

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Jon Caldara and Mike Krause
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: February 21, 2018
SUBJECT: Proposed initiative measure #148, concerning authorize bonds for transportation projects

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 #149 and #150. The comments and questions raised in this memorandum will not include comments and questions that are addressed in the memoranda for proposed initiatives 2017-2018 #149 and #150, 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.

In addition, earlier versions of this proposed initiative, proposed initiatives 2017-2018 #21 to #22, were the subject of memoranda dated April 4, 2017, which were discussed at public meetings on April 7, 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. Without raising taxes, to authorize the department of transportation to issue revenue anticipation notes in a maximum amount of \$3.5 billion, with a repayment cost of \$5.2 billion and a repayment term of 20 years, to be used exclusively for road and bridge expansion, construction, maintenance, and repair of the listed projects but not for transit, administration, or indirect costs and expenses;
2. Without raising taxes or fees and either by using available federal funds, reallocating priorities in the state budget, using increases in state revenue under the federal "Tax Cuts and Jobs Act", or using money that the state has been using to make principal and interest payments on revenue anticipation notes authorized in 1999 (TRANS), or any combination thereof, to require the general assembly to identify and appropriate sufficient funds for the repayment cost of the revenue anticipation notes issued by the department of transportation;
3. To exclude the proceeds of the revenue anticipation notes from state fiscal year spending limits;
4. To specify the projects for which the revenue anticipation note proceeds may be expended; and
5. To specify that the distributed proceeds are in addition to other money appropriated for road and bridge expansion, construction, maintenance and repair, and that the executive branch may not transfer the proceeds for other programs or purposes.

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. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the Legislative Council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
 - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
 - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
 - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the Legislative Council staff at BallotImpactEstimates.ga@state.co.us.
3. Proposed section 43-4-1104 requires that "no later than July 1, 2019, the General Assembly shall identify and appropriate in each fiscal year sufficient funds for the repayment cost of the notes until the notes are paid in full..."
 - a. Appropriations are generally made on a fiscal year basis. For what fiscal year(s) must the general assembly make appropriations by July 1, 2019?
 - b. Does the requirement that the general assembly appropriate sufficient funds until the notes are paid in full mean that appropriations for the entire payment period be made by July 1, 2019?
 - c. If the proponents intend only that appropriations for fiscal year 2019-20 be made by July 1, 2019, would the proponents consider changing the phrase "no later than July 1, 2019," to "on or before July 1, 2019, and on or before July 1 of each year thereafter until the notes are paid in full"?

4. Debt service on the 1999 TRANS was paid from state highway fund money continuously appropriated to the transportation commission and not from funds annually appropriated by the general assembly. Proposed section 43-4-1104 appears to call for a different approach with respect to the repayment of the debt authorized in this initiative. Is this the proponents' intent?
5. Proposed section 43-4-1104 states that "[t]o the extent possible, the state shall use any available federal funds." What does "any available federal funds" mean in the context of this requirement? Are there specific sources of federal funds, other than those that were previously used to make payments on the TRANS issued in 1999, that are intended to be included within this phrase?
6. Proposed section 43-4-1104 requires the general assembly to use "increases in state revenue under the federal tax cuts and jobs act" for the repayment of the notes.
 - a. Colorado income tax is imposed on federal taxable income, which is expected to increase as a result of the federal "Tax Cuts and Jobs Act." However, state tax forms do not provide information on the portion of taxable income attributable to the federal policy change. How should the amount of the increase be calculated? Do you have an estimate of the anticipated increase?
 - b. If this increase is temporary in nature or is eliminated by future changes to federal or state law, how does that affect the proposed initiative?
 - c. Does this section require the general assembly to appropriate the entire amount of the increase to the repayment of the notes or only a portion?
7. At the public meeting on proposed initiative 2017-2018 #21, held on April 7, 2017, you indicated that you intended for the provisions in part 7 of article 4 of title 43, Colorado Revised Statutes, related to the types and forms of revenue anticipation notes; the interest rate; whether the interest rate is fixed, adjustable, or variable; and how the notes are to be issued to apply to the authority granted in the proposed initiative. Is that still the case with this proposed initiative? If so, would you consider indicating which provisions of part 7 should apply to the notes authorized in the proposed initiative?
8. Proposed section 43-4-1105 states that the proceeds from such additional transportation revenue anticipation notes shall not be used for "administration or indirect costs and expenses." What does this mean? For example, would "administration or indirect costs and expenses" include the costs associated

- with procurement, accounting, and reporting for the projects listed in proposed section 42-4-1106? Would it include studies such as engineering, safety, planning, or environmental assessments for those projects?
9. In proposed section 43-4-1106 (1)(b)(III), what does "EA" stand for?
 10. In proposed section 43-4-1106 (1)(b)(IV), what does "Phase of the State Highway 21 Woodmen to State Highway 83 EA" mean?
 11. Proposed section 43-4-1106 (1)(f)(VIII) specifies to "combine with local funds and any available federal funds to rebuild I-25/State Highway 7 interchange."
 - a. Does this refer to a different or additional source of federal funds from funds mentioned in proposed section 43-4-1104? Would they be available for this project and not the other projects?
 - b. What local funds are referenced here?

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. 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."
2. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized:
 - a. The first letter of the first word of each sentence;
 - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
 - c. The first letter of proper names only, excluding street suffixes (i.e., avenue, street, road).

3. It is unnecessary to capitalize department names or terms such as "general assembly" or "supreme court" in the proposed initiative.
4. It is the practice of this office to use the Oxford comma in a series of three or more terms to avoid ambiguity.
5. When quoting federal acts please format as "FEDERAL TAX CUTS AND JOBS ACT."
6. Dollar amounts are typically spelled out. For example, "\$3.5 BILLION" would be "THREE BILLION FIVE HUNDRED MILLION DOLLARS."
7. In proposed section 43-4-1106 (1), when referring to the current section please refer to it as "THIS SECTION" and not "THIS SECTION 1106."
8. Proposed section 43-4-1106 (1)(f)(VI) appears to be missing a space between "(VI)" and "State."
9. Proposed section 43-4-1106 (1)(f)(IX) refers to a "SHOULD LANE"; please correct to "SHOULDER."
10. Proposed sections 43-4-1106 (1)(j)(IV) and 43-4-1106 (1)(n)(IV) each appear to be missing a space between "(IV)" and "State."
11. In proposed section 43-4-1106 (1)(k)(II), please show the words "improvements at specified locations" in SMALL CAPS.