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## MEMORANDUM<sup>1</sup>

TO: Statutory Revision Committee

FROM: Jason Gelender, Office of Legislative Legal Services

DATE: February 19, 2021

SUBJECT: Update of Senate Bill 19-263 Effective Date Clause

### Summary

Senate Bill 20-152, a Statutory Revision Committee bill, corrected the effective date section of Senate Bill 19-263 to ensure that if the voters of the state approved a referred ballot issue (ballot issue) at the 2020 general election authorizing the state to issue transportation revenue anticipation notes (TRANS), the TRANS would be issued in lieu of, and not in addition to, lease-purchase agreements (COPS) that current law, originally enacted as part of Senate Bill 17-267, requires the state to execute during the 2020-21 and 2021-22 state fiscal years (FYs).

After Senate Bill 20-152 was enacted, the General Assembly enacted House Bill 20-1376, which delayed submission of the ballot issue to the November 2021 statewide election. Because House Bill 20-1376 did not include a conforming amendment to the Senate Bill 19-263 effective date section as amended by Senate Bill 20-152, approval of the ballot issue at the November 2021 statewide election would cause TRANS to be issued in addition to, and not in lieu of, the state FY 2021-22 COPS. That result would be directly contrary to the General Assembly's intent that TRANS be issued in lieu of, and not in addition to, any as yet unexecuted COPS.

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

## Analysis

### 1. The General Assembly intended that any voter-approved TRANS be issued in lieu of, and not in addition to, COPS.

In 2017, the General Assembly enacted section 24-82-1303, C.R.S., as part of Senate Bill 17-267. In relevant part, the statute requires the state to execute up to \$2 billion of COPS in four equal tranches of up to \$500 million during each of the 2018-19, 2019-20, 2020-21, and 2021-22 state fiscal years to fund transportation projects. The state has executed the FY 2018-19 and 2019-20 COPS and is expected to execute the FY 2020-21 COPS in April of this year.

In 2018, the General Assembly enacted Senate Bill 18-001. The bill required a statewide ballot issue seeking authorization for the state to issue up to \$2.34 billion of TRANS to be referred to voters at the November 2019 statewide election, unless the voters approved a citizen-initiated ballot issue authorizing the state to issue TRANS at the November 2018 general election.<sup>2</sup> Senate Bill 18-001 also amended section 24-82-1301, C.R.S, so that, if the voters approved the referred ballot issue, the TRANS authorized would be issued in lieu of, rather than in addition to, the FY 2019-20, FY 2020-21, and FY 2021-22 COPS.<sup>3</sup> At the 2018 general election, the voters rejected two citizen-initiated ballot issues that would have authorized the state to issue TRANS.<sup>4</sup>

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<sup>2</sup> The referred ballot issue is codified in § 43-4-705 (13)(b)(III), C.R.S., and, as originally enacted in S.B. 18-001, stated:

**43-4-705. Revenue anticipation notes - ballot issue - repeal.** (13) (b) (III) The secretary of state shall submit to the registered electors of the state for their approval or rejection at the November 2019 statewide election the following ballot issue: "Shall state of Colorado debt be increased \$2,337,000,000, with a maximum repayment cost of \$3,250,000,000, without raising taxes, through the issuance of transportation revenue anticipation notes for the purpose of addressing critical priority transportation needs in the state by financing transportation projects, shall note proceeds and investment earnings on note proceeds be excluded from state fiscal year spending limits, and shall the amount of lease-purchase agreements required by current law to be issued for the purpose of financing transportation projects be reduced?"

<sup>3</sup> See S.B. 18-001 §§ 3 and 13.

<sup>4</sup> The rejected ballot issues were propositions 109 ("Authorize Bonds for Highway Projects") and 110 ("Authorize Sales Tax and Bonds for Highway Projects") that would have authorized the state to issue TRANS.

In 2019, the General Assembly enacted Senate Bill 19-263, which delayed the referral of the ballot issue from the November 2019 statewide election to the November 2020 general election. The bill also further amended the provisions of section 24-82-1303, C.R.S., lowering the amount of TRANS authorized to be issued and repealing only the requirement that the state execute the FY 2020-21 and 2021-22 COPS and not the requirement that the state execute the FY 2019-20 COPS.<sup>5</sup> The amendments were crafted to take effect only upon approval of the ballot measure by the voters and again ensured that any voter-approved TRANS would be issued in lieu of, and not in addition to, COPS.

Senate Bill 20-152, a Statutory Revision Committee bill, corrected an error in the effective date clause of Senate Bill 19-263 so that the amendments to section 24-82-1303, C.R.S., are contingent upon the passage of a **referred**, rather than a **citizen-initiated**, ballot issue.<sup>6</sup>

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<sup>5</sup> See S.B. 19-263 §§ 4 and 5. S.B. 19-263 amended § 43-4-705 (13)(b)(III), C.R.S., which includes the ballot issue language as follows:

**43-4-705. Revenue anticipation notes - ballot issue - repeal.** (13) (b) (III) The secretary of state shall submit to the registered electors of the state for their approval or rejection at the November ~~2019 statewide~~ 2020 GENERAL election the following ballot issue: "Shall state of Colorado debt be increased ~~\$2,337,000,000~~ **\$1,837,000,000**, with a maximum repayment cost of ~~\$3,250,000,000~~ **\$2,560,000,000**, without raising taxes, through the issuance of transportation revenue anticipation notes for the purpose of addressing critical priority transportation needs in the state by financing transportation projects, shall note proceeds and investment earnings on note proceeds be excluded from state fiscal year spending limits, and shall the amount of lease-purchase agreements required by current law to be issued for the purpose of financing transportation projects be reduced?"

<sup>6</sup> S.B. 20-152 § 1 amended the effective date clause of S.B. 19-263 as follows:

**Error! Main Document Only.**SECTION 1. In Session Laws of Colorado 2019, section 8 of chapter 334, **amend** (2) as follows:

Section 8. **Effective date.** (2) Section 24-82-1303 (2)(a)(I), (2)(a)(II), (2)(a)(III), (2)(a)(IV), (2)(b), and (2)(d)(II), Colorado Revised Statutes, as amended in section 4 of this act, takes effect only if a ~~citizen initiated~~ MAJORITY OF THE ELECTORS VOTING ON THE ballot issue that authorizes the state to issue transportation revenue anticipation notes ~~but does not authorize the state to collect additional tax revenue for the purpose of providing a revenue source for repayment of the notes~~ AND THAT is submitted to the registered electors of the state for their approval or rejection at the November 2020 general election ~~and a majority of the electors voting on the ballot issue~~ PURSUANT TO SECTION 43-4-705 (13)(b)(III), COLORADO REVISED STATUTES, vote "Yes/For", and, in such case, section 24-82-1303 (2)(a)(I), (2)(a)(II), (2)(a)(III), (2)(a)(IV), (2)(b), and

The General Assembly then enacted House Bill 20-1376. This bill again delayed the referral of the ballot issue, this time from the November 2020 general election to the November 2021 statewide election. The bill also amended the ballot issue to ensure that the aggregate amount of transportation funding from TRANS and COPS would continue to remain unchanged by lowering the amount of TRANS authorized by the measure.<sup>7</sup> It did not, however, make a conforming amendment to the effective date clause for the corresponding changes to section 24-82-1303, C.R.S., to refer to the 2021 statewide election instead of the 2020 general election.

**2. The error in the effective date section of Senate Bill 19-263, as amended by Senate Bill 20-152, will force the state to both issue TRANS and execute the FY 2021-22 COPS if the ballot issue is approved by voters.**

As amended by Senate Bill 20-152, the effective date section of Senate Bill 19-263 states:

Section 8. **Effective date.** (2) Section 24-82-1303 (2)(a)(I), (2)(a)(II), (2)(a)(III), (2)(a)(IV), (2)(b), and (2)(d)(II), Colorado Revised Statutes, as amended in section 4 of this act, takes effect only if a majority of the electors voting on the ballot issue that authorizes the state to issue transportation revenue anticipation notes and that is submitted to the registered electors of the state for their approval or rejection at the **November 2020 general election** pursuant to section 43-4-705 (13)(b)(III), Colorado Revised Statutes, vote "Yes/For", and, in such case, section 24-82-1303 (2)(a)(I), (2)(a)(II), (2)(a)(III), (2)(a)(IV), (2)(b),

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(2)(d)(II), Colorado Revised Statutes, as amended in section 4 of this act, takes effect on the date of the official declaration of the vote thereon by the governor.

<sup>7</sup> This was necessary because due to the delay in placing the issue before the voters, the FY 2020-21 COPS would already have been issued by the time the ballot issue went to the voters. *See* S.B. 20-1376 § 5, which amended § 43-4-705 (13)(b)(III), C.R.S, which includes the ballot issue language, as follows:

**Error! Main Document Only.43-4-705. Revenue anticipation notes - ballot issue - repeal.** (13) (b)**Error! Main Document Only.**(III) The secretary of state shall submit to the registered electors of the state for their approval or rejection at the ~~November 2020 general~~ **NOVEMBER 2021 STATEWIDE** election the following ballot issue: "Shall state of Colorado debt be ~~increased \$1,837,000,000~~ **INCREASED \$1,337,000,000**, with a maximum repayment cost of ~~\$2,560,000,000~~ **OF \$1,865,000,000**, without raising taxes, through the issuance of transportation revenue anticipation notes for the purpose of addressing critical priority transportation needs in the state by financing transportation projects, shall note proceeds and investment earnings on note proceeds be excluded from state fiscal year spending limits, and shall the amount of lease-purchase agreements required by current law to be issued for the purpose of financing transportation projects be reduced?"

and (2)(d)(II), Colorado Revised Statutes, as amended in section 4 of this act, takes effect on the date of the official declaration of the vote thereon by the governor. **(Emphasis added)**

Under this language, the amendments to section 24-82-1303, C.R.S, repealing the requirement that the state execute the FY 2021-22 COPS cannot go into effect, because they are contingent upon approval of the ballot issue at the November 2020 general election. Unless the effective date is corrected to make the repeal contingent upon approval of the ballot issue at the November 2021 statewide election instead, approval of the ballot issue at that time will cause the state to both issue TRANS and execute the FY 2021-22 COPS. This outcome would thwart the General Assembly's intent that TRANS be issued in lieu of, and not in addition to, COPS.

### **Statutory Charge<sup>8</sup>**

This issue fits within the Statutory Revision Committee's charge because it corrects a defect in the law that will, if the voters of the state approve the referred ballot issue that authorizes the state to issue TRANS at the November 2021 statewide election, thwart the clear intent of the General Assembly that TRANS be issued in lieu of, and not in addition to, FY 2021-22 COPS.

### **Proposed Bill**

The attached draft amends the 2019 Session Laws of Colorado to correct the effective date section of Senate Bill 19-263, as amended by Senate Bill 20-152, as described above.

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<sup>8</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the SRC "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

First Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

DRAFT  
2.4.21

DRAFT

LLS NO. 21-0789.01 Jason Gelender x4330

COMMITTEE BILL

Statutory Revision Committee

**BILL TOPIC:** "Update Senate Bill 19-263 Effective Date Clause"

**A BILL FOR AN ACT**

101       **CONCERNING THE UPDATING OF THE EFFECTIVE DATE CLAUSE OF**  
102               **SENATE BILL 19-263, AS AMENDED BY SENATE BILL 20-152, FOR**  
103               **THE PURPOSE OF ENSURING THAT THE BILL ACCOMPLISHES ITS**  
104               **INTENDED LEGAL EFFECT OF ELIMINATING THE REQUIREMENT**  
105               **THAT THE STATE TREASURER EXECUTE LEASE-PURCHASE**  
106               **AGREEMENTS TO FUND TRANSPORTATION PROJECTS DURING THE**  
107               **2021-22 STATE FISCAL YEAR IF A REFERRED BALLOT ISSUE THAT**  
108               **AUTHORIZES THE STATE TO ISSUE TRANSPORTATION REVENUE**  
109               **ANTICIPATION NOTES IS APPROVED AT THE NOVEMBER 2021**  
110               **STATEWIDE ELECTION.**

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does*

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

*not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** In 2017, the general assembly (GA) enacted Senate Bill 17-267, which required the state treasurer to issue up to \$500 million of lease-purchase agreements (COPS) in each of the 2018-19, 2019-20, 2020-21, and 2021-22 state fiscal years for the purpose of funding transportation projects. In 2018, the GA enacted Senate Bill 18-001 (SB 001), which referred a statewide ballot issue at the November 2019 statewide election that, if approved, would have authorized the state to issue transportation revenue anticipation notes (TRANs) for the purpose of funding transportation projects and prevented the issuance of the last 3 years of COPS. When enacting SB 001, the GA intended that, upon approval of the ballot issue, the TRANs authorized would replace the unissued COPS as a source of funding for transportation projects.

In 2019, the GA enacted Senate Bill 19-263 (SB 263), which delayed the referral of the ballot issue until the November 2020 general election. Consistent with the intent of replacing COPS funding with TRANs funding upon approval of the ballot issue, SB 263 also reduced the authorized amount of TRANs because approval in 2020 rather than 2019 would prevent the issuance of only 2, rather than 3, years of COPS. In 2020, the GA also enacted Senate Bill 20-152 (SB 152), which corrected a technical error in the effective date clause of SB 263 that would have frustrated the intent of the GA by allowing TRANs to be authorized without preventing the issuance of 2 years of COPS.

In 2020, after SB 152 was enacted, the GA enacted House Bill 20-1376, which further delayed the referral of the ballot issue to the November 2021 statewide election and again reduced the authorized amount of TRANs because approval of the ballot issue in 2021, rather than 2020, would prevent the issuance of only one, rather than 2, years of COPS. Due to the additional delay, if the effective date clause of SB 263, as amended by SB 152, is not amended again, TRANs could be authorized without preventing the issuance of one year of COPS. To ensure that this unintended result does not occur, the bill amends the effective date clause of SB 263, as amended by SB 152, to correct this issue and thereby ensure that approval of the ballot issue will prevent the issuance of one year of TRANs as intended by the GA.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Session Laws of Colorado 2019, section 8 of

1 chapter 334, **amend** (2), as (2) is amended by section 1 of chapter 36, (SB  
2 20-152), Session Laws of Colorado 2020, as follows:

3 Section 8. **Effective date.** (2) Section 24-82-1303 (2)(a)(I),  
4 (2)(a)(II), (2)(a)(III), (2)(a)(IV), (2)(b), and (2)(d)(II), Colorado Revised  
5 Statutes, as amended in section 4 of this act, takes effect only if a majority  
6 of the electors voting on the ballot issue that authorizes the state to issue  
7 transportation revenue anticipation notes and that is submitted to the  
8 registered electors of the state for their approval or rejection at the  
9 November ~~2020~~ ~~general~~ 2021 STATEWIDE election pursuant to section  
10 43-4-705 (13)(b)(III), Colorado Revised Statutes, vote "Yes/For", and, in  
11 such case, section 24-82-1303 (2)(a)(I), (2)(a)(II), (2)(a)(III), (2)(a)(IV),  
12 (2)(b), and (2)(d)(II), Colorado Revised Statutes, as amended in section  
13 4 of this act, takes effect on the date of the official declaration of the vote  
14 thereon by the governor.

15 **SECTION 2. Safety clause.** The general assembly hereby finds,  
16 determines, and declares that this act is necessary for the immediate  
17 preservation of the public peace, health, or safety.



