

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

April 2, 2014

**TO:** Lisa Brumfiel and Peter Coulter

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**SUBJECT:** Proposed initiative measure 2013-2014 #128, concerning tax on nongovernmental tolls

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 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 appear to be:

1. To place a ten dollar tax on each toll collected by a toll road that is not wholly owned, managed, financed, or maintained by the state;
2. To specify that the tax is not to be refunded, credited, or offset; and

3. To specify that the proposed initiative is self-executing and severable and supersedes state and local laws and ordinances.

## 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. Pursuant to article V, section 1 (2) of the Colorado constitution, proposed initiatives must amend either the Colorado constitution or state law (i.e., the Colorado Revised Statutes). The proposed initiative should be revised to indicate whether it amends the Colorado constitution or the Colorado Revised Statutes and to show where in the constitution or statutes its provisions should be inserted.
2. Commas need to be used in a series before the conjunction. For example "...owned, managed, financed, and maintained...".
3. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, "In Colorado Revised Statutes, **add** article \_\_ to title 39 as follows:".
4. It is standard drafting practice to number each section, part, etc. that is being amended or added with a bold section number (e.g., **SECTION 1**, **SECTION 2**.) before the amending clause.
5. Each section in the Colorado Revised Statutes and Colorado constitution has a headnote. Headnotes briefly describe the content of the section. Headnotes should: Follow the section number, be in bold-faced type, be in lowercase letters, and be on the same line as the text of the section.
6. To show language being added to the Colorado constitution or Colorado Revised Statutes, it is standard drafting practice to use SMALL CAPITAL LETTERS, which are different than ALL CAPS.
7. It is standard drafting practice to write numbers rather than to express them in numerals. For example, "ten dollars" rather than "\$10.00".

## 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 requires a ten dollar tax to be imposed on "each and every toll collected by any toll road" not owned by the state. Which party is responsible for the payment of the tax: the driver using the toll road and paying the toll or the non-state entity that owns, manages, finances, or maintains the toll road and therefore collects the toll?
3. On certain tolled highways in the state, multiple toll plazas are used to assess higher tolls on vehicles traveling longer distances. Is it your intent that the ten dollar tax be imposed each time a vehicle passes through a toll plaza on the same highway on the same trip?
4. The language in the proposed initiative states that the tax is imposed on a toll "collected by any toll road". Would you consider clarifying this language to specify that the toll is collected by a non-state entity that owns, manages, finances, and maintains a toll road?
5. Many toll roads are financed by the state in cooperation with local governmental entities, including municipalities, counties, and special districts. Is it your intent that the tax apply on publically financed toll roads that are built in part using state and local government moneys? Would it apply to tolls collected by the E-470 Highway Authority? The Northwest Parkway Authority? The Colorado High-performance Transportation Enterprise?
6. The state often contracts with private contractors for large-scale highway maintenance projects. Is it your intent that the tax be assessed in the event that the state owns, manages, and financed the construction of the toll road but contracts with private businesses to provide maintenance for the road?
7. Is it your intent that the ten dollar tax be adjusted for inflation or any other growth factor?
8. Which state entity is responsible for collecting the tax?
9. Do you intend that the revenue from the toll road tax be deposited in any specific state cash fund to be used for any specific purpose? If so, to which

- fund and for what purpose? Or do you intend that the revenue from the toll road tax be deposited in the state general fund and expended in a manner to be determined by the general assembly?
10. The proposed initiative states that the "tax shall not be refunded...". Is it your intent that the revenues collected from the tax be exempt from the state revenue limits imposed by section 20 of article X of the state constitution (TABOR)? Can the state spend the revenue collected? If so, would you consider adding language to clarify your intent? For example: "All revenues attributable to the tax on tolls collected by non-state toll roads shall be collected and spend as a voter-approved revenue change without regard to any limitation on revenue, spending, or appropriations contained in section 20 of article X of the state constitution or any other law. Spending such revenue shall not require additional voter approval at any state or local election." If this is not your intent, what is the intended purpose of that language?
  11. The proposed initiative states that the tax shall not be "credited". Do you mean that the tax revenue shall be deposited in one fund and not credited to any other fund? Please consider clarifying your intent regarding the term "credited".
  12. What do you mean by the phrase in the proposed initiative that the tax shall not be "offset" in any manner? In the past, proponents of other initiated measures have required that the revenues from a proposed tax be used for a specific purpose and have prohibited the general assembly from using the money to "offset" any money that it has historically appropriated for that particular purpose. However, you have not specified that the revenues from the tax be used for any specific purpose so what do you intend to prohibit from being "offset"?
  13. The proposed initiative states that the provisions of the initiative are self-executing, that the provisions supersede other state and local law, and that the provisions are effective upon certain events, except as otherwise provided in the proposed initiative. However, the proposed initiative does not include any exceptions to the original statements. Why have you included the "except as otherwise provided" language when it does not change the original statement? Do you anticipate any changes to the proposed initiative that might impact some of these statements?
  14. You have specified that the provisions of the proposed initiative become effective upon the governor's proclamation. Is this also when the provisions in the proposed initiative become applicable? The state may need several months after the provisions become law to establish the framework and

mechanism to collect the tax. Would you consider including the date on which the state is required to begin collecting the tax? For example, "Beginning on July 1, 2015, there shall be a ten dollar tax..."

15. Regardless of when the state is required to begin collecting the tax, which toll roads do you intend to include? Would the tax apply only to non-state toll roads on which construction began after the effective date of the proposed initiative? Would it apply to non-state toll roads that were already under construction but not completed on the effective date? Is it your intent that the tax be assessed on toll roads where a contract between the state and a toll road operator are already in place on the effective date of the proposed initiative?
16. Bondholders provide moneys to build roads in exchange for the right to receive a portion of the tolls generated by the roads. If the state enacts a tax that has the effect of reducing toll road use or revenues, would bondholders have a claim against the state for impairing their right to collect a certain amount of tolls to repay the indebtedness? Similarly, would a lessee of a toll road that relies upon toll revenues to maintain or operate the road have its contractual rights impaired by the imposition of the new tax?