

# 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 #18 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.

This initiative was submitted with a series of initiatives including proposed initiatives 2017-2018 #14 to #18. 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 #14, #15, #16, or #17, 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.

## 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 3.52% (This is not entirely clear; on page 5 you specify 3.4%) and to allocate the new net revenue as follows:
  - a. "[C]redit 35% percent of the net revenue . . . to the HUTF 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. "[C]redit the remaining 30% of the remainder of the net revenue . . . to the multimodal transportation options fund. . .".
2. To require the general assembly to transfer \$150 million from the general fund to the state highway fund.
3. To require the Colorado department of transportation (CDOT) to issue up \$3.5 billion of transportation revenue anticipation notes (TRANs) with a maximum repayment cost of \$5 billion with a 20 year term.
4. 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.
5. 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.
6. To create a transportation options account and a pedestrian and active transportation account in the multimodal fund.
7. 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.

8. 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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.

14. 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 substantive comments set forth in the review and comment memorandum on proposed initiatives 2017-2018 #14 are applicable to proposed initiative 2017-2018 #18 and, as such, will not be repeated. However, the following new substantive comment and question has arisen:

1. What is the temporary sales and use tax rate in this initiative? Please make changes to the proposed initiative to make the rate consistent throughout the document.
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. The initiative's language on page 7, lines 9 through 20, combined with the initiative's language on page 13, lines 18 through 27, and page 14, lines 1 through 13, operate to distribute the net new sales and use tax revenue as follows:
  - a. 35% to the HUTF 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)
    - i. 65% of 35% of the net new sales and use tax revenue plus \$150 million in general fund revenue is credited to the state highway fund.
      1. 35% of that amount may be used for the new TRANs debt service payments; and
      2. 30% is credited to the multimodal fund.
    - ii. The remaining 35% of the 35% is split equally between the counties and the municipalities.

- b. The remaining 30% of the remainder of the net revenue is credited to the multimodal fund.
- 4. The following questions apply to the distribution described in comment no. 3 above:
  - a. It appears that your initiative provides two different transfers (in percentages) to the multimodal fund, is that your intention?
  - b. The distribution only earmarks 65% of the total new net sales and use tax revenues. What happens with the additional 35%?
  - c. Is the general fund transfer to the state highway fund expected to last in perpetuity?

### **Technical Comments**

The technical comments set forth in the review and comment memorandum on proposed initiatives 2017-2018 #14 are applicable to proposed initiative 2017-2018 #18 and, as such, will not be repeated.