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Colorado General Assembly

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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 #26, 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 3.9% 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 substantive comments set forth in the review and comment memorandum on proposed initiatives 2017-2018 #23 are applicable to proposed initiative 2017-2018 #26 and, as such, will not be repeated. However, the following new substantive comment and question has arisen:

1. It appears that the only difference between proposed initiative 2017-2018 #23 and this proposed initiative #26 is the net new sales and use tax rate (3.9% instead of 3.52%). Is this correct?

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 #26 and, as such, will not be repeated.