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# FUNDING: APPROPRIATIONS, TRANSFERS, AND SPECIAL FUNDS

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## I. INTRODUCTION

The drafter should carefully consider the funding implications of each bill: Will the bill cost money to implement? Where will the money come from? In many cases, it will be necessary to appropriate money in the bill to implement its provisions. In some cases, it will be necessary to establish a mechanism that provides a source of revenue to fund the bill, and in other cases it may be desirable to create a special fund to hold the revenue collected to fund the bill. This section will address the drafting of appropriation sections and other provisions that establish special funds such as "cash funds".

## II. APPROPRIATIONS GENERALLY

### A. Constitutional Background - Meaning of "Appropriation"

Section 33 of article V of the state constitution states: "No moneys in the state treasury shall be disbursed therefrom by the treasurer except upon appropriations made by law, or otherwise authorized by law...." Accordingly, under the constitutional separation of powers doctrine, the General Assembly has plenary or absolute power over appropriations subject to constitutional limitations. *Colorado General Assembly v. Lamm*, 704 P.2d 1371, 1380 (Colo. 1985); *MacManus v. Love*, 179 Colo. 218, 499 P.2d 609 (1972). The plenary power of the legislature over appropriations is the power "to set apart from the public revenue a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object and for no other." *Colorado General Assembly v. Lamm*, 700 P.2d 508 (Colo. 1985).

An "appropriation" is legal authority for an agency to expend a specified sum of money for a specified purpose, and a state agency may only expend moneys from the state treasury if the agency has a legislative appropriation for such purpose or if the expenditure is "otherwise authorized by law". Since most state government programs depend on the level of funding provided, the drafter must understand appropriations in order to adequately address the possible funding implications of each bill.

### B. Long bill - Supplemental Appropriation Bills

Most appropriations for state departments, agencies, and institutions are included in the annual general appropriations bill, commonly known as the "long bill", which is drafted and sponsored by the Joint Budget Committee. Under section 32 of article V of the state

constitution, the long bill may only contain appropriations. Thus, the long bill may not include any substantive law and is not included in the Colorado Revised Statutes. The long bill adopted each legislative session applies primarily to the upcoming fiscal year (beginning July 1). During the next legislative session, the Joint Budget Committee usually sponsors various "supplemental appropriation bills" to amend the long bill for the current fiscal year. (A "supplemental appropriation" provides funds for operations only during the fiscal year in which it is enacted.) In addition, other members of the General Assembly may sponsor special appropriation bills that contain nothing besides one or more appropriations.

**C. Appropriation Sections in Substantive Bills**

Often a bill that amends the permanent statutes also includes an appropriation section to ensure that moneys are made available to cover the costs of implementing the bill. It is standard practice to include an appropriation section in a bill that creates a new state agency or adds new functions to an existing state agency even if the amount of the appropriation is unknown and must be left blank. However, the sponsor may choose to omit the appropriation section from the bill as introduced.

**D. Additional Constitutional Considerations**

The drafter should become familiar with several constitutional provisions that specifically address appropriations. These are: Section 32 of article V, which imposes the single-subject rule on all appropriations bills other than the long bill; section 34 of article V, which prohibits appropriations to private or religious groups; and section 18 of article X and section 2 of article XXIV, which concern the disposition of excise taxes on motor fuels and other sales. While appropriations cannot be made directly to private groups or individuals, moneys can be appropriated to state agencies that purchase services from, or make grants and loans to, private groups or individuals. If a drafter believes that any of these constitutional provisions call the validity of an appropriation into question, the drafter should consult a senior staff member of the Office.

**E. Relevant Statutory Provisions**

The drafter should be familiar with several statutory provisions that relate to the appropriations process. For reference, some of these sections are:

<b>Section</b>	<b>Subject</b>
2-2-703	Funding must be provided in bills that result in net increase in periods of imprisonment in state correctional facilities

<b>Section</b>	<b>Subject</b>
2-4-215	Future general assemblies not bound by legislation requiring an appropriation
23-1-103.5	Annual allowable cash fund revenues and expenditures - higher education
24-22-115 to 24-22-116	Tobacco litigation settlement cash fund and trust fund
24-36-102	Principal function of treasury department is receipt of state moneys
24-36-103	Fees and taxes collected by state agencies must be transmitted to the treasury department
24-36-114	Interest earned on state moneys must be credited to general fund, unless otherwise expressly provided by law
24-37-Parts 2 and 3	Office of state planning and budgeting charged with recommending legislative and executive actions to achieve desired state objectives and helping the governor prepare the annual executive budget
24-75-102	Reversion of unexpended appropriations; closing of books in 35 days
24-75-105 to 24-75-111	Transfers of state moneys - expenditures in excess of appropriations
24-75-201	General fund created - all state revenues required to be credited thereto unless otherwise provided by law
24-75-201.1	Restrictions on state general fund appropriations - required general fund reserve
24-75-201.3	Annual revenue estimate of General Assembly

<b>Section</b>	<b>Subject</b>
24-75-203	Loans and advances to state agencies
24-75-212	Legislative reporting of federal moneys
24-75-Part 3	Capital construction fund
24-75-402	Limits on uncommitted cash fund reserves - reductions in fees
24-75-Part 6	Legal investments of public funds
24-76-101 to 24-76-102	Federal funds - appropriations and reporting ( <i>But see Colorado General Assembly v. Lamm</i> , 738 P.2d 1156 (Colo. 1987))
24-77-101 et seq.	Implementation of section 20 of article X of the state constitution (TABOR)
24-77-106	Annual allowable revenues and expenditures - all state departments
24-82-102	State acquisition of real property
24-82-Part 7	Master leasing
24-82-Part 8	State acquisition of real or personal property - lease-purchase agreements
43-1-106 (8)(h), 43-1-113	State highway funds and budgets
43-1-112.5	Annual allowable revenues and expenditures - transportation
43-4-201	Highway users trust fund created - limitations on appropriations ("off-the-tops")

### III. CONSIDERATIONS IN DRAFTING APPROPRIATIONS PROVISIONS

#### A. Indicating Appropriations in Bill Titles

The title of any bill that contains an appropriations section should indicate that the bill makes an appropriation. The drafter should add either of the following trailers at the end of the title: "..., AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH." or "..., AND MAKING AN APPROPRIATION THEREFOR."

Similarly, any amendment that adds an appropriation section to a bill should include language that amends the title of the bill to indicate the addition of the appropriation section. As noted above, either ", AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH" or ", AND MAKING AN APPROPRIATION THEREFOR" are appropriate trailers. The amendment to the title appears last in the amendment.

#### B. Required Elements

Every appropriation must contain at least the following five elements that are discussed in detail in sections III. C. to III. G. of this chapter:

- (1) The *time period* during which the moneys appropriated are available for expenditure;
- (2) *From where* the money is appropriated - a special fund or the general fund (for example, "out of any moneys in the general fund not otherwise appropriated");
- (3) *To whom* the appropriation is made;
- (4) The *amount* of the appropriation; and
- (5) The *purpose* for which the appropriation is made.

#### C. Designating Time Period for Appropriations

##### 1. General Provisions

If an appropriation does not designate a time period for the availability of an appropriation, it is presumed that the funds are intended to be available for the fiscal year beginning on the July 1 next following. The better practice is to include the phrase "for the fiscal year beginning July 1, 20\_\_,". Example:

**SECTION \_\_. Appropriation.** In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of \_\_\_\_, for the fiscal year beginning July 1, 2000, the sum of \_\_\_\_ dollars (\$ ), or so much thereof as may be necessary, for the implementation of this act.

A supplemental appropriation provides funds for operations only during the fiscal year in which it is enacted. The text of a supplemental appropriation should begin with the phrase: "In addition to any other appropriation heretofore made for the current fiscal year,". Example:

**SECTION \_\_. Appropriation.** In addition to any other appropriation heretofore made for the current fiscal year, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of \_\_\_\_, the sum of \_\_\_\_ dollars (\$ ), or so much thereof as may be necessary, for the implementation of this act.

Occasionally, it is necessary to fund operations immediately upon passage of an act, i.e., during the current fiscal year, but also during the fiscal year beginning the July 1 next following. In such instances, the drafter should include a sentence that provides substantially as follows:

"The moneys appropriated by this section shall become available upon passage of this act and shall remain available until July 1, 20\_\_ [the year following the one in which the appropriation is made)]."

Example (assumes an appropriation made during the 2000 legislative session):

**SECTION \_\_. Appropriation.** In addition to any other appropriation, there is hereby appropriated, out of any moneys in the \_\_\_\_ cash fund not otherwise appropriated, to the department of \_\_\_\_, the sum of \_\_\_\_ dollars (\$ ), or so much thereof as may be necessary, for the direct and indirect costs of implementing this act. The moneys appropriated by this section shall become available upon passage of this act and shall remain available until July 1, 2001.

## ***2. Reversion of Unexpended Appropriations***

Pursuant to section 24-75-102, C.R.S., the unexpended amount of every appropriation reverts to the fund from which the appropriation was made at the end of the fiscal year for which the appropriation was made unless otherwise provided by law (such as in the statute governing the fund from which the appropriation was made). However, moneys appropriated from the general fund that would otherwise revert to the general fund may be transferred to another fund on either a one-time basis or a permanent basis. For a discussion of this type of transfer, see section IV. of this chapter.

## ***3. Special Rule for Certain Corrections Bills***

Section 2-2-703, C.R.S., requires any bill that results in a net increase in periods of imprisonment in state correctional facilities to include an appropriation "sufficient to cover

any increased capital construction costs and any increased operating costs which are the result of such bill in each of the first five years in which there is a fiscal impact as a result of the bill." The language needed to accomplish this sort of appropriation will vary with the timing and nature of the fiscal impact of different bills, but the drafter should generally include the appropriation in the substantive text of such a bill rather than in a separate appropriation section. The following is an example of the suggested language format starting in 2008:

**17-18-101. Appropriation to comply with section 2-2-703 - ?B 08-#### - repeal.**

(1) Pursuant to section 2-2-703, C.R.S., the following statutory appropriations, or so much thereof as may be necessary, are made in order to implement House/Senate Bill 08-\_\_\_\_, enacted at the second regular session of the sixty-sixth general assembly:

(a) For the fiscal year beginning July 1, 2008, in addition to any other appropriation, there is hereby appropriated from the capital construction fund created in section 24-75-302, C.R.S., to the corrections expansion reserve fund created in section 17-1-116, the sum of \_\_\_\_\_ dollars (\$ ).

(b) (I) For the fiscal year beginning July 1, 2009, in addition to any other appropriation, there is hereby appropriated, from the capital construction fund created in section 24-75-302, C.R.S., to the corrections expansion reserve fund created in section 17-1-116, the sum of \_\_\_\_\_ dollars (\$ ).

(II) For the fiscal year beginning July 1, 2009, in addition to any other appropriation, there is hereby appropriated to the department, out of any moneys in the general fund not otherwise appropriated, the sum of \_\_\_\_\_ dollars (\$ ).

(c) (I) For the fiscal year beginning July 1, 2010, in addition to any other appropriation, there is hereby appropriated, from the capital construction fund created in section 24-75-302, C.R.S., to the corrections expansion reserve fund created in section 17-1-116, the sum of \_\_\_\_\_ dollars (\$ ).

(II) For the fiscal year beginning July 1, 2010, in addition to any other appropriation, there is hereby appropriated to the department, out of any moneys in the general fund not otherwise appropriated, the sum of \_\_\_\_\_ dollars (\$ ).

(d) (I) For the fiscal year beginning July 1, 2011, in addition to any other appropriation, there is hereby appropriated, from the capital construction fund created in section 24-75-302, C.R.S., to the corrections expansion reserve fund created in section 17-1-116, the sum of \_\_\_\_\_ dollars (\$ ).

(II) For the fiscal year beginning July 1, 2011, in addition to any other appropriation, there is hereby appropriated to the department, out of any moneys in the general fund not otherwise appropriated, the sum of \_\_\_\_\_ dollars (\$ ).

(e) (I) For the fiscal year beginning July 1, 2012, in addition to any other appropriation, there is hereby appropriated, from the capital construction fund created in section 24-75-302, C.R.S., to the corrections expansion reserve fund created in section 17-1-116, the sum of \_\_\_\_\_ dollars (\$ ).

(II) For the fiscal year beginning July 1, 2012, in addition to any other appropriation, there is hereby appropriated to the department, out of any moneys in the general fund not otherwise appropriated, the sum of \_\_\_\_\_ dollars (\$ ).

(2) This section is repealed, effective July 1, 2013.

The drafter should note that notwithstanding the requirements of section 2-2-703, C.R.S., because section 2-4-215, C.R.S., prevents one General Assembly from binding future general assemblies, a General Assembly may refuse to make appropriations required by statute by simply amending or repealing the relevant statutory provisions.

The drafter should also amend section 24-75-302 (2), C.R.S., to make the necessary increase to the statutory transfer of moneys from the general fund to the capital construction fund so sufficient moneys exist in the capital construction fund to fund the appropriation to the corrections expansion reserve fund. For an example, see section 2 of chapter 298, Session Laws of Colorado 1998.

#### **4. Special Rule for Certain Capital Construction Bills**

In accordance with the practice used by the Joint Budget Committee for capital construction appropriations in the long bill, the drafter should indicate in the appropriation section of any substantive law bill that makes an appropriation for a capital construction project that the appropriation made will be available for three years or until completion of the project, whichever comes first, by including the following language:

**SECTION \_\_. Appropriation.** (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the capital construction fund created in section 24-75-302, Colorado Revised Statutes, not otherwise appropriated, to the department of \_\_\_\_\_, for the fiscal year beginning July 1, 2000, the sum of \_\_\_\_\_ dollars (\$ ), or so much thereof as may be necessary, for [insert description of project].

(2) The appropriation made in subsection (1) of this section shall become available upon passage of this act, and, if any appropriated project is initiated within the fiscal year, the appropriations for the project shall remain available until completion of the project or for a period of three years, whichever comes first, at which time such unexpended and unencumbered balances shall revert to the capital construction fund.

### **D. Designating the Source of Funding**

#### **1. General Provisions**

Bills may be funded from the state general fund or from a special fund. For a discussion of the funding of bills through special funds, see section V. of this chapter.

Section 24-75-201.1, C.R.S., imposes a limitation on general fund appropriations. As a general rule, general fund appropriations cannot exceed 106% of the prior fiscal year's general fund appropriations (the Arveschoug-Bird appropriations limit). All bills with



funding from the general fund, as well as existing programs that desire additional funding must "compete" for the additional 6% annual general fund appropriations increase. Each year, the long appropriation bill spends a substantial portion of the 6% allowable increase.

## **2. Bills Funded From Long Bill Set Asides**

In some years, the General Assembly has set aside a portion of the 6% annual general fund appropriations increase to be used solely to fund bills other than the long appropriation bill. A decision on "set aside" moneys is generally made by the General Assembly prior to or early in a legislative session. If the General Assembly establishes "set aside" moneys, the drafter will probably need to adjust the long bill in order to make the appropriation from the "set aside" moneys. In the past, the long bill has included an appropriation from the general fund to the capital construction fund that is then further appropriated to the department of transportation. This appropriation is the "set aside" moneys. To access the "set aside" moneys, the drafter should make an appropriation from the general fund to fund the costs of the bill and then adjust the long bill to reduce the general fund appropriation to the capital construction fund and the corresponding appropriation to the department of transportation. The staffs of the Office of Legislative Legal Services and the Joint Budget Committee developed the following language to indicate that a bill is to be funded with "set aside" moneys:

**SECTION \_\_. Appropriation - adjustment in 2000 long bill.** (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of \_\_\_\_\_, for the fiscal year beginning July 1, 2000, the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), or so much thereof as may be necessary, for the implementation of this act.

(2) For the implementation of this act, appropriations made in the annual general appropriations act for the fiscal year beginning July 1, 2000, shall be adjusted as follows:

(a) The general fund appropriation to the capital construction fund outlined in section 3 (1) (f) is reduced by \_\_\_\_\_ dollars (\$ \_\_\_\_\_).

(b) The capital construction fund appropriation to the department of transportation, construction projects, is reduced by \_\_\_\_\_ dollars (\$ \_\_\_\_\_).

The drafter should check the long bill to verify the reference in subsection (2) (a) of the preceding appropriation section.

## **3. Bills Funded from General Fund Outside the Statutory Limit**

Section 24-75-201.1 (1) (a) (III), C.R.S., exempts from the statutory limit on general fund appropriations any appropriation of general fund moneys derived from certain voter-approved tax or fee increases and any general fund appropriation for new programs or services or for an increase in existing services that is required by a federal mandate or a state or federal court order. For example, in 1998, a bill relating to tobacco sales to underage

children was funded outside the limit because the bill was the result of a federal mandate. The drafter should use the following language to indicate that the statutory limit on state general fund appropriations does not apply to a given appropriation:

**SECTION \_\_. Appropriation.** In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of \_\_\_\_\_, for the fiscal year beginning July 1, 2000, the sum of \_\_\_\_\_ dollars (\$ ) and \_\_\_ FTE, or so much thereof as may be necessary, for the implementation of this act. Said amount is exempt from the statutory limit on state general fund appropriations pursuant to section 24-75-201.1 (1) (a) (III) (insert appropriate sub-subparagraph here), Colorado Revised Statutes.

#### ***4. Bills Making Long Bill Adjustments***

Bills sometimes include "long bill adjustments" in their appropriation sections. Typically, such bills will cost money to implement but will also save money in other governmental programs. Thus, these bills include an appropriation for the costs of implementing the bill and a provision that describes reductions in specified line item appropriations for ongoing programs in the long bill for the upcoming fiscal year. (The long bill cannot be amended directly since it is not yet law.)

In drafting a long bill adjustment, the drafter must precisely identify the line items to be adjusted and the amount of each adjustment. If the long bill is already introduced, the drafter should look at the line items in the bill to be adjusted and use the same wording as used in the long bill. If the long bill is not yet introduced, the drafter should look at the language from the previous long bill, on the assumption that the wording of the line items will be similar in both long bills. Example:

**SECTION \_\_. Appropriation - adjustment in 2000 long bill.** (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the judicial department, for the fiscal year beginning July 1, 2000, the sum of nineteen thousand four hundred eleven dollars (\$19,411), or so much thereof as may be necessary, for the purpose of implementing this act.

(2) For the implementation of this act, appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 2000, shall be adjusted as follows: The appropriation to the department of human services, self-sufficiency, assistance payments, aid to the needy disabled, is decreased by one hundred nineteen thousand seven hundred eighty-six dollars (\$119,786), of which sum, nineteen thousand four hundred eleven dollars (\$19,411) shall be from the general fund, twenty-seven thousand eight hundred thirty-nine dollars (\$27,839) shall be from cash funds, and seventy-two thousand five hundred thirty-six dollars (\$72,536) shall be from federal funds.

#### ***5. Bills Funded from General Fund Savings in Other Bills***

In certain circumstances, the General Assembly will link the funding of one bill to savings that will occur by the passage of a second bill. In this situation, there is no adjustment of the long bill as generally occurs when the funding and savings are included in

the same bill; the two bills are generally unrelated one to the other. The drafter should include language in the appropriation section to note the legislative intent concerning the funding source and should include a separate effective date clause as shown in the example. If a member requests that the savings in a certain bill be used as a funding source, the drafter should remind the member that his or her bill may be competing with several other bills for the use of the savings. Example:

**SECTION 4. Appropriation - legislative intent.** (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of \_\_\_\_\_, for the fiscal year beginning July 1, 2000, the sum of \_\_\_\_\_dollars (\$ ) and \_\_\_ FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) It is the intent of the general assembly that the general fund appropriation for the implementation of this act shall be derived from savings generated from the implementation of the provisions of [HB/SB] 00-\_\_\_\_\_, as enacted during the second regular session of the sixty-second general assembly.

**SECTION 5. Effective date.** (1) This act shall take effect upon passage.

(2) Notwithstanding the provisions of subsection (1) of this section, this act shall only take effect if:

(a) The final fiscal estimate for H.B. 05-\_\_\_\_\_, as reflected in the appropriations clause for said act, shows a net general fund savings that is equal to or greater than the final general fund fiscal estimate for this act, as reflected in section 4 of this act; and

(b) H.B. 05-\_\_\_ is enacted at the first regular session of the sixty-fifth general assembly and becomes law; and

(c) The staff director of the joint budget committee files written notice with the revisor of statutes no later than July 15, \_\_\_\_\_, that the requirement set forth in paragraph (a) of this subsection (2) has been met.

These clauses have been carefully developed with coordination and input from the Joint Budget Committee and the Revisor of Statutes; however, drafters are advised to communicate with JBC staff when incorporating these provisions in a bill. Drafters making any substantial deviation from the recommended language should consult with senior staff in the Office prior to creatively creating a new type of clause or contingency.

## **6. Federal Funds**

Under a line of Colorado Supreme Court cases interpreting the state constitution, the General Assembly generally lacks power to appropriate federal funds. See *Colorado General Assembly v. Lamm*, 738 P.2d 1156 (Colo. 1987); annotation to section 24-76-101, C.R.S. Thus, drafters should not draft appropriation sections that appropriate federal funds. However, the General Assembly may still want to indicate in a bill how much federal funding the state will receive to implement the bill by adding one of the following sections to the bill.

If a bill is to be funded entirely with federal funds, the following section should be included in the bill:

**SECTION \_\_. Federal funds.** The general assembly anticipates that, for the fiscal year beginning July 1, 2000, the department of \_\_\_\_\_ will receive the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) in federal funds for the implementation of this act. Although these funds are not appropriated in this act, they are noted for the purpose of indicating the assumptions used relative to these funds.

If the bill is to be funded by a combination of state and federal funding, the following appropriation section should be included in the bill:

**SECTION \_\_. Appropriation.** In addition to any other appropriation, there is hereby appropriated out of the [insert name of state fund], to the department of \_\_\_\_\_, for the fiscal year beginning July 1, 2000, the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), or so much thereof as may be necessary, for the implementation of this act. [Said sum shall be subject to the "(M)" notation as defined in the general appropriation act.] In addition to said appropriation, the general assembly anticipates that, for the fiscal year beginning July 1, 2000, the department of \_\_\_\_\_ will receive the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) in federal funds for the implementation of this act. Although the federal funds are not appropriated in this act, they are noted for the purpose of indicating the assumptions used relative to these funds in developing the state appropriation amounts.

## **E. Designating the Recipient of an Appropriation**

### ***1. General Provisions***

Appropriations for functions of the executive branch of government are generally made to a principal department or to the office of the governor. A specific unit within that department or office may be designated as follows: "to the department of \_\_\_\_\_, for allocation to the division [board, commission, etc.] of \_\_\_\_\_,". The drafter must always be sure to use the correct name of the governmental unit involved, i.e., the name as it is stated in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

### ***2. Appropriations to Special Cash Funds***

In recent years, an increasing number of bills have created special funds for particular purposes with the funding for such special funds coming from appropriations made to the special fund by the General Assembly from the general fund. Prior to the 1992 adoption of section 20 of article X of the state constitution (TABOR), a transfer of moneys from the general fund to a special fund did not count against the statutory limit on general fund appropriations contained in section 24-75-201.1, C.R.S., if the bill specified that the transfer was an exception to the statutory limitation on general fund appropriations. However, section 20 of article X provides that "[O]ther limits on district revenue, spending, and debt may be weakened only by future voter approval." As a consequence, while transfers from the general fund to special funds that existed when TABOR was adopted and that were excepted from the statutory limitation on general fund appropriations can continue to be

made, any new attempt to circumvent the statutory limitation by transferring moneys from the general fund to a special fund probably constitutes a "weakening" of the statutory limitation that requires voter approval. Accordingly, the drafter should advise any bill sponsor who seeks to circumvent the statutory limitation on general fund appropriations by including a provision in a bill that transfers, rather than appropriates, money from the general fund to a special fund that section 20 of article X probably requires voter approval for such a transfer and that the safer course from a constitutional perspective would be to simply appropriate general fund moneys to the special fund. Currently, the only transfer from the general fund to another fund being made is the statutory transfer from the general fund to the capital construction fund. (See section 24-75-302 (2), C.R.S.)

If a bill requires an appropriation from the general fund to a special fund, the appropriation is actually made to the special fund and the first subsection of the appropriation section generally specifies the purposes for which the money appropriated is to be used. The moneys in the special fund are then appropriated to a particular department or office in the manner noted above. Example:

**SECTION \_\_. Appropriation.** (1) In addition to any other appropriation, for the fiscal year beginning July 1, 2000, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the lead school program grant fund created in section 22-36-107 (1), Colorado Revised Statutes, the sum of one million dollars (\$1,000,000), to be used for purposes consistent with the creation of the fund.

(2) In addition to any other appropriation, there is hereby appropriated, out of the lead school program grant fund created in section 22-36-107 (1), Colorado Revised Statutes, to the department of education, for the fiscal year beginning July 1, 2000, the sum of one million dollars (\$1,000,000), or so much thereof as may be necessary, to be allocated as follows:

- (a) \$200,000 for costs incurred by the department in administering the program;
- (b) \$600,000 for grants to school districts with enrollments of 250,000 or more; and
- (c) \$200,000 for grants to school districts with enrollments less than 250,000.

### ***3. Appropriation to Capital Construction Fund***

In recent years, the General Assembly has also appropriated general fund money to the capital construction fund. Appendix E of this manual includes an example of such an appropriation.

## **F. Designating the Amount of the Appropriation**

The amount of an appropriation represents the maximum amount of money that the recipient of the appropriation may spend. For this reason, outside the legislative process an appropriation is sometimes called "spending authority". "Appropriation" and "spending authority" generally have the same meaning; however, when the appropriation comes from

a cash fund that depends upon revenue collection, the cash fund spending authority cannot exceed the amount of revenue collected and equals the amount of revenue collected or the amount appropriated, whichever is less. The same principle applies if the appropriation is from reappropriated funds (for example, cash funds appropriated to one state agency that are spent to pay another agency for services provided): "Spending authority" is limited to the actual moneys paid to and received by a state agency or the amount of the appropriation, whichever is less.

## G. Designating the Purpose of the Appropriation

The purpose of the appropriation can be very broad or quite specific. Generally, the purpose of the appropriation is stated as "for the implementation of this act". However, the purpose can be made more specific by using the language "for the implementation of section 3 of this act" or the language "for the implementation of the lead school program created in section 22-36-107 (1), Colorado Revised Statutes". The drafter should also remember to be more specific about the purpose of the appropriation when money is being appropriated from the general fund to a special cash fund. See section III. E. 2. of this chapter.

## H. Drafting "No Appropriation" Sections

The appropriations committees sometimes add a "no appropriation section" to bills that do not require an appropriation. A "no appropriation section" expresses a legislative finding that a bill will not require additional funding. A "no appropriation section" may assist the sponsor of a bill by improving the bill's chances of passage, but its primary purpose is to discourage the implementing agency from making a budget request in future years for the costs of implementing the bill. Example:

**SECTION \_\_. No appropriation.** The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

In some cases, the General Assembly may want to indicate that the bill is to be implemented within existing FTEs. Example:

**SECTION \_\_. Appropriation.** (1) In addition to any other appropriation, for the fiscal year beginning July 1, 2000, there is hereby appropriated, out of the lead school program grant fund created in section 22-36-107 (1), Colorado Revised Statutes, to the department of education, for the fiscal year beginning July 1, 2000, the sum of one million dollars (\$1,000,000), or so much thereof as may be necessary, to make grants to school districts for lead school programs.

(2) It is the intent of the General Assembly that this act can be implemented within existing FTE allocations and that no separate appropriations of state moneys for FTEs will be necessary to carry out the provisions of this act.

## I. Drafting "Future Appropriation" Sections

Sometimes it is anticipated that a bill will not require funding for implementation during the first fiscal year, but will require funding in subsequent fiscal years. In such situations, one of the appropriations committees generally adds a "future appropriations section" and warns the General Assembly of the estimated future costs of the bill. However, a "future appropriations section" does not obligate the General Assembly to actually appropriate any particular amount of moneys in future fiscal years. Example:

**SECTION \_\_. Future appropriations.** Although no appropriation is included in this act for the fiscal year beginning July 1, 2000, it appears that this act will require appropriations [from the general fund] [from cash funds] for subsequent fiscal years, and the amount required to be appropriated for the fiscal year beginning July 1, 2001, is estimated to be \_\_\_\_\_ dollars (\$ ).

## J. Drafting an Effective Date Provision Contingent on a Future Appropriation

During the 1998 legislative session, language for a new type of effective date section was created to delay the effective date of a bill to allow the implementing agency to obtain funding for the new program during the next fiscal year. Legislators referred to using this new language as "Entzing a bill" because it was first used in a bill for Rep. Lewis Entz. "Entzing a bill" involves adding an effective date section that delays the effective date of a bill for another year and provides that the act will not take effect unless the implementing agency obtains the necessary funds through a long bill appropriation or other appropriation for the next fiscal year. In essence, "Entzing" is a creative financing strategy that can improve the odds of passage for a bill with a fiscal impact. The drafter can suggest "Entzing" to a bill sponsor but should probably discourage the practice because it does not create a guaranteed funding source for such a bill and may not improve the bill's chances as much as the sponsor might expect. Section 2 of chapter 239 of the Session Laws of Colorado 1998 shows how this provision was added to a bill increasing the mileage allowance for state officers and employees who use their own vehicle for state business. Example:

**SECTION \_\_. Effective date.** This act shall take effect July 1, 2001 [*the normal effective date would have been July 1, 2000*]; except that this act shall not take effect unless moneys are appropriated for the \_\_\_\_ program as specified in the annual general appropriations act or in any other act making an appropriation for the fiscal year beginning July 1, 2001 [*the normal fiscal year would have been July 1, 2000*].

## K. Double Appropriations

If there are two identical, duplicate bills that are introduced and subsequently enacted that contain duplicate appropriations for the same purpose, the Joint Budget Committee staff will interpret that as two separate appropriations, thereby appropriating twice the amount needed for the program. In that circumstance, the drafter needs to advise the sponsors of the conflict and work with the sponsors to see if one of the bills can be killed to avoid incurring a "double" appropriation for the same purpose.

## IV. TRANSFERS OF FUNDS OR APPROPRIATIONS

### A. General Provisions

The term "transfer" has different meanings in different situations. "Transfer" may mean moving money from one fund to another fund, or it may mean moving an amount of money from one item of appropriation to another item of appropriation. As discussed in section III. E. of this chapter, transfers from the general fund to other funds would appear to be limited to those transfers that were allowed when section 20 of article X of the state constitution was adopted. A transfer between two line item appropriations is essentially two appropriations: A negative supplemental appropriation to one line item (a reduction in the line item appropriation), combined with a matching positive supplemental appropriation to another line item (a positive supplemental appropriation to another line item equal to the reduction to the other line item).

### B. Transfers Between Cash Funds

Transfers of money have been made from one cash fund to another cash fund. This generally occurs when a cash fund has a large balance or reserve. Measures were taken by the 1998 General Assembly to reduce cash fund balances so transfers between cash funds should not occur too often in the future. See section 24-75-402, C.R.S. This type of transfer only provides money for one year and is not an ongoing source of funding unless the transfers occur on a yearly basis. However, if a member requests that this type of transfer be made, there are two approaches that can be taken. The first example shows an amendment to the statutory section creating the cash fund to provide for the transfer followed by the appropriation of the transferred money and the second example shows the transfer and the appropriation in the same nonstatutory section. In either case, the drafter needs to include language clearly stating that the transfer of the money is being made notwithstanding statutory provisions that may place limits on how the money in the cash fund is to be expended.

#### *Example 1.*

**SECTION 5.** 24-21-104 (3) (d), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

**24-21-104. Fees of secretary of state.** (3) (d) (X) NOTWITHSTANDING ANY PROVISION OF PARAGRAPH (b) OF THIS SUBSECTION (3) TO THE CONTRARY, ON JULY 1, 2000, THE STATE TREASURER SHALL DEDUCT ONE MILLION DOLLARS FROM THE DEPARTMENT OF STATE CASH FUND AND TRANSFER SUCH SUM TO THE SCHOOL CONSTRUCTION AND RENOVATION FUND CREATED IN SECTION 22-43.7-103, C.R.S.

**SECTION 6. Appropriation.** In addition to any other appropriation, there is hereby appropriated, out of any moneys in the school construction and renovation cash fund



created in section 22-43.7-103, Colorado Revised Statutes, not otherwise appropriated, to the department of education, for the fiscal year beginning July 1, 2000, the sum of one million dollars (\$1,000,000) for the school district capital construction assistance program established by article 43.7 of title 22, Colorado Revised Statutes.

*Example 2.*

**SECTION 4. Transfer of funds - appropriation.** (1) Notwithstanding any provision of section 24-21-104 (3) (b), Colorado Revised Statutes, to the contrary, on July 1, 2000, the state treasurer shall deduct one million dollars (\$1,000,000) from the department of state cash fund and transfer such sum to the school construction and renovation cash fund created in section 22-43.7-103, Colorado Revised Statutes.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the school construction and renovation cash fund created in section 22-43.7-103, Colorado Revised Statutes, not otherwise appropriated, to the department of education, for the fiscal year beginning July 1, 2000, the sum of one million dollars (\$1,000,000) for the school district capital construction assistance program established by article 43.7 of title 22, Colorado Revised Statutes.

### C. Transfer of Unexpended Appropriation to a Cash Fund

As stated previously in this chapter, moneys appropriated from the general fund but not expended by a department will revert to the general fund at the end of the fiscal year unless otherwise provided by law. The General Assembly has on one occasion provided for a portion of the reversion to be transferred to another fund. See Session Laws of Colorado 1998, chapter 306, section 120. Because the amount reverted varies from year to year, this type of transfer does not guarantee the funding of a program. If a member requests that the reversion be used to fund a program, the drafter should make sure the member knows the risk involved. If the member proceeds with this as a funding source, the drafter will need to know whether the transfer is being done on a one-time basis or on a permanent basis and whether the amount to be transferred is the entire amount reverted or only a portion thereof. In providing for such a transfer, the drafter must amend section 24-75-102, C.R.S., as well as add an appropriation clause if the money is to be expended.

*Example of a one-time transfer:*

**SECTION 5.** 24-75-102, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**24-75-102. Appropriations expended, when - balance - repeal.** (3) ANY MONEYS APPROPRIATED TO ALL DEPARTMENTS OF STATE GOVERNMENT FOR THE 1999-2000 FISCAL YEAR THAT WOULD OTHERWISE REVERT TO THE GENERAL FUND PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL BE TRANSFERRED BY THE STATE TREASURER TO THE SCHOOL CONSTRUCTION AND RENOVATION FUND CREATED IN SECTION 22-43.7-103, C.R.S.; [EXCEPT THAT THE AMOUNT TRANSFERRED SHALL NOT EXCEED FIVE MILLION DOLLARS.] THIS SUBSECTION (3) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2000.

**SECTION 6. Appropriation.** In addition to any other appropriation, there is hereby appropriated, out of any moneys in the school construction and renovation fund created in section 22-43.7-103, Colorado Revised Statutes, not otherwise appropriated, to the department of education, for the fiscal year beginning July 1, 2000, the sum of five million dollars (\$5,000,000) for the school district capital construction assistance program established by article 43.7 of title 22, Colorado Revised Statutes.

*Example of a permanent transfer:*

**SECTION 5.** 24-75-102 (1), Colorado Revised Statutes, is amended to read:

**24-75-102. Appropriations expended, when - balance - repeal.** (1) (a) Except as otherwise provided by law, all moneys appropriated by the general assembly may be expended or encumbered, if authorized by the controller, only in the fiscal year for which appropriated. Except as otherwise provided ~~by law~~ IN PARAGRAPH (b) OF THIS SUBSECTION (1), any moneys unexpended or not encumbered from the appropriation to each department for any fiscal year shall revert to the general fund or, if made from a special fund, to such special fund. Determination of such expenditures or encumbrances shall be made no later than thirty-five days after the close of the fiscal year and pursuant to the provisions of section 24-30-202 (11).

(b) FOR THE 1999-2000 FISCAL YEAR AND FISCAL YEARS THEREAFTER, ANY MONEYS THAT WOULD OTHERWISE REVERT TO THE GENERAL FUND PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1) FROM ALL DEPARTMENTS OF STATE GOVERNMENT SHALL BE TRANSFERRED ANNUALLY TO THE SCHOOL CONSTRUCTION AND RENOVATION FUND CREATED IN SECTION 22-43.7-103, C.R.S.; [EXCEPT THAT THE AMOUNT TRANSFERRED SHALL NOT EXCEED TEN MILLION DOLLARS].

**SECTION 6. Appropriation.** In addition to any other appropriation, there is hereby appropriated, out of any moneys in the school construction and renovation fund created in section 22-43.7-103, Colorado Revised Statutes, not otherwise appropriated, to the department of education, for the fiscal year beginning July 1, 2000, the sum of ten million dollars (\$10,000,000) for the school district capital construction assistance program established by article 43.7 of title 22, Colorado Revised Statutes.

## D. Examples of Transfers of Appropriations

**SECTION \_\_. Transfer of appropriation - appropriations.** (1) From the appropriation made in the general appropriation act for the fiscal year beginning July 1, 1990, from the workers' compensation cash fund to the department of labor and employment, division of labor, workers' compensation, personal services, the sum of three hundred forty-four thousand three hundred thirty-eight dollars (\$344,338) and 9.4 FTE is hereby transferred to the department of administration for allocation to the division of administrative hearings, for the implementation of this act. (From H.B. 90-1024)

**SECTION \_\_. Transfer authorization.** The director of the office of state planning and budgeting, after consultation with the executive director of the department of natural resources, and upon approval of the governor, shall order the controller to transfer to the division of mined land reclamation for the minerals program moneys appropriated to the executive director of the department of natural resources for personal services for the Colorado mine safety program for the 1987-88 fiscal year, the sum of which shall be one

hundred nine thousand one hundred ninety dollars (\$109,190) and 3.5 FTE for personal services for the minerals program. (1987 Session Laws, chapter 336)

## V. SPECIAL FUNDS - CASH FUNDING

### A. General Provisions

By law, all revenues and moneys received by the state must be transmitted to the state treasurer and credited to the state's general fund unless otherwise required by the constitution or by statute to be credited and paid to a special fund. See sections 24-36-103 and 24-75-201, C.R.S. However, sometimes it is best to establish a special funding mechanism for a bill by which revenue needed to implement the bill is collected and credited to a special fund, rather than to the general fund. This usually occurs when a program is to be "cash-funded".

A cash-funded program supports itself through fees or charges. Usually, but not always, a special "cash fund" is created for purposes of separately accounting for the fees or charges collected. For example, the occupational licensing functions of the state are currently "cash-funded" through license fees and charges assessed against licensees. No tax revenue is required since the licensees themselves pay the costs of their licensing. The fees collected are credited to a special fund, the division of registrations cash fund, and appropriations are made by the General Assembly every year from that cash fund to defray the costs of the state's licensing activities.

In 1998, the General Assembly addressed concerns that state cash fund reserves were too high by passing Senate Bill 98-194, the most significant portion of which is now codified as section 24-75-402, C.R.S. With certain specified exceptions and subject to other statutory and state constitutional provisions, section 24-75-402, C.R.S., limits the amount of uncommitted reserves that a cash fund may contain at the end of any fiscal year to 16.5% of the amount expended from the cash fund during that fiscal year. Section 24-75-402 C.R.S., also requires any entity that collects fees that are credited to a cash fund to adjust such fees as necessary to ensure that the amount of uncommitted reserves in the cash fund remains at or below the 16.5% limit. Accordingly, the drafter should include the following language in any bill that specifies the amount of a fee that is to be credited to any cash fund that is not exempt from the requirements of section 24-75-402, C.R.S.:

(\_) NOTWITHSTANDING THE AMOUNT SPECIFIED FOR THE FEE IN SUBSECTION (\_\_) OF THIS SECTION, THE [NAME OF COLLECTING ENTITY] BY RULE OR AS OTHERWISE PROVIDED BY LAW MAY REDUCE THE AMOUNT OF THE FEE IF NECESSARY PURSUANT TO SECTION 24-75-402 (3), C.R.S., TO REDUCE THE UNCOMMITTED RESERVES OF THE FUND TO WHICH ALL OR ANY PORTION OF THE FEE IS CREDITED. AFTER THE UNCOMMITTED RESERVES OF THE FUND ARE SUFFICIENTLY REDUCED, THE [NAME OF COLLECTING ENTITY] BY RULE OR AS OTHERWISE PROVIDED BY LAW MAY INCREASE THE AMOUNT OF THE FEE AS PROVIDED IN SECTION 24-75-402 (4), C.R.S.

Section 1-4-1203, C.R.S., provides one example of a statutory provision that contains the preceding language.

## B. Terminology

Terms relating to funding are not always used consistently in the statutes. The following usages are suggested:

**Revenue** (such as fees, tax receipts, and charges but do not use "monies" or "funds") is first **collected** by some agency, then **transmitted** to the state treasurer, who **credits** the revenue to a specified **fund** (or to a special **account** in a specified fund). The treasurer may **deposit** the money in a bank or other financial institution where it will earn interest for the state.

A **fund** is an accounting device that sets apart and administers a collection of money, and each fund consists of one or more self-balancing accounts. To avoid confusion, the drafter should use the term "funds" only as the plural of "fund" and avoid using "funds" as a synonym for "moneys". A new fund should be created "in the state treasury" rather than "in the office of the state treasurer".

The drafter should only name a fund a **trust fund** if the fund has elements of a true legal trust such as where the fund is established by the state as "trustor" or "settlor" and held by an independent "trustee" for the benefit of "beneficiaries". For example, see 24-32-717, C.R.S., (the "Colorado Housing Act of 1970").

A **revolving fund** is a fund that is replenished continuously or periodically, often from some source other than tax revenues. The term usually refers to a fund that is used to defray the operating expenses of a state-conducted enterprise and replenished from the sale of the enterprise's goods or services. See, for example, section 33-1-114, C.R.S., (the Colorado outdoors magazine revolving fund, used for publishing the magazine and replenished from paid subscriptions) and section 24-30-1108, C.R.S. (the department of personnel revolving fund).

A **sinking fund** is a fund established to extinguish a government debt (i.e., a fund used for accumulating the moneys necessary to pay principal and interest).

## C. Drafting Considerations When Creating Special Funds

### 1. Required Elements

Every statute that creates a special fund should specify:

- (a) The *source of revenue* for the fund;

- (b) *How* moneys in the fund are to be appropriated (as discussed below, the fund should be either "continuously appropriated" or subject to legislative appropriation); and
- (c) For what *purpose* moneys may be expended from the fund.

## **2. Source of Revenue - Amount Fixed by Agency**

In some cases a statute itself will establish the amount of any taxes, fees, or charges imposed to generate revenue for a special fund. In other cases, a statute will give an agency authority to set the amount of such taxes, fees, or charges. When authorizing an agency to fix the amount of a fee or charge, the drafter should include language that requires the agency to act by rule. Example:

**40-16-XXX. Fees - taxicab fund.** THE COMMISSION BY RULE SHALL ESTABLISH FEES FOR THE DIRECT AND INDIRECT COSTS OF THE ADMINISTRATION OF THIS ARTICLE, WHICH FEES SHALL BE ASSESSED ANNUALLY AGAINST ANY PERSON LICENSED PURSUANT TO THE PROVISIONS OF SECTION 40-16-XXX. ALL FEES COLLECTED SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE TAXICAB FUND, WHICH FUND IS HEREBY CREATED. THE MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE DIRECT AND INDIRECT COSTS OF THE ADMINISTRATION OF THIS ARTICLE.

In some cases, a statute will require an agency to annually adjust its fees based on the amount of any appropriation made to the agency. See, for example, section 24-21-104, C.R.S., (the department of state cash fund) and section 24-34-105, C.R.S., (division of registrations cash fund).

## **3. Startup Financing**

When a new cash-funded program begins operation (usually on July 1), it will often incur expenses before any of the fees, taxes, or charges that support the program can be collected. Thus, the drafter may be asked to provide for a loan of moneys (usually from the general fund), to enable the program to defray its expenses until sufficient fee, charge, or tax income accrues to the cash fund. Appendix E of this manual contains examples of provisions for such startup financing. However, such provisions are usually not necessary since section 24-75-203, C.R.S., allows programs to obtain advances of moneys for working capital. Thus, the drafter should not include startup financing provisions unless special circumstances establish their need.

## **4. Legislative Appropriation or Continuous Appropriation by Statute**

Most special funds are subject to legislative appropriation, which means that an agency can only expend those moneys from the fund that the legislature appropriates to the agency. In contrast, an agency may expend moneys in a "continuously appropriated" fund

without legislative appropriation. Examples of "continuous appropriation" language that the drafter can include in the body of a bill that creates a special fund are:

The moneys in the fund are hereby continuously appropriated to the commission for the purposes of this part 4.

The moneys in the fund are hereby continuously appropriated to the board for the sole purpose of assisting victims of crime; except that an amount equal to five percent of the total restitution made during the preceding fiscal year, not to exceed a total amount of fifteen thousand dollars for each fiscal year, may be used by the board to cover all direct and indirect costs incurred by the board in implementing the provisions of this section.

The drafter should be aware, and advise any bill sponsor who desires "continuous appropriations", that in recent years the appropriations committees have generally amended bills with continuously appropriated special funds so that the funds will be subject to annual legislative appropriation. However, the appropriations committees do not necessarily intend that the General Assembly will use the appropriations process to tightly constrain expenditures from such funds. Instead, the primary purpose of subjecting special funds to legislative appropriation is to ensure that the funding of state government programs is fully accounted for through the budget process by minimizing the number of programs that are operated "off-budget" and subjected to less public scrutiny.

### ***5. Allowing Agencies to Retain Administrative Costs***

Sometimes a state agency collects money on behalf of another agency or political subdivision, and a bill sponsor wishes to fund the costs incurred by the collecting agency out of the moneys collected. In such cases, a bill may provide that the collecting agency is entitled to retain its administrative costs before paying over the proceeds or that the collecting agency is entitled to be paid its administrative costs by the recipient. In either case, the drafter must specify whether the moneys to be retained or received by the collecting agency are to be subject to legislative appropriation or continuously appropriated.

In drafting a bill that allows an agency to retain administrative collection costs, the drafter should avoid any possible confusion by the agencies that will implement the bill by including language stating that any moneys withheld for administrative expenses are to be credited to the general fund or to a special fund and that such moneys are subject to appropriation by the General Assembly for such administrative collection costs. For examples of retained costs that are credited to the general fund and subject to appropriation by the General Assembly, see sections 32-9-119 (2) (c) (II) and 30-11-107.5 (2) (b), C.R.S.

### ***6. Cash Funding Without Creating a Separate Cash Fund***

It is not always necessary to create a cash fund to accomplish cash funding.

*Examples:*

**25-2-113.5. Limited access to information upon consent of all parties.**

(10) (a) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HEALTH SHALL ESTABLISH FEES TO BE CHARGED EACH PERSON REQUESTING THAT HIS NAME BE PLACED ON THE LIST PROVIDED FOR IN SUBSECTION (3), (4), OR (5) OF THIS SECTION AND FOR THE SERVICES PROVIDED BY THE REGISTRAR IN ESTABLISHING AND IMPLEMENTING THE REGISTRY PURSUANT TO THIS SECTION. IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE FEES SHALL COVER ALL DIRECT AND INDIRECT COSTS INCURRED PURSUANT TO THIS SECTION.

(b) THE FEES COLLECTED PURSUANT TO THIS SECTION SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE GENERAL FUND. THE GENERAL ASSEMBLY SHALL ANNUALLY APPROPRIATE FROM THE GENERAL FUND TO THE DEPARTMENT OF HEALTH AN AMOUNT SUFFICIENT TO MEET EXPENSES INCURRED PURSUANT TO THIS SECTION.

**7. Direct and Indirect Costs**

In recent years, the Joint Budget Committee, through the appropriations committees and the JBC staff, has encouraged the use of language that allows the General Assembly flexibility in appropriating not only for the *direct* costs of an agency in administering a program but also for the *indirect* costs incurred by other state agencies because of the program, such as the costs of services provided by the controller, the department of personnel, and the department of the treasury. (For examples of such language, see the preceding examples in this section V. C.) However, the drafter should remember that the wishes of the sponsor control the drafting of bills and amendments.

**8. Crediting Investment Earnings to the Fund**

The state treasurer generally invests moneys credited to a special fund until needed for expenditure, and, unless otherwise provided by statute, credits the interest earned from such investments to the general fund in accordance with section 24-36-114, C.R.S. The following language provides for the crediting of such interest income to the general fund. The drafter should use this language unless the sponsor requests that interest be credited to the special fund.

In accordance with section 24-36-114, C.R.S., all interest derived from the deposit and investment of this fund shall be credited to the general fund.

The following language may be used to provide that interest is to be credited to the special fund, rather than to the general fund:

All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

## **9. "Nonreversion" to General Fund**

Language providing that moneys in a special fund shall not "revert" to the general fund appears in a number of statutes:

The moneys in the fund shall not be transferred or credited to the general fund or to any other fund except as directed by the general assembly acting by bill.

Any moneys not appropriated shall remain in the fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year.

At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund.

Generally the legal need for such "nonreversion" language is doubtful, but bill sponsors sometimes find such language psychologically reassuring. Providing that moneys in a special fund "shall not revert to the general fund at the end of a fiscal year" makes sense only if moneys actually originated in the general fund and there is a specific reason why they might "revert".

Unnecessary use of "nonreversion" language can cause problems. For example, does the phrase "acting by bill" (in the first paragraph of the sample language above) allow removal of moneys from a special fund by a supplemental appropriation bill or must the General Assembly act by a "substantive law" bill that amends a statute?

## **10. "Reversion" to General Fund**

Sometimes it may be desirable to transfer excess moneys remaining in a special fund at the end of a fiscal year to the general fund or another fund by inserting some of the following language:

Any unexpended and unencumbered moneys remaining in the fund shall be credited to the general fund at the end of each fiscal year.

The unexpended and unencumbered balance of moneys appropriated by the general assembly from the fund shall be credited to the general fund at the end of each fiscal year.

Net revenues collected in excess of twenty-five percent of the debt collection fund balance shall revert ["shall be credited" would be better] to the general fund at the end of each fiscal year. See section 24-30-202.4 (3), C.R.S.

## **11. Provision for Remaining Balance of Abolished Cash Fund**

Any bill that abolishes a special fund should specify the disposition of any moneys remaining in the special fund at the time of abolishment. If not specified, the balance of the abolished fund will likely revert to the general fund pursuant to section 24-75-201, C.R.S.



Moneys remaining in a special fund at the time of abolishment may be expressly transferred to the general fund or to an existing or newly-created special fund. Examples:

All unexpended and unencumbered moneys remaining in the fund as of July 1, 2000, shall be transferred to the general fund.

The balance remaining in the fund after payment of all obligations of the preceding fiscal year shall be credited to the general fund, and the fund is abolished.

All moneys remaining in the license fee fund as of July 1, 2000, shall be transferred to the division cash fund, which is hereby created.

## **12. Disbursement Procedure**

Language like the following is sometimes used but is rarely necessary:

### **24-30-1515. Compromise or settlement of claims - authority.**

(3) Disbursements from the risk management fund for claims compromised or settled in accordance with this part 15 shall be paid by the state treasurer upon warrants drawn in accordance with law upon vouchers issued by the division upon order of the board or person authorized in subsection (2) of this section to make such compromise or settlement.

## **D. Reappropriated Funds**

During the fall of 2007, the Joint Budget Committee decided to change the format of appropriations commencing in Fiscal Year 2008-09 to eliminate the designation of "cash fund exempt" appropriations and create a new category for identifying moneys that are reappropriated more than once in the same fiscal year. The new category of appropriations is called "reappropriated funds", which is a specific sub-category of cash funds but is identified separately from a regular "cash funds" appropriation. This change affects not only the format of the long appropriations bill and supplemental appropriations bills, but also the format of appropriation clauses included in substantive law bills.

In the majority of cash fund appropriations made for FY 2008-09 and fiscal years thereafter, the appropriation clause will include a regular cash fund appropriation just as the Office and the Joint Budget Committee staff has always drafted them. Only in very limited circumstances will an appropriation clause be needed for "reappropriated funds".

A good test for whether the "reappropriated funds" term is to be used in an appropriation clause is to think of the term describing one of three different types of double counts (i.e., moneys appropriated that were previously appropriated during that same fiscal year):

- Payments from one department to another for services, like to the Department of Personnel for computer services or to the Department of Law for legal services;

- Pass-through exchanges, like medicaid funds from the Department of Health Care Policy and Financing to the Department of Human Services;
- Cash funds where statutes require an appropriation both into and out of the fund, like the Colorado heritage communities (smart growth) grant fund in the Department of Local Affairs.

When preparing an Appropriations Committee amendment to add or modify an appropriations clause for a substantive law bill, the drafter should look under the "State Appropriations" section of the fiscal note for the bill. The Legislative Council fiscal note staff will indicate in this section of the fiscal note the amount, if any, of cash funds and of reappropriated funds that need to be appropriated to cover the costs of implementing the bill.

*Example of an appropriation with reappropriated funds for an appropriation to purchase services from another agency:*

**SECTION 5. Appropriation.** (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of securities cash fund not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of securities, for the fiscal year beginning July 1, 2008, the sum of one hundred ninety thousand eight hundred sixty-four dollars (\$190,864) and 4.0 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2008, the sum of sixteen thousand seven hundred nine dollars (\$16,709), or so much thereof as may be necessary, for the provision of legal services to the division of securities related to the implementation of this act. Said sum shall be from reappropriated funds received from the division of securities out of the appropriation made in subsection (1) of this section.

So far, examples have been developed only for the first bulleted example of double counts discussed in this section D - appropriations to purchase services from another agency. Those examples may be found in Appendix E of this manual. An example of an adjustment to the long bill appropriation is also in Appendix E.