fund, the destination fund, and the date when the transfer is to be made.

Diversions

Fiscal notes identify a diversion when revenue that would have otherwise been received in one fund is instead redirected to a different fund. Note that a diversion is different than a transfer. A transfer moves money that has already been received, whereas a diversion changes where money will be received in the future. A common example of a diversion in fiscal notes is the diversion of premium tax revenue from the General Fund to the Division of Insurance Cash Fund when expenditures in the Division of Insurance increase. Because more premium tax revenue is being spent from the cash fund, less money is available to spill over into the General Fund after accounting for the Division of Insurance's expenses—thus, money is being diverted from where it would have otherwise been deposited. Diversions appear only in fiscal notes. Once a law is enacted that requires money to be deposited in a specific fund, there is no future accounting in budget or forecast documents to show the movement of these funds.

Warrants on State Funds

In rare circumstances, a bill may add a statute that creates a state financial obligation payable from a certain fund, called a warrant. A warrant may allow another government, such as a county government, or a statutory public entity, such as the Public Employees' Retirement Association (PERA), to receive payment from a state fund. In fiscal notes, warrant amounts are shown as expenditures from the fund. No appropriation is required because the requirement and authority to issue the warrant is already included in law. Further, because warrants are not appropriated, they may only be reduced or eliminated by the enactment of legislation that amends statute to change the warrant amount or repeals the warrant requirement altogether.

Fee-based Programs

For some bills, particularly for regulatory programs where a population pays fees to support the cost of regulation, fee revenue will increase when there is an increase in agency expenditures. Fiscal notes are required to estimate the fee impact of bills on the affected populations that are subject to any new or increased fee. When estimating fees, fiscal notes will use available information on the affected population, and set any new or increased fee at the amount necessary to cover costs under the bill. In some cases, a bill will specify fee amounts and the fiscal note will base fee impacts on these amounts. Unless otherwise exempt (such as fees paid to a state enterprise), fee revenue is subject to TABOR and increases taxpayer refunds in years when the state is above its revenue limit.

New fees do not require voter approval in order to take effect; however, new taxes require voter approval under the Colorado Constitution's TABOR amendment. The distinction between a tax and a fee is a legal matter and may be discussed with the legislature's attorneys at the Office of Legislative Legal Services.

Gifts, Grants, or Donations

Often, bills will give agencies the authority to receive and spend gifts, grants, and donations to support a program or initiative. In fiscal notes, gifts, grants, and donations are treated as a potential revenue increase. Unless the fiscal analyst receives formal documentation that funding will be provided from a specific donor in a specific amount, revenue from gifts, grants and donations is typically not estimated in fiscal notes. Revenue from these sources is not subject to TABOR.

Funding Mechanisms Requiring Voter Approval

Certain funding mechanisms require voter approval under either the Colorado Constitution or current state law. These include:

- new taxes, tax rate increases, extensions of an expiring tax, or tax policy changes directly causing a net revenue gain;
- creation of multi-year state debt;
- allowances for the state to retain and spend revenue in excess of current limits; and
- formation of an enterprise to collect fees or surcharges totaling more than $100 million in the enterprise's first five years of operation.