

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Daniel Gibbs and Cathy Noon
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: March 6, 2018
SUBJECT: Proposed initiative measure 2017-2018 #155 regarding 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.

This initiative was submitted with a series of initiatives including proposed initiatives 2017-2018 #152 to #155. 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 #152 to #154, 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.

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 2019 from 2.9% to 3.4%.
2. To authorize the executive director of the department of transportation to issue additional revenue anticipation notes with a _____ maximum total principal amount, a _____ maximum total repayment cost, and a 20-year term and to specify that the revenue anticipation notes revenue, not otherwise used for the payment of the notes, "be expended on priority maintenance and priority construction projects, including multimodal capital projects, as determined by the commission."
3. To allocate the revenue from the temporary sales and use tax rate increase as follows:
 - a. 45% to the state highway fund;
 - b. 15% to the multimodal transportation options fund; and
 - c. 40% to the local transportation priorities fund.
4. To further distribute the 45% to the state highway fund:
 - a. As much as is needed to make full payments of amounts allocated by the transportation commission on an annual basis on revenue anticipation notes; and
 - b. The remainder, if any, must be expended on "priority maintenance and priority construction projects, including multimodal capital projects as determined by the commission."
5. To specify that the 45% to the state highway fund may not be used to support toll highways, or, unless certain requirements are met, not be used to support toll lane construction or maintenance.
6. To further allocate the 15% to the multimodal transportation options fund:
 - a. The first \$30 million to "make principal and interest payments on transportation revenue anticipation notes for those multimodal projects selected by the transportation commission";

- b. 85% of the remaining revenue for "local multimodal projects to be determined" by the transportation commission; and
 - c. 15% of the remaining revenue for "multimodal projects that are selected by the transportation commission".
- 7. To further allocate the 40% to the local transportation priorities fund:
 - a. 50% to counties; and
 - b. 50% to cities and counties, cities, and incorporated towns.
- 8. To specify that the revenue from the temporary sales and use tax rate increase does not need to be credited to the old age pension fund as is required by article XXIV of the state constitution because the existing sales tax revenue already fully funds the old age pension fund.
- 9. To specify that the revenue from the temporary sales and use tax rate increase and the proceeds of the additional transportation revenue anticipation notes, including earnings on the revenue and proceeds may be retained and spent by the state, cities, and counties as voter-approved revenue changes and are exempt from all revenue, spending, and other limitations under section 20 of article X of the state constitution or any other law.
- 10. To specify that the increased sales and use tax rate is not imposed on aviation fuels.
- 11. To specify that the revenue from the temporary sales and use tax rate increase that is attributable to retail marijuana sales is not credited to the marijuana tax cash fund.
- 12. To require the department of transportation to annually report to the joint budget committee, legislative audit committee, House of Representatives transportation and energy committee, and Senate transportation committee regarding its use of revenue anticipation note proceeds and to post the reports and certain user-friendly, project-specific information on its website.
- 13. To create the transportation revenue anticipation notes citizen oversight committee to provide oversight of the expenditure by the department of transportation of the proceeds of additional revenue anticipation notes. The committee must annually report to the General Assembly's transportation legislation review committee regarding its activities and findings.

14. To require an annual transfer of \$150 million to three cash funds as follows:
45% to the state highway fund, 15% to the multimodal transportation options fund, and 40% to the local transportation priorities fund.

Substantive Comments and Questions

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

1. Is it correct that the only difference between this proposed initiative and proposed initiative 2017-2018 #152 is the inclusion of the language requiring the annual augmentation of "the state highway fund, the multimodal transportation options fund, and the local transportation priorities fund" by a total of \$150 million dollars?
2. What does "shall be augmented" mean?
 - a. If it means that the General Assembly is required to annually transfer an additional \$150 million to those funds, is the General Assembly able to transfer any revenue source to meet this requirement?
3. Does "provided that each fund is augmented in the percentage specified for it in section 39-26-123 (7)(a)(I), (II), and (III), refer to 45% to the state highway fund, 15% to the multimodal transportation options fund, and 40% to the local transportation priorities fund?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. Please consider revising the proposed initiative as suggested below.

1. **SECTION 18.** of the proposed initiative adds a new (5) to section 24-75-219. Please include the headnote for section 24-75-219 as follows:

24-75-219. Transfers - transportation - capital construction - definitions. (5) IN EACH FISCAL YEAR...