

## SB0128S03 compared with SB0128S02

~~text~~ shows text that was in SB0128S02 but was deleted in SB0128S03.

Inserted text shows text that was not in SB0128S02 but was inserted into SB0128S03.

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**Representative Kay J. Christofferson** proposes the following substitute bill:

### **TRANSPORTATION REVISIONS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David G. Buxton**

House Sponsor: Kay J. Christofferson

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#### **LONG TITLE**

##### **General Description:**

This bill amends provisions related to transportation funding and the authority to construct, encroach on, or access a state highway right-of-way.

##### **Highlighted Provisions:**

This bill:

- ▶ amends the distribution of the local option highway construction and transportation corridor preservation fee in a county of the first class;
- ▶ requires a highway authority to get permission from the Department of Transportation before any construction, encroachment, or access on a state highway right-of-way;
- ▶ provides construction standards for certain repairs;
- ▶ amends the distribution of revenue and repayment requirements in the County of the

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First Class ~~{State}~~ Highway Projects Fund; and

- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides a special effective date.

This bill provides a coordination clause.

### Utah Code Sections Affected:

AMENDS:

**41-1a-1222**, as last amended by Laws of Utah 2017, Chapter 240

**72-2-121**, as last amended by Laws of Utah 2017, Chapter 436

**72-3-109**, as last amended by Laws of Utah 2011, Chapter 303

**72-7-102**, as last amended by Laws of Utah 2012, Chapter 289

### Utah Code Sections Affected by Coordination Clause:

**72-2-121**, as last amended by Laws of Utah 2017, Chapter 436

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **41-1a-1222** is amended to read:

**41-1a-1222. Local option highway construction and transportation corridor preservation fee -- Exemptions -- Deposit -- Transfer -- County ordinance -- Notice.**

(1) (a) (i) Except as provided in Subsection (1)(a)(ii), a county legislative body may impose a local option highway construction and transportation corridor preservation fee of up to \$10 on each motor vehicle registration within the county.

(ii) A county legislative body may impose a local option highway construction and transportation corridor preservation fee of up to \$7.75 on each motor vehicle registration for a six-month registration period under Section 41-1a-215.5 within the county.

(iii) A fee imposed under Subsection (1)(a)(i) or (ii) shall be set in whole dollar increments.

(b) If imposed under Subsection (1)(a), at the time application is made for registration or renewal of registration of a motor vehicle under this chapter, the applicant shall pay the local option highway construction and transportation corridor preservation fee established by the

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county legislative body.

(c) The following are exempt from the fee required under Subsection (1)(a):

(i) a motor vehicle that is exempt from the registration fee under Section 41-1a-1209 or Subsection 41-1a-419(3);

(ii) a commercial vehicle with an apportioned registration under Section 41-1a-301; and

(iii) a motor vehicle with a Purple Heart special group license plate issued in accordance with Section 41-1a-421.

(2) (a) Except as provided in Subsection (2)(b), the revenue generated under this section shall be:

(i) deposited in the Local Highway and Transportation Corridor Preservation Fund created in Section 72-2-117.5;

(ii) credited to the county from which it is generated; and

(iii) used and distributed in accordance with Section 72-2-117.5.

(b) The revenue generated by a fee imposed under this section in a county of the first class shall be deposited or transferred as follows:

(i) ~~[50%]~~ 70% of the revenue shall be:

(A) deposited in the County of the First Class Highway Projects Fund created in Section 72-2-121; and

(B) used in accordance with Section 72-2-121; and

~~[(ii) 20% of the revenue shall be:]~~

~~[(A) transferred to the legislative body of a city of the first class:]~~

~~[(f) located in a county of the first class; and]~~

~~[(H) that has:]~~

~~[(Aa) an international airport within its boundaries; and]~~

~~[(Bb) a United States customs office on the premises of the international airport described in Subsection (2)(b)(ii)(A)(H)(Aa); and]~~

~~[(B) used by the city described in Subsection (2)(b)(ii)(A) for highway construction, reconstruction, or maintenance projects; and]~~

~~[(iii)]~~ (ii) 30% of the revenue shall be deposited, credited, and used as provided in Subsection (2)(a).

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(3) To impose or change the amount of a fee under this section, the county legislative body shall pass an ordinance:

- (a) approving the fee;
- (b) setting the amount of the fee; and
- (c) providing an effective date for the fee as provided in Subsection (4).

(4) (a) If a county legislative body enacts, changes, or repeals a fee under this section, the enactment, change, or repeal shall take effect on July 1 if the commission receives notice meeting the requirements of Subsection (4)(b) from the county prior to April 1.

(b) The notice described in Subsection (4)(a) shall:

- (i) state that the county will enact, change, or repeal a fee under this part;
- (ii) include a copy of the ordinance imposing the fee; and
- (iii) if the county enacts or changes the fee under this section, state the amount of the

fee.

Section 2. Section **72-2-121** is amended to read:

### **72-2-121. County of the First Class Highway Projects Fund.**

(1) There is created a special revenue fund within the Transportation Fund known as the "County of the First Class Highway Projects Fund."

(2) The fund consists of money generated from the following revenue sources:

(a) any voluntary contributions received for new construction, major renovations, and improvements to highways within a county of the first class;

(b) the portion of the sales and use tax described in Subsection 59-12-2214(3)(b) deposited in or transferred to the fund;

(c) the portion of the sales and use tax described in Subsection 59-12-2217(2)(b) and required by Subsection 59-12-2217(8)(b) to be deposited in or transferred to the fund; and

(d) a portion of the local option highway construction and transportation corridor preservation fee imposed in a county of the first class under Section 41-1a-1222 deposited in or transferred to the fund.

(3) (a) The fund shall earn interest.

(b) All interest earned on fund money shall be deposited into the fund.

(4) The executive director shall use the fund money only:

(a) to pay debt service and bond issuance costs for bonds issued under Sections

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63B-16-102, 63B-18-402, and 63B-27-102;

(b) for right-of-way acquisition, new construction, major renovations, and improvements to highways within a county of the first class and to pay any debt service and bond issuance costs related to those projects, including improvements to a highway located within a municipality in a county of the first class where the municipality is located within the boundaries of more than a single county;

(c) for the construction, acquisition, use, maintenance, or operation of:

(i) an active transportation facility for nonmotorized vehicles;

(ii) multimodal transportation that connects an origin with a destination; or

(iii) a facility that may include a:

(A) pedestrian or nonmotorized vehicle trail;

(B) nonmotorized vehicle storage facility;

(C) pedestrian or vehicle bridge; or

(D) vehicle parking lot or parking structure;

(d) for fiscal year 2012-13 only, to pay for or to provide funds to a municipality or county to pay for a portion of right-of-way acquisition, construction, reconstruction, renovations, and improvements to highways described in Subsections 72-2-121.4(7), (8), and (9);

(e) to transfer to the 2010 Salt Lake County Revenue Bond Sinking Fund created by Section 72-2-121.3 the amount required in Subsection 72-2-121.3(4)(c) minus the amounts transferred in accordance with Subsection 72-2-124(4)(a)(iv);

(f) for a fiscal year beginning on or after July 1, 2013, to pay debt service and bond issuance costs for \$30,000,000 of the bonds issued under Section 63B-18-401 for the projects described in Subsection 63B-18-401(4)(a);

(g) for a fiscal year beginning on or after July 1, 2013, and after the department has verified that the amount required under Subsection 72-2-121.3(4)(c) is available in the fund, to transfer an amount equal to 50% of the revenue generated by the local option highway construction and transportation corridor preservation fee imposed under Section 41-1a-1222 in a county of the first class:

(i) to the legislative body of a county of the first class; and

(ii) to be used by a county of the first class for:

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(A) highway construction, reconstruction, or maintenance projects; or

(B) the enforcement of state motor vehicle and traffic laws;

(h) for fiscal year 2015 only, and after the department has verified that the amount required under Subsection 72-2-121.3(4)(c) is available in the fund and the transfer under Subsection (4)(f) has been made, to transfer an amount equal to the remainder of the revenue available in the fund for the 2015 fiscal year:

(i) to the legislative body of a county of the first class; and

(ii) to be used by a county of the first class for:

(A) highway construction, reconstruction, or maintenance projects; or

(B) the enforcement of state motor vehicle and traffic laws;

(i) for fiscal year 2015-16 only, and after the department has verified that the amount required under Subsection 72-2-121.3(4)(c) is available in the fund and the transfer under Subsection (4)(f) has been made, to transfer an amount equal to \$25,000,000:

(i) to the legislative body of a county of the first class; and

(ii) to be used by the county for the purposes described in this section;

(j) for a fiscal year beginning on or after July 1, 2015, after the department has verified that the amount required under Subsection 72-2-121.3(4)(c) is available in the fund and the transfer under Subsection (4)(f) has been made, to annually transfer an amount equal to up to 42.5% of the sales and use tax revenue imposed in a county of the first class and deposited into the fund in accordance with Subsection 59-12-2214(3)(b) to:

(i) the appropriate debt service or sinking fund for the repayment of bonds issued under Section 63B-27-102; and

(ii) the Transportation [~~Investment Fund of 2005~~] Fund created in Section [~~72-2-124~~] 72-2-102 until \$28,079,000 has been deposited into the Transportation [~~Investment Fund of 2005; and~~] Fund;

(k) for a fiscal year beginning on or after July 1, 2018, after the department has verified that the amount required under Subsection 72-2-121.3(4)(c) is available in the fund ~~and~~ and after the transfer under Subsection (4)(e), the payment under Subsection (4)(f) ~~has been made~~, and ~~after~~ the transfers under Subsections (4)(j)(i) and (ii) have been made, to annually transfer 20% of the amount deposited into the fund under Subsection (2)(b) to a public transit district in a county of the first class to fund a system for public transit;

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(l) for a fiscal year beginning on or after July 1, 2018, after the department has verified that the amount required under Subsection 72-2-121.3(4)(c) is available in the fund and after the transfer under Subsection (4)(e), the payment under Subsection (4)(f), and the transfers under Subsections (4)(j)(i) and (ii) have been made, to annually transfer 20% of the amount deposited into the fund under Subsection (2)(b):

(i) to the legislative body of a county of the first class; and

(ii) to fund parking facilities in a county of the first class that facilitate significant economic development and recreation and tourism within the state; and

~~(k)~~ (m) for a fiscal year beginning after the amount described in Subsection (4)(j) has been repaid to the Transportation ~~[Investment Fund of 2005]~~ Fund until fiscal year 2030, or sooner if the amount described in Subsection (4)(j)(ii) has been repaid, after the department has verified that the amount required under Subsection 72-2-121.3(4)(c) is available in the fund and the transfer under Subsection (4)(f) has been made, and after the bonds under Section 63B-27-102 have been repaid, to annually transfer an amount equal to up to 42.5% of the sales and use tax revenue imposed in a county of the first class and deposited into the fund in accordance with Subsection 59-12-2214(3)(b):

(i) to the legislative body of a county of the first class; and

(ii) to be used by the county for the purposes described in this section.

(5) The revenues described in Subsections (2)(b), (c), and (d) that are deposited in the fund and bond proceeds from bonds issued under Sections 63B-16-102, 63B-18-402, and 63B-27-102 are considered a local matching contribution for the purposes described under Section 72-2-123.

(6) The additional administrative costs of the department to administer this fund shall be paid from money in the fund.

(7) Notwithstanding any statutory or other restrictions on the use or expenditure of the revenue sources deposited into this fund, the Department of Transportation may use the money in this fund for any of the purposes detailed in Subsection (4).

(8) (a) For a fiscal year beginning on or after July 1, 2018, at the end of each fiscal year, after all programmed payments and transfers authorized or required under this section have been made, on July 30 the department shall transfer the remainder of the money in the fund to the Transportation Fund to reduce the amount owed to the Transportation Fund under

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### Subsection (4)(j)(ii).

(b) The department shall provide notice to a county of the first class of the amount transferred in accordance with this Subsection (8).

Section 3. Section 72-3-109 is amended to read:

### **72-3-109. Division of responsibility with respect to state highways in cities and towns.**

(1) Except as provided in Subsection (3), the jurisdiction and responsibility of the department and the municipalities for state highways within municipalities is as follows:

(a) The department has jurisdiction over and is responsible for the construction and maintenance of:

(i) the portion of the state highway located between the back of the curb on either side of the state highway; or

(ii) if there is no curb, the traveled way, its contiguous shoulders, and appurtenances.

(b) The department may widen or improve state highways within municipalities.

(c) (i) A municipality has jurisdiction over all other portions of the right-of-way and is responsible for construction and maintenance of the right-of-way.

(ii) If a municipality grants permission for the installation of any pole, pipeline, conduit, sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or character within the portion of the right-of-way under its jurisdiction:

(A) the permission shall contain the condition that any installation will be removed from the right-of-way at the request of the municipality; and

(B) the municipality shall cause any installation to be removed at the request of the department when the department finds the removal necessary:

(I) to eliminate a hazard to traffic safety;

(II) for the construction and maintenance of the state highway; or

(III) to meet the requirements of federal regulations.

(iii) Except as provided in Subsection (1)(h), a municipality may not install or grant permission for the installation of any pole, pipeline, conduit, sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or character within the portion of the state highway right-of-way under its jurisdiction without the prior written approval of the department.



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(iv) The department may, by written agreement with a municipality, waive the requirement of its approval under Subsection (1)(c)(iii) for certain types and categories of installations.

(d) If it is necessary that a utility, as defined in Section 72-6-116, be relocated, reimbursement shall be made for the relocation as provided for in Section 72-6-116.

(e) (i) The department shall construct curbs, gutters, and sidewalks on the state highways if necessary for the proper control of traffic, driveway entrances, or drainage.

(ii) If a state highway is widened or altered and existing curbs, gutters, or sidewalks are removed, the department shall replace the curbs, gutters, or sidewalks.

(f) The department may furnish and install street lighting systems for state highways, but their operation and maintenance is the responsibility of the municipality.

(g) If new storm sewer facilities are necessary in the construction and maintenance of the state highways, the cost of the storm sewer facilities shall be borne by the state and the municipality in a proportion mutually agreed upon between the department and the municipality.

(h) (i) For a portion of a state highway right-of-way for which a municipality has jurisdiction, and upon request of the municipality, the department shall grant permission for the municipality to issue permits within the state highway right-of-way, provided that:

(A) the municipality gives the department seven calendar days to review and provide comments on the permit; and

(B) upon the request of the department, the municipality incorporates changes to the permit as jointly agreed upon by the municipality and the department.

(ii) If the department fails to provide a response as described in Subsection (1)(h)(i) within seven calendar days, the municipality may issue the permit.

(2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules governing the location and construction of approach roads and driveways entering the state highway. The rules shall:

(i) include criteria for the design, location, and spacing of approach roads and driveways based on the functional classification of the adjacent highway, including the urban or rural nature of the area;

(ii) be consistent with the "Manual on Uniform Traffic Control Devices" and the model

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access management policy or ordinance developed by the department under Subsection 72-2-117(8);

(iii) include procedures for:

(A) the application and review of a permit for approach roads and driveways including review of related site plans that have been recommended according to local ordinances; and

(B) approving, modifying, denying, or appealing the modification or denial of a permit for approach roads and driveways within 45 days of receipt of the application; and

(iv) require written justifications for modifying or denying a permit.

(b) The department may delegate the administration of the rules to the highway authorities of a municipality.

(c) In accordance with this section and Section 72-7-104, an approach road or driveway may not be constructed on a state highway without a permit issued under this section.

(3) The department has jurisdiction and control over the entire right-of-way of interstate highways within municipalities and is responsible for the construction, maintenance, and regulation of the interstate highways within municipalities.

Section 4. Section 72-7-102 is amended to read:

**72-7-102. Excavations, structures, or objects prohibited within right-of-way except in accordance with law -- Permit and fee requirements -- Rulemaking -- Penalty for violation.**

(1) As used in this section, "management costs" means the reasonable, direct, and actual costs a highway authority incurs in exercising authority over the highways under its jurisdiction.

(2) Except as provided in Subsection (3) and Section 54-4-15, a person may not:

(a) dig or excavate, within the right-of-way of any state highway, county road, or city street; or

(b) place, construct, or maintain any approach road, driveway, pole, pipeline, conduit, sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or character within the right-of-way.

(3) (a) (i) A highway authority having jurisdiction over the right-of-way may allow excavating, installation of utilities and other facilities or access under rules made by the highway authority and in compliance with federal, state, and local law as applicable.

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(ii) Notwithstanding Subsection (3)(a)(i), a highway authority may not allow excavating, installation of utilities and other facilities, or access to any portion of a state highway, including portions thereof within a municipality, without the prior written approval of the department. The department may, by written agreement with a municipality, waive the requirement of its approval for certain types and categories of excavations, installations, and access.

(b) (i) The rules may require a permit for any excavation or installation and may require a surety bond or other security.

(ii) The application for a permit for excavation or installation on a state highway shall be accompanied by a fee established under Subsection (4)(f).

(iii) The permit may be revoked and the surety bond or other security may be forfeited for cause.

(iv) Any portion of the right-of-way disturbed by a project permitted under this section shall be repaired using construction standards established by the highway authority with jurisdiction over the disturbed portion of the right-of-way.

(c) (i) For a portion of a state highway right-of-way for which a municipality has jurisdiction, and upon request of the municipality, the department shall grant permission for the municipality to issue permits within the state highway right-of-way, provided that:

(A) the municipality gives the department seven calendar days to review and provide comments on the permit; and

(B) upon the request of the department, the municipality incorporates changes to the permit as jointly agreed upon by the municipality and the department.

(ii) If the department fails to provide a response as described in Subsection (3)(c)(i) within seven calendar days, the municipality may issue the permit.

(4) (a) Except as provided in Section 72-7-108 with respect to the department concerning the interstate highway system, a highway authority may require compensation from a utility service provider for access to the right-of-way of a highway only as provided in this section.

(b) A highway authority may recover from a utility service provider, only those management costs caused by the utility service provider's activities in the right-of-way of a highway under the jurisdiction of the highway authority.

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(c) (i) A fee or other compensation under this Subsection (4) shall be imposed on a competitively neutral basis.

(ii) If a highway authority's management costs cannot be attributed to only one entity, the management costs shall be allocated among all privately owned and government agencies using the highway right-of-way for utility service purposes, including the highway authority itself. The allocation shall reflect proportionately the management costs incurred by the highway authority as a result of the various utility uses of the highway.

(d) A highway authority may not use the compensation authority granted under this Subsection (4) as a basis for generating revenue for the highway authority that is in addition to its management costs.

(e) (i) A utility service provider that is assessed management costs or a franchise fee by a highway authority is entitled to recover those management costs.

(ii) If the highway authority that assesses the management costs or franchise fees is a political subdivision of the state and the utility service provider serves customers within the boundaries of that highway authority, the management costs may be recovered from those customers.

(f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall adopt a schedule of fees to be assessed for management costs incurred in connection with issuing and administering a permit on a state highway under this section.

(g) In addition to the requirements of this Subsection (4), a telecommunications tax or fee imposed by a municipality on a telecommunications provider, as defined in Section 10-1-402, is subject to Section 10-1-406.

(5) Permit fees collected by the department under this section shall be deposited with the state treasurer and credited to the Transportation Fund.

(6) Nothing in this section shall affect the authority of a municipality under:

(a) Section 10-1-203 or 10-1-203.5;

(b) Section 11-26-1;

(c) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or

(d) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.

(7) A person who violates the provisions of Subsection (2) is guilty of a class B misdemeanor.

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### Section 5. **Effective date.**

(1) Except as provided in Subsection (2), this bill takes effect on May 8, 2018.

(2) The amendments to the following sections take effect on July 1, 2018:

(a) Section 41-1a-1222; and

(b) Section 72-2-121.

### Section 6. **Coordinating S.B. 128 with S.B. 136 -- Substantive and technical amendments.**

If this S.B. 128 and S.B. 136, Transportation Governance Amendments, both pass and become law, it is the intent of the Legislature that on July 1, 2018, the Office of Legislative Research and General Counsel shall prepare the Utah Code database for publication by renumbering and amending Subsection 72-2-121(8) enacted in S.B. 136 to read:

"(9)(a) Any revenue in the fund that is not specifically allocated and obligated under this section is subject to the review process described in this Subsection (9).

(b) A county of the first class shall create a county transportation advisory committee as described in Subsection (9)(c) to review proposed transportation and, as applicable, public transit projects and rank projects for allocation of funds.

(c) The county transportation advisory committee described in Subsection (9)(b) shall be composed of the following 13 members:

(i) six members who are residents of the county, nominated by the county executive and confirmed by the county legislative body who are:

(A) members of a local advisory board of a large public transit district as defined in Section 17B-2a-802;

(B) county council members; or

(C) other residents with expertise in transportation planning and funding; and

(ii) seven members nominated by the county executive, and confirmed by the county legislative body, chosen from mayors or managers of cities or towns within the county.

(d) (i) A majority of the members of the county transportation advisory committee constitutes a quorum.

(ii) The action by a quorum of the county transportation advisory committee constitutes an action by the county transportation advisory committee.

(e) The county body shall determine:

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(i) the length of a term of a member of the county transportation advisory committee;

(ii) procedures and requirements for removing a member of the county transportation advisory committee;

(iii) voting requirements of the county transportation advisory committee;

(iv) chairs or other officers of the county transportation advisory committee;

(v) how meetings are to be called and the frequency of meetings, but not less than once annually; and

(vi) the compensation, if any, of members of the county transportation advisory committee.

(f) The county shall establish by ordinance criteria for prioritization and ranking of projects, which may include consideration of regional and countywide economic development impacts, including improved local access to:

(i) employment;

(ii) recreation;

(iii) commerce; and

(iv) residential areas.

(g) The county transportation advisory committee shall evaluate and rank each proposed public transit project and regionally significant transportation facility according to criteria developed pursuant to Subsection (9)(e).

(h) (i) After the review and ranking of each project as described in this section, the county transportation advisory committee shall provide a report and recommend the ranked list of projects to the county legislative body and county executive.

(ii) After review of the recommended list of projects, as part of the county budgetary process, the county executive shall review the list of projects and may include in the proposed budget the proposed projects for allocation, as funds are available.

(i) The county executive of the county of the first class, with information provided by the county and relevant state entities, shall provide a report annually to the county transportation advisory committee, and to the mayor or manager of each city, town, or metro township in the county, including the following:

(i) the amount of revenue received into the fund during the past year;

(ii) any funds available for allocation;

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(iii) funds obligated for debt service; and

(iv) the outstanding balance of transportation related debt."