

STATE OF COLORADO

Colorado General Assembly

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: Jon Caldara and Mike Krause
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 4, 2017
SUBJECT: Proposed initiative measure 2017-2018 #21 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. Without raising taxes, to authorize the Department of Transportation to issue revenue anticipation notes in a maximum amount of \$2.5 billion, with a repayment cost of \$4 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 or "multi modal transportation".

2. Without raising taxes or fees and either by reallocating priorities in the state budget or by 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 specify the projects for which the revenue anticipation note proceeds may be expended.
5. To specify that the distributed proceeds are in addition to other moneys appropriated for road and bridge, expansion, construction, maintenance and repair, and that the executive branch may not transfer the proceeds for other purposes.

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. Is the authorized issuance of revenue anticipation notes a "debt by loan in any form" under section 3 of article XI of the state constitution?
 - a. Have you made it sufficiently clear in your proposed initiative that the notes cannot pledge state revenues for future years because they are subject to annual allocation by either the transportation commission or the General Assembly? If not, have you met the requirements of the holding in *Submission of Interrogatories on House Bill 99-1325*, 979 P.2d 549 (Colo. 1999)?
 - b. You specify that the General Assembly can identify funds for the repayment cost of the notes by reallocating priorities in the state budget. Does that mean that the repayment could possibly require the use of

revenues available for general purposes? If so, how does that work in light of the holding in *Submission of Interrogatories on House Bill 99-1325*?

- c. Have you made it clear that note holders may not look to other state revenues for payment? If not, have you met the requirements of the holding in *Submission of Interrogatories on House Bill 99-1325*?
 - d. Have you clearly specified that the payment is subject to annual appropriation, which does not bind future legislatures? If not, have you met the requirements of the holding in *Submission of Interrogatories on House Bill 99-1325*?
 - e. Is the sentence "Any annual appropriations made by the General Assembly shall be made in accordance with law and rulings issued by the Colorado Supreme Court" in section 43-4-754 of the proposed initiative intended to address the questions set forth in a. through d. above? If so, could you be more specific about what "law" and what "rulings" you mean?
3. The proposed initiative does not include details about the types and forms of revenue anticipation notes, nor does it specify details about the interest rate, and whether the interest rate must be fixed, adjustable, or variable. The proposed initiative also does not specify many details about how the revenue anticipation notes are to be issued by the Department of Transportation other than the maximum amount that can be issued, the maximum repayment cost, and the term of the notes. Do you intend for the provisions in part 7 of article 4 of title 43, C.R.S., to apply to this authority?
 4. The proposed initiative requires the General Assembly to identify and appropriate sufficient funds for the repayment cost of the notes and the proposed initiative suggests that the General Assembly may use the money that the state has been using to make principal and interest payments for the transportation revenue anticipation notes (TRANS) authorized in 1999. However, the TRANS were paid from federal transportation funds that the transportation commission is allocated on an annual basis by the federal government. Does your proposed initiative adequately provide the transportation commission the authority to use those federal transportation funds for such purpose?
 5. Does the proposed initiative meet the election requirements under section 20 of article X of the state constitution for the creation of a multiple fiscal year district debt?

6. What is intended by "multi modal transportation"? The proposed initiative specifies "however defined," but is there really no definition that can be provided?
7. Do all of the projects listed in section 43-4-756 of the proposed initiative qualify for federal funding? This is important if the notes are paid for with federal transportation money.
8. Do you care about the order of the projects listed in section 43-4-756 of the proposed initiative or how long it takes to get the projects done?
9. What are the revenues that "should have gone to roads and bridges pursuant to state law" in section 43-4-752 (1)(b)?
10. Current law in section 43-4-705 (1), Colorado Revised Statutes, permitted, but did not require, the Executive Director of the Department of Transportation to issue revenue anticipation notes up to some maximum amount. Section 43-4-753 of the proposed initiative requires the executive director to issue revenue anticipation notes up to some maximum amount. Is there some minimum value of notes that must be issued in order to satisfy this requirement?
11. Does section 43-4-753 of the proposed initiative require that all notes be issued no later than July 1, 2018, or merely that some notes be issued on or before that date? Can the executive director continue to issue notes after July 1, 2018?
12. Do the proponents wish to comment on which revenues the General Assembly could use to pay debt service as required in the new notes? Could gasoline and special fuel excise taxes be allocated for this purpose under the provisions of Article X, Section 18, of the Colorado Constitution?
13. There is a comma after one instance of "road and bridge" in section 43-4-755 of the proposed initiative. Is this comma errant, or does it suggest that the state may expend note proceeds for expansion, construction, maintenance and repair that are not related to roads and bridges?
14. What activities are included in "road and bridge, expansion, construction, maintenance and repair"? What activities are excluded from "road and bridge, expansion, construction, maintenance and repair"?
15. Does the proposed initiative permit note proceeds to be expended for:
 - a. Highway engineering studies?
 - b. Drainage and sewer improvements?

- c. Safety improvements?
 - d. High-occupancy vehicle (HOV) or high-occupancy toll (HOT) lanes in which buses will be given priority?
 - e. Sidewalks or bicycle lanes?
 - f. Roadway shoulders permitted for bicycle use?
 - g. Overpasses and underpasses designed for use by pedestrians and bicycles?
 - h. Overpasses and underpasses designed for use by wildlife?
 - i. Parking lanes?
 - j. Landscaping of medians and land adjacent to roadways?
 - k. Construction or maintenance contracts, wherein the contractor receives payment for its general indirect administrative costs?
 - 1. Review by the Department of Transportation of contractor proposals?
16. Section 43-4-755 of the proposed initiative says that "The Executive Branch shall not transfer the proceeds for other purposes." Does this mean that the General Assembly may transfer proceeds for other purposes? May a future General Assembly amend this statute in order to expend proceeds elsewhere?
17. Section 43-4-755 requires that "The proceeds shall be used only for the projects identified in this part 7.5." Does this mean that proceeds may not be used for expansion, construction, maintenance, and repair of any state roads or bridges other than those identified in section 43-4-756? Is it correct that no proceeds may be expended for new needs as these are identified in the next twenty years?
18. Does the inclusion of a project in the list in section 43-4-756 of the proposed initiative imply that the project meets the criteria for the use of proceeds established in section 43-4-755?
19. How were the projects in section 43-4-756 of the proposed initiative selected?
20. May proceeds be spent for any of the projects in section 43-4-756 of the proposed initiative or must proceeds be spent for all of the projects in section 43-4-756 of the proposed initiative?
21. Is the order of projects in section 43-4-756 of the proposed initiative significant?

22. May the General Assembly amend the list of projects in section 43-4-756 of the proposed initiative to add or remove projects?
23. Section 43-4-756 (A)(I) of the proposed initiative references the "Hwy 85 PE." What is this?
24. Section 43-4-756 (F)(I) of the proposed initiative says "(underway)". Does that mean that the study is underway or the projects are underway? If the projects are underway, may proceeds be spent on this project if it is no longer underway at some point in the future?
25. Does the "foot trail" referenced in section 43-4-756 (F)(IV) meet the criteria for spending of proceeds in section 43-4-755 of the proposed initiative?
26. Do the tolled express lanes referenced in section 43-4-756 (F)(VIII) of the proposed initiative constitute a transit project for the purposes of section 43-4-755?
27. Do the "water quality and drainage improvements" referenced in section 43-4-756 (H)(III) of the proposed initiative and the "permanent water quality features" referenced in section 43-4-756 (H)(V) of the proposed initiative meet the criteria for spending of proceeds in section 43-4-755 of the proposed initiative?
28. Do the pedestrian facilities, pedestrian bridge, and wildlife crossings in section 43-4-756 (L)(IV), (L)(V), and (L)(VI) of the proposed initiative meet the criteria for spending of proceeds in section 43-4-755 of the proposed initiative?
29. Where may proceeds be expended for the project in section 43-4-756 (L)(VI) of the proposed initiative? The measure does not provide any specification beyond "US 550 South".
30. Section 43-4-756 (L)(VIII) of the proposed initiative lists "finalize pre-construction" and "complete the final design and prepare advertisement". These portions of the project appear not to be highway or bridge construction. Do they meet the criteria for spending of proceeds in section 43-4-755 of the proposed initiative?
31. Does the geo-hazard landslide mitigation portion of the project in section 43-4-756 (N)(I) of the proposed initiative meet the criteria for spending of proceeds in section 43-4-755 of the proposed initiative?
32. Does the "specified study" in section 43-4-756 (N)(II) meet the criteria for spending of proceeds in section 43-4-755 of the proposed initiative?

33. Do the deer fencing and animal underpasses in section 43-4-756 (N)(III) of the proposed initiative meet the criteria for spending of proceeds in section 43-4-755 of the proposed initiative?
34. 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.

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. The proponents wish to add a new part 7.5 to article 4 of title 43. Due to numbering requirements in the Colorado Revised Statutes, part numbers cannot contain decimals. A new part in article 4 would be added as the next number up from the highest existing part number, which would be a new part 11. If the proponents wish to relocate the new part within article 4, please renumber all sections and internal citations accordingly.
2. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

X-X-XXXX. Headnote. (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

Section 43-4-756 of the proposed initiative contains an introductory paragraph that should be preceded by the subsection "(1)" in order for the remaining numbering to be in correct order.

3. It is standard drafting practice to use SMALL CAPITAL LETTERS to show language being added and ~~stricken type~~ to show language being removed from the Colorado constitution or the Colorado Revised Statutes. However, subsection numbering should not be written in small caps. For instance, write paragraph "(a)" rather than paragraph "(A)".
4. The following are recommended as standard drafting practice:
 - a. It is unnecessary to capitalize "general assembly" or "the state" in the proposed initiative.
 - b. Please correct the word "issuant" in section 43-4-753 of the proposed initiative, which should read "issuance".
 - c. In section 43-4-756 of the proposed initiative, the introductory paragraph contains the citation "Section 755 of Article 4 of Title 43", which should be written as "section 43-4-755". Please also refer to technical comment #1 regarding the need to correct the part number.
 - d. In section 43-4-755 of the proposed initiative, the second to last sentence erroneously repeats the word "IN".
 - e. Section 43-4-756 (H) includes two paragraphs labeled (III). Please correct the first instance of "(III)", which should read "(II)".