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MEMORANDUM

TO: James Moody and Anthony Milo
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 5, 2017
SUBJECT: Proposed initiative measure 2017-2018 #23, 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.

Earlier versions of this proposed initiative, proposed initiatives 2017-2018 #14 to 18, were the subject of memoranda dated March 22, 2017, which were discussed at a public meeting on March 24, 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. 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 it adds up to 3.42%) and to allocate the new net revenue as follows:
 - a. "[C]redit 85% percent of the annual 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 15% of the annual net revenue . . . to the multimodal transportation options fund. . .".
2. To further distribute the 85% of annual net revenue to the highway users tax fund (HUTF) as follows:
 - a. 41.2% to the State Highway Fund
 - b. The remainder to counties and municipalities in a 50/50 share.
3. To use the amount credited to the State Highway Fund as follows:
 - a. As much as needed to make full payments on the transportation revenue anticipation notes (TRANS); and
 - b. The remainder, if any, must be expended on "priority construction and maintenance projects as determined by the commission."
4. To specify that the increased sales tax is not imposed on aviation fuels.
5. To specify that the new net sales tax revenue attributable to retail marijuana sales is not credited to the marijuana tax cash fund.
6. To specify that net new sales tax revenues, TRANS proceeds, and investment earnings are not subject to any statutory limitation on general fund appropriations or any other spending limitation in law including section 20 of article X of the constitution.
7. To require the Colorado department of transportation (CDOT) to issue up \$3.5 billion of TRANS with a maximum repayment cost of \$5 billion with a 20-year term.

8. To specify that the TRANs revenue, not otherwise used for the payment of the notes, "be used only for projects, including multimodal capital projects, that are on the department's priority list for transportation funding and for maintenance of state highways."
9. 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 HUTF and subsequently credited to the state highway fund must be expended for transit purposes of transit-related capital improvements.
10. To create a transportation options account and a pedestrian and active transportation account in the multimodal fund.
11. 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.
12. 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.
13. Under the supervision and guidance of the committee, to require the transit and rail division of CDOT 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.
14. To require 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.
15. To eliminate 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.

16. To reduce 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.
17. To require CDOT 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 TRANs proceeds and to post the reports and certain user-friendly project-specific information on its website.
18. To create 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 (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. What is the temporary sales tax rate that this initiative is proposing? If it is 3.52%, please correct the amount on page 5.
3. Section 4 of the proposed initiative exempts the Multimodal Transportation Options Fund from a statutory requirement that fees be reduced if the fund's year-end balance exceeds a certain threshold. However, the proposed initiative does not create a new fee or credit any fee revenue to this fund. Does Section 4 have any effect?
4. The proposed initiative adds the language that the net new sales tax revenues, TRANs proceeds, and investment earnings "are not subject to any statutory limitation on general fund appropriations or any other spending limitation in law including section 20 of article X of the constitution" to section 12 of the proposed initiative. Why is it added here?

5. Will the language described in question number 3 of this memorandum work for counties and municipalities? Do the counties and municipalities want this language?
6. The introduced version of House Bill 17-1242 requires 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. This language is not included in the proposed initiative, but a cross reference is still included in the proposed initiative on page 22. Please remove the cross reference or add the covenant language.
7. The proposed initiative allocates the proceeds from the sale of the TRANs, **"that are not otherwise pledged for the payment of the notes"**. Where in the initiated measure does it specify that proceeds from the sale of the TRANs are to be used for the payment of the notes? The proposed initiative appears to provide that all of the payments be made from the new net sales tax revenue that is credited to the State Highway Fund.
8. Section 13 of the proposed initiative, on page 15, specifies how the amount of the new net sales tax revenue credited to the State Highway Fund is to be used. First the money is to be used for debt service payments on the TRANs and the remainder "must be expended on priority construction and maintenance projects as determined by the commission." However, section 18 of the proposed initiative, on page 24, specifies that "and revenue generated by any additional state sales and use tax that is allocated to the state highway fund . . . in excess of amounts needed for payment of the notes may be used only for projects, including multimodal capital projects, that are on the department's priority list for transportation funding and for maintenance of state highways." These two sections provide different authorized uses. Which authorized use controls?
 - a. What are examples of priority construction and maintenance projects? Is this intended to refer to the department's priority list for transportation funding and for maintenance of state highways? Are the proponents satisfied with delegating that decision-making to the transportation commission?

- b. What are multimodal capital projects?
9. Section 19 of the proposed initiative creates the transportation revenue anticipation notes citizen oversight committee and requires the committee to verify that the TRANs proceeds and additional net new sales tax revenue is expended "appropriately, transparently, effectively, and efficiently." How will the committee meet this subjective directive?
10. Section 21 of the proposed initiative, on page 28, makes reference to "the ballot issue submitted at the November 2017 statewide election **pursuant to section 43-4-705 (13)(b)**". The proposed initiative does not discuss a ballot issue in section 43-4-705 (13)(b). Please correct this declaration.
11. 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. 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. On page 3, "(c)" should not be stricken.
4. On page 3, "(I)" should not be stricken.
5. On page 6, in section 39-26-112, C.R.S., please strike the word "said" before "APPLICABLE".
6. On page 11, please add the word "section" before "29-1-602 (3)".
7. On page 12, please add the word "section" before "29-1-602 (3)".
8. On page 15, there is an errant plus sign in subsection (3).
9. On page 17, within subsection (1), "except that" should not be stricken.
10. On page 17, in section 15, "**43-4-208. Municipal allocation.** (1)" is repeated. Please delete the repetition.
11. On page 19, within subsection (1), "except that" should not be stricken.
12. On page 21, 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.
13. On page 23, please remove all references to the list of projects in the 2017 ballot information booklet.