

# STATE OF COLORADO

## Colorado General Assembly

Natalie Mullis, 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  
Email: lcs.ga@state.co.us



Sharon L. Eubanks, 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 John Cooke  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** April 7, 2021  
**SUBJECT:** Proposed initiative measure 2021-2022 #32, concerning sales and use tax revenue for transportation

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. To reallocate, commencing on or after July 1, 2022, 15% of the net sales and use tax revenue of the state, which is currently allocated to the general fund, so that 10% of the net revenues be allocated to the Highway Users Tax Fund (HUTF) and distributed to the state, counties, and municipalities for

transportation and so that 5% of the net revenues be allocated to the general fund.

2. To allocate the amount credited to the HUTF, 60% to the state, 22% to counties, and 18% to municipalities for transportation, and to specify that the state portion only be used for "[t]he construction, reconstruction, repairs, improvement, planning, supervision, and maintenance of the state highway system and other public highways, including any county and municipal roads and highways, together with the acquisition of rights-of-way and access rights for the same."

## **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. The proposed initiative specifies that the effective date is upon proclamation of the governor. If successful, this measure would be included on the November 2022 general election ballot. Assuming the measure passes with sufficient votes, it will become effective sometime in January 2023; however, the proposed initiative specifies that the changes to the distribution of net sales and use tax revenue is commencing on or after July 1, 2022. Is it the proponents' intent to retroactively change the distribution of sales and use tax revenues in the state?
3. As a statutory change, the proposed initiative may be amended by subsequent legislation enacted by the General Assembly. Is this your intention?
4. In the fourth paragraph of the legislative declaration the proponents incorrectly reference "Senate Bill 91-001." This should instead reference "Senate Bill 97-001." Also, in that same paragraph, the proponents reference that the bill "was repealed by the General Assembly in 2009." It would be more correct to say that the statute enacted by the bill was repealed.
5. Is it the proponents' intent that instead of crediting 15% of net sales and use tax revenue to the general fund, that 10% of net revenue is credited to the HUTF and 5% of net revenue is credited to the general fund?

6. In proposed section 39-26-123 (3.2)(a), C.R.S, the proponents state "as a portion of the net revenue from *sales and use taxes attributable to sales or use of vehicles and related items.*" The bold and italicized language is a defined term in section 39-26-123 (1)(b), C.R.S., and represents a portion of all net sales tax revenue. Is it the proponents' intent that by including this language in the proposed subsection (3.2)(a) that the 10% credited to the HUTF is limited only to sales and use taxes attributable to those particular sales?
  - a. If so, the proponents' statutory language in proposed subsection (3.2)(a) creates an ambiguity with the proposed subsection (3.2) introductory portion, which describes how to credit the remaining 15% of the "net revenue." "Net revenue" is a defined term in section 39-26-123 (1)(a.7), C.R.S.
  - b. If not, why is this language included?
7. Because the proponents' new subsection (6.8) in section 43-4-205, C.R.S., specifies how the money credited to the HUTF under proposed section 39-26-123 (3.2)(a), C.R.S., must be allocated and expended, there is no need to include a reference to section 43-4-205 (6)(b), C.R.S. Including that statutory citation is confusing.
8. Proposed section 43-4-205 (6.8) specifies that the 10% of net revenues allocated to the HUTF must be allocated in accordance with the formula specified in current law, section 43-4-205 (6)(b), C.R.S. However, the proposed change to section 43-4-206 (1)(b) specifies that the state share shall be expended only for the purposes set forth in section 43-4-206 (1)(b)(V), C.R.S. Is this a correct interpretation of the proponents' intent? If so, why not make that clear in proposed section 43-4-205 (6.8)?
9. Is the \$10 million transfer to the older Coloradans cash fund as specified in proposed section 39-26-123 (3.2)(b)(I), C.R.S., a one-time transfer or a transfer that occurs every fiscal year? Current law provides that this transfer occurs "each state fiscal year", however, this language is not included in proposed subsection (3.2)(b)(I). Is that intentional?
10. What do the proponents mean in proposed section 39-26-123 (3.2)(b)(II)(B), C.R.S., by stating that the amount credited to the housing development grant fund "shall be adjusted as required by law"? Such language is not included in current law. *See* section 39-26-123 (3)(b)(I), C.R.S. Is this a reference to the

reductions specified in section 39-26-123 (3)(b)(II), C.R.S.? If so, could you make that clear?

11. Hypothetically, what is the proponents' intent if the 5% of net revenues allocated to the general fund is not sufficient to cover the \$10 million to the older Coloradan cash fund and the amount allocated to the housing development grant fund?

## 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. In section 4 of the proposed initiative, the language leading into the first cite reads "I section." This should actually read "in section" to match the existing language.
2. In section 5 of the proposed initiative, the word "maintenance" is missing after the phrase "or highway" in the first sentence of subsection (1). Please either insert the word "maintenance," or show it in strike type to match the current statutory language.
3. 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."