

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**TO:** Jon Caldara and Mike Krause  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** February 21, 2018  
**SUBJECT:** Proposed initiative measure #150, concerning authorize bonds for transportation projects

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.

This initiative was submitted with a series of initiatives including proposed initiatives 2017-2018 #148 and #149. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2017-2018 #148 and #149, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum. Only new comments and questions are included in this memorandum.

In addition, earlier versions of this proposed initiative, proposed initiatives 2017-2018 #21 to #22, were the subject of memoranda dated April 4, 2017, which were discussed at public meetings on April 7, 2017. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meetings, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

## **Purposes**

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

1. Without raising taxes, to authorize the department of transportation to issue revenue anticipation notes in a maximum amount of \$3.5 billion, with a repayment cost of \$5.2 billion and a repayment term of 20 years, to be used exclusively for road and bridge expansion, construction, maintenance, and repair of the listed projects but not for transit, administration, or indirect costs and expenses;
2. Without raising taxes or fees and either by using available federal funds, reallocating priorities in the state budget, using increases in state revenue under the federal "Tax Cuts and Jobs Act," or using money that the state has been using to make principal and interest payments on revenue anticipation notes authorized in 1999 (TRANS), to require the general assembly to identify and appropriate sufficient funds for the repayment cost of the revenue anticipation notes issued by the department of transportation;
3. To exclude the proceeds of the revenue anticipation notes from state fiscal year spending limits;
4. To require the general assembly to appropriate five percent of the annual net sales and use tax receipts to the state highway fund for bridge and road maintenance and repair;
5. To specify the projects for which the revenue anticipation note proceeds may be expended; and
6. To specify that the distributed proceeds are in addition to other money appropriated for road and bridge expansion, construction, maintenance, and

repair, and that the executive branch may not transfer the proceeds for other programs or purposes.

## **Substantive Comments and Questions**

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

1. Proposed section 43-4-1104 requires an appropriation of at least five percent of "annual net state sales and use tax receipts" to be appropriated to the state highway fund to be used solely for bridge and road maintenance and repair.
  - a. Does the "state highway fund" refer to the fund created in section 43-1-219? If so, is it correct that the money appropriated under this requirement would be subject to the provisions governing the state highway fund and not subject to the restrictions in proposed section 43-4-1105?
  - b. The state assesses sales and use tax on most goods and some services pursuant to article 26 of title 39 and a special sales tax on retail marijuana pursuant to article 28.8 of title 39. Does the five percent appropriation requirement apply to both taxes?
  - c. What is the definition of "net receipts" as used in proposed sections 43-4-1102 (10(b) and 43-4-1104? Does it have the same meaning as "net revenues" as defined in section 39-26-123 (1)(a)?
  - d. Does this provision require an amendment to section 39-26-123 (3) to avoid creating a conflict?
  - e. In the past, general fund revenue sources, like sales and use tax revenue, have been transferred or diverted to the state highway fund rather than appropriated thereto. Why does the proposed initiative require an appropriation rather than a transfer or diversion?
  - f. Appropriations are generally authorized before the beginning of the fiscal year for which they are written. Do the proponents intend that the general assembly calculate five percent of net sales and use tax receipts before taxes are collected for the fiscal year? If so, what happens if the amount appropriated is less than five percent of actual tax receipts?

- g. May the state use net sales and use tax receipts credited to the state highway fund to service debt on the revenue anticipation notes authorized pursuant to proposed section 43-4-1103?

### **Technical Comments**

The technical comments set forth in the review and comment memorandum on proposed initiative 2017-2018 #148 are applicable to proposed initiative 2017-2018 #150 and, as such, will not be repeated. There are no new technical comments for this memorandum.