

# 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:** 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 #28, 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 #23 to #28. 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 #23 to #28, 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.

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 83% 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);
  - b. "[C]redit 15% of the annual net revenue . . . to the multimodal transportation options fund. . ."; and
  - c. "[C]redit 2% of the annual net revenue . . . to the high priority water project fund".
2. To further distribute the 83% of annual net revenue to the highway users tax fund (HUTF) as follows:
  - a. 60% 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 create the "high priority water project fund".

5. To specify that the increased sales tax is not imposed on aviation fuels.
6. To specify that the new net sales tax revenue attributable to retail marijuana sales is not credited to the marijuana tax cash fund.
7. 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.
8. 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.
9. 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."
10. 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.
11. To create a transportation options account and a pedestrian and active transportation account in the multimodal fund.
12. 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.
13. 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.
14. 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.

15. 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.
16. 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.
17. 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.
18. 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.
19. 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 substantive comments set forth in the review and comment memorandum on proposed initiatives 2017-2018 #23 are applicable to proposed initiative 2017-2018 #28 and, as such, will not be repeated. However, the following new substantive comment and question has arisen:

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. Are the only differences between proposed initiative 2017-2018 #23 and this proposed initiative #28:
  - a. The requirement that 2% of the net new sales and use tax revenues be credited to the "high priority water project fund", thus reducing the percentage credited to the HUTF by 2% to 83%; and
  - b. The percentage of the HUTF transfer that is credited to the State Highway Fund (60% instead of 41.2%)?
3. Why does the proposed initiative specify that money for high priority water projects be credited to a new fund? Why not credit the money to the Colorado water conservation board construction fund, which is created in the section that the proposed initiative references, section 37-60-121 (1)? If the proponents feel a new cash fund must be created, please review Chapter 7.5 of the Colorado legislative drafting manual regarding the questions that should be considered when creating a cash fund to ensure that all elements are included in the proposed initiative.

## **Technical Comments**

The technical comments set forth in the review and comment memorandum on proposed initiatives 2017-2018 #23 are applicable to proposed initiative 2017-2018 #28 and, as such, will not be repeated.