

Mike Mauer, Director  
Legislative Council Staff

**Colorado Legislative Council**  
200 East Colfax Avenue Suite 029  
Denver, Colorado 80203-1716  
Telephone 303-866-3521  
Facsimile 303-866-3855  
TDD 303-866-3472



Dan L. Cartin, Director  
Office of Legislative Legal Services

**Office of Legislative Legal Services**  
200 East Colfax Avenue Suite 091  
Denver, Colorado 80203-1716  
Telephone 303-866-2045  
Facsimile 303-866-4157  
Email: olls.ga@state.co.us

## MEMORANDUM

**TO:** William Ray and Richard Evans  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** April 6, 2016  
**SUBJECT:** Proposed initiative measure 2015-2016 #146, concerning a new transportation safety sales and use tax

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

### Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To create a permanent transportation safety sales and use tax at a rate of 6.2 cents per \$10 of commodities or services sold;

2. To allow the state, counties, cities, and towns to use the transportation safety sales and use tax revenue to fund improvements to highways within the state and to fund newly-defined transportation safety and congestion relief projects in the state; and
3. To require the Colorado Department of Transportation to publicly disclose on its website all of the expenditures related to the transportation safety sales and use tax.

## **Substantive Comments and Questions**

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. What will be the effective date of the proposed initiative?
3. Article XXIV, section 2 (a) of the Colorado constitution specifies that 85% of all net revenue from any and all excise taxes, including the use tax, **but not including “the revenue derived from excise taxes now or hereafter levied, for highway purposes, upon gasoline or other motor fuel,”** is allocated to the Old Age Pension Fund. For accounting purposes, money is not actually transferred to the fund as described, but is instead deposited into the general fund and general fund moneys are then appropriated to cover the Old Age Pension Program expenditures. (**emphasis added**)
  - a. Is it the proponents’ intention that the transportation safety sales and use tax revenue is subject to the same earmarks? If not, would the proponents consider clarifying that in their proposed initiative? This question is particularly important in light of the language in section 6 of the proposed initiative which seeks voter approval to collect, retain, and expend “the full amount of revenue from the transportation safety sales and use tax.”
4. It appears that the transportation safety sales and use tax applies to the same sales and use tax base (tangible personal property and limited services) as the current state sales and use tax, is that correct?
5. Do the same sales and use tax exemptions in part 7 of article 26 of title 39, Colorado Revised Statutes, apply to the transportation safety sales and use tax?

6. It appears that it is the proponents' intent that the transportation safety sales tax would increase the amount of the vendor fee, which allows retailers to keep a certain percentage of the sales tax collected on behalf of the state, is that correct?
7. Have the proponents considered whether the Department of Revenue will be able to track the transportation safety sales and use tax revenue to earmark it as specified in the initiative?
8. Section 4 of the proposed initiative specifies that transportation safety sales and use tax revenues must be allocated and expended in accordance with the formula specified section 43-4-205 (6) (b), Colorado Revised Statutes. That statute provides that the revenues may be expended "only for improvements to highways within the state, including new construction, safety improvements, maintenance and capacity improvements, and for other transportation-related projects to the extent authorized by section 43-4-206 (3), 43-4-207 (1), and 43-4-208 (1), and may not be expended for administrative purposes."
  - a. Section 43-4-206 (3), Colorado Revised Statutes, allows an expenditure of \$10 million per year for transit-related projects. This maximum amount would not be increased by operation of the proposed initiative despite the increase in revenue to be expended. Is that the proponents' intention?
  - b. Sections 43-4-207 (1) and 43-4-208 (1), Colorado Revised Statutes, allow expenditures for transit-related projects at the county, city, and town levels. These expenditures are limited to no more than 15% of the total amount expended. Is it the proponents' intention that these limitations on the amounts expended for transit-related projects apply to the transportation safety sales and use tax revenues as well?
  - c. Does the formula set forth in section 43-4-205 (6) (b), Colorado Revised Statutes, allow for expenditures on bridge construction and repair? This is important with respect to the voter approval language in section 6 of the proposed initiative.
9. The following questions are related to the new paragraph (a) of subsection (6.4) in section 4 of the proposed initiative:
  - a. What does a "three-year period" mean?

- i. Is that period consecutive or can the general assembly annually fund congestion relief projects three times so long as the transportation safety sales and use tax is being collected?
  - ii. Can the "three-year period" occur at any time in the future? For example, since the transportation safety sales and use tax is permanent, could the general assembly meet the requirements by funding the congestion relief projects in each of the state's transportation districts in the 20<sup>th</sup> year of the existence of the transportation safety sales and use tax?
  - iii. Once the "three-year period" is met, is there a further requirement that the transportation safety sales and use tax be used for congestion relief projects?
- b. Section 43-4-205 (6) (b), Colorado Revised Statutes, already specifies that "such revenue may be expended only for . . . capacity improvements." Are "capacity improvements" different from "transportation safety and congestion relief projects"? If the terms are synonymous, what is the effect of this requirement?
- c. With respect to "the state shall expend a portion of its allocated revenues":
  - i. Does "its allocated revenues" refer to the formula in section 43-4-205 (6) (b), Colorado Revised Statutes, that specifies 60% of the revenue goes to the State Highway Fund? Or does it refer to 100% of the revenues allocated pursuant to the formula?
  - ii. The requirement appears to be limited to the state, but because the formula in section 43-4-205 (6) (b), Colorado Revised Statutes, also distributes 22% of the revenue to the county treasurers and 18% of the revenue to cities and towns, is this phrase intended to add a requirement to counties, cities, and towns to fund congestion relief projects in a similar three-year period?
  - iii. What does "a portion" mean? For example would the requirement be met if the general assembly expended one-half of one percent of its allocated revenues on transportation safety and congestion relief projects?

- d. The language does not specify how the funding for transportation safety and congestion relief projects is to be distributed in each transportation district. Must there be parity or proportionality among the districts? Would it be okay to spend \$1 million in one district and \$5 million in another? Would it be okay to spend \$1 in ten of the 11 districts and the remainder in the 11<sup>th</sup> district?
10. The following questions are related to the new paragraph (b) of subsection (6.4) in section 4 of the proposed initiative:
- a. The language provides that the Department of Transportation “disclose prominently on its website the districts and the counties where all expenditures of” revenue was made. Did the proponents intentionally leave out cities and towns?
  - b. What does “all expenditures” refer to? Does “all expenditures” refer to the expenditures from the formula in section 43-4-205 (6) (b), Colorado Revised Statutes, that specifies 60% of the revenue that goes to the State Highway Fund? Or does it refer to the expenditures of 100% of the revenues allocated pursuant to the formula?
11. What does “congestion” mean? How is a “transportation safety and congestion relief project” different from the expenditures allowed in section 43-4-205 (6) (b), Colorado Revised Statutes?
12. What is an “improvement to relieve congestion”? Does it include funding for transit purposes or for transit-related capital improvements? Does it include funding for highway bridge construction and repair?
13. The revenue generated from the transportation safety sales and use tax is distributed to counties, cities, and towns by operation of section 4 of the proposed initiative. The voter approval language in section 6 of the proposed initiative appears to create a voter-approved revenue change to the limitation on state fiscal year spending. What is the effect on a county’s, city’s, or town’s fiscal year spending limitation?
14. If the voters approve the collection, retention, and expenditure of the transportation safety sales and use tax revenue, can the general assembly change the allocation of that revenue at a later date?

## Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. It is standard drafting practice when referencing statutory subsections to place spaces in between each component. For example, write “(1) (a) (I)”, not “(1)(a)(I)”.
2. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it "means that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty."
3. The proponents should consider adding the internal citation of the transportation safety sales and use tax in section 4 of the proposed initiative, as they have done in other sections (...pursuant to sections 39-26-106 (1) (c) and 39-26-202 (1) (b.5), C.R.S.,...).