

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

**TO:** Roger Sherman and Anthony Milo  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** March 22, 2017  
**SUBJECT:** Proposed initiative measure 2017-2018 #14 Concerning Transportation Funding

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 temporarily increase the rate of the state sales and use tax for 20 years beginning in 2018 from 2.9% to 3.4% and to allocate the new net revenue as follows:
  - a. "To provide the first \$350 million to the highway users tax fund for allocation to the state, counties, and municipalities as specified in

sections 43-4-206 (4), 43-4-207 (1) and (2)(b), and 43-4-208 (1) and (6)(a)."; and

- b. To "credit up to \$100 million of the remainder of the net revenue collected . . . to the multimodal transportation options fund. . .".
2. To require the Colorado department of transportation (CDOT) to issue up to \$3.5 billion of transportation revenue anticipation notes (TRANs) with a maximum repayment cost of \$5 billion with a 20-year term.
3. To require the transportation commission to covenant that amounts it allocates on an annual basis to pay TRANs shall be paid: First, from \$50 million from any legally available money under its control other than the new sales and use tax revenue; next, from the new sales and use tax revenue; and last, if necessary, from any other legally available money under its control any amount needed for payment of the TRANs until the TRANs are fully repaid.
4. To repeal the existing statutory requirement that at least 10% of the sales and use tax net revenue and other general fund revenue that may be transferred or appropriated to the highway users tax fund (HUTF) and subsequently credited to the state highway fund must be expended for transit purposes of transit-related capital improvements.
5. To create a transportation options account and a pedestrian and active transportation account in the multimodal fund.
6. To require the transportation commission to designate the percentages of multimodal fund revenue to be credited to each account subject to the limitations that for any given fiscal year no more than 75% of the revenue may be credited to the transportation options account and at least 25% of the revenue must be credited to the pedestrian and active transportation account.
7. To create a multimodal transportation options committee of gubernatorial appointees representing transit agencies, transportation planning organizations, local governments, and CDOT as a **type 1** agency within CDOT for the purpose of allocating the money in the transportation options account of the multimodal fund for transportation options projects throughout the state.
8. Under the supervision and guidance of the committee, the transit and rail division of CDOT is required to solicit, receive, and evaluate proposed

- transportation options projects and propose funding for interregional transportation options projects. Any transportation options project receiving funding from the transportation options account of the multimodal fund must also be funded by at least an equal total amount of local government, regional transportation authority, or transit agency funding.
9. Requires CDOT to allocate the money in the pedestrian and active transportation account of the multimodal fund for projects for transportation infrastructure that is designed for users of nonmotorized mobility-enhancing equipment.
  10. Eliminates transfers of 2% of general fund revenue to the HUTF that are scheduled under current law to be made for state fiscal years 2017-18, 2018-19, and 2019-20.
  11. Reduces the state road safety surcharges imposed on motor vehicles weighing 10,000 pounds or less for the same period during which the rates of the state sales and use taxes are increased. The resulting reduction in state fee revenue is taken entirely from the share of such fee revenue that is kept by the state so that county and municipal allocations of such revenue are not reduced.
  12. Requires CDOT to annually report to the joint budget committee, legislative audit committee, house transportation and energy committee, and senate transportation committee regarding its use of TRANs proceeds and to post the reports and certain user-friendly project-specific information on its website.
  13. Creates the transportation revenue anticipation notes citizen oversight committee to provide oversight of the expenditure by CDOT of the proceeds of additional TRANs. The committee must annually report to the General Assembly's transportation legislation review committee regarding its activities and findings.

### **Substantive Comments and Questions**

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

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado". To comply with this constitutional

- requirement, this complete phrase should be added to the beginning of the proposed initiative.
2. 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?
  3. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the legislative council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
    - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
    - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
    - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at [BallotImpactEstimates.ga@state.co.us](mailto:BallotImpactEstimates.ga@state.co.us).
  4. As a statutory change, the proposed initiative may be amended by subsequent legislation enacted by the General Assembly. Is this your intention?
  5. Do you intend for the new net sales and use tax revenue to be excluded from all state and local government fiscal year spending limits?
    - a. Is it possible for this initiative alone to exclude the additional revenue from a local government's fiscal year spending limit or does that require the local government to seek voter approval?
  6. Do you intend for the TRANs note proceeds and the investment earnings on the TRANs note proceeds to be excluded from state fiscal year spending limits?
  7. The initiative's language on page 7, lines 9 through 22, combined with the initiative's language on page 13, lines 18 through 29, and page 14, lines 1 through 14, operate to distribute the net new sales and use tax revenue as follows:

- a. \$350 million of net new sales and use tax revenue plus \$150 million general fund money is credited to the State Highway Fund, for a total of \$500 million. Up to \$250 million of that \$500 million may be used for the new TRANs debt service payments, and up to \$100 million of that \$500 million is credited to the multimodal fund. That means that up to \$350 million of that \$500 million that is credited to the state highway fund is spoken for; and
  - b. Up to \$100 million is credited to the multimodal fund.
8. The following questions apply to the distribution described in comment no. 7 above:
- a. By operation of the initiative's language, no additional new net sales and use tax revenue is transferred to the HUTF to distribute to the counties and municipalities. Is that your intention?
    - i. If you did intentionally exclude counties and municipalities, please remove sections 13 and 14 of the initiated measure that pertain to county and municipal allocation of HUTF money.
  - b. This particular part of the initiative specifies that there is a limit to the amount of the new net sales and use tax revenue (and the general fund transfer) that may be used for debt service payments on the TRANs notes. But later language that requires the transportation commission to adopt a resolution in which it covenants the amounts it allocates annually to meet the debt service does not include this limitation. What is your intention?
  - c. It appears that your initiative provides up to \$200 million (two different transfers of up to \$100 million each) to the multimodal fund, is that your intention?
  - d. Since the initiated measure specifies "up to" a specified amount for the multimodal fund, what entity will determine what portion of the \$100 million or \$200 million to transfer?
  - e. Of the \$500 million transferred to the state highway fund, only \$350 million is earmarked. What happens with the remaining \$150 million?
  - f. Fiscal estimates show that a sales and use tax rate increase to 3.52% will generate approximately \$700 million annually. While this initiated measure contemplates smaller rate increase and thus will expect less

revenue annually, what happens to the excess revenue if the new net sales and use tax revenue exceeds \$500 million that is credited pursuant to your initiative?

9. The initiated measure specifies an additional \$150 million annual transfer from the general fund to the state highway fund. Is that where you intended that general fund money to be transferred? What cuts do you suggest that the Joint Budget Committee undertake to find \$150 million available annually in the general fund?
  - a. The initiated measure distributes the new net sales and use tax revenue, which is a temporary revenue increase. However, the \$150 million annual transfer from the general fund to the state highway fund is required to continue in perpetuity. Is this your intention?
10. Current law permits, but does not require, the Executive Director of CDOT to issue TRANs notes up to a specified maximum amount. Page 20, lines 26 through 29, of the initiated measure requires the Executive Director to issue TRANs notes up to a specified maximum amount. Is it your intention that the Executive Director issue up to the maximum?
11. Does the initiated measure include any requirements that govern what specific projects are to be funded from the new TRANs notes?
12. Current law credits all state sales and use taxes collected on aviation fuels to the aviation fund. Is it your intention that the revenue from the additional state sales and use taxes on aviation fuel be credited to the aviation fund?
13. Current law credits all state sales and use taxes collected on medical and retail marijuana products to the marijuana tax cash fund. Is it your intention that revenue from the additional state sales and use tax on marijuana products be credited to the marijuana tax cash fund?
14. Current law permits the diversion of a share of state sales tax revenue above a base year amount to a regional tourism project authorized by the Economic Development Commission. Is it your intention that a share of revenue from the additional state sales tax collected in a regional tourism zone be diverted to a regional tourism project?

## 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. 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."
2. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized:
  - a. The first letter of the first word of each sentence;
  - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
  - c. The first letter of proper names.
3. In several places throughout the text of the proposed initiative you included declarative language from the general assembly. Since this is not a proposition offered by the general assembly, please search the text for instances of this and replace with "the voters".
4. On page 3, line 3, "(c)" should not be stricken.
5. On page 3, line 8, "(I)" should not be stricken.
6. On page 6, line 14, please strike the word "said".
7. On page 7, lines 10 and 11, it says, "of the net revenue of the net revenue". Please fix.
8. On page 14, lines 13 and 14, the number "13" appears out of context twice within the sentence. Please fix.
9. On page 15, line 19, "except that" should not be stricken.
10. On page 15, line 24, please strike "to be".

11. On page 17, line 16, "except that" should not be stricken.
12. On page 18, line 27, "funds" should be stricken.
13. Please remove all references to the list of projects in the 2017 ballot information booklet.
14. On page 20, you amend existing subsection 43-4-705 (13), C.R.S. The complete text of the existing subsection is not included in the proposed initiative, please include the entire subsection (13) in order to properly amend it.