Ballot Wars: Competing Transportation Funding Measures May Be on November Ballot

Colorado voters this November may face two transportation-funding ballot proposals that will offer starkly different strategies for addressing the state's $9 billion shortfall for paying for roads and bridges over the next decade.

Motorists and civic, political and business leaders alike are concerned that lack of investment in transportation infrastructure and growing congestion will sharply constrain Colorado's economic future.

Each proposal contains certain political assumptions that may or may not appeal to an individual voter, depending on his or her political philosophy.

One generally reflects the viewpoint of Republicans and the other the viewpoint of Democrats, a difference largely manifested in the recently completed session with the passage of SB-1, the marginally bipartisan bill that represented the legislature's best shot at tackling the problem.

On May 31st, Governor John Hickenlooper signed SB-1 into law, an action "that was met by a collective yawn by many of the organizations that had pushed for help with the state's highways and transit system," wrote Ed Sealover, veteran statehouse reporter for *The Denver Business Journal*.

Position of the CACI Board of Directors on the Ballot Proposals

CACI supported SB-1 (described below) but remains concerned that the legislature did not dedicate more General Fund revenue to transportation on a sustained basis.

Concerning the possible two ballot measures for November, the CACI Board of Directors normally waits until after a measure has qualified for the ballot to take a position.

To qualify for the ballot, a citizen-initiated measure with at least 98,492 valid signatures of registered voters must be filed with the Colorado Secretary of State by 3 p.m. on August 6th.

SB-1: The New Context

The two potential ballot measures reflect the fact that SB-1, a last-minute political compromise, will allocate a one-time $645 million expenditure for transportation funding for the next two fiscal years beginning July 1st from the so-called $1.3 billion revenue "windfall" caused by the state's strong economy and the effect of last December's Federal tax act on the state's tax system.

Of this $645 million, 70 percent will go for roads and bridges, which reflects the Republicans' priority. Reflecting the Democrats' priority, the rest is apportioned between local governments (15 percent) and multi-modal projects (15 percent).

If voters do not approve a transportation ballot measure this November, then SB-1 will put before the voters a measure in November 2019 to endorse the sale of $2.3 billion in transportation bonds for roads-and-bridges and multimodal projects—but not for local governments.

Each year, the legislature would appropriate $122.6 million to service the debt, but only $50 million of this is "new" money from the General Fund because of SB-1. The balance, $72.6 million, would come from existing State transportation dollars.

If the voters do not approve a ballot measure in 2018 or 2019, however, then the SB-1 will allocate the $50 million annually for 20 years for transportation beginning with the fiscal year that starts July 1st, 2020.

Option One: Raise Taxes, Sell Bonds

Tony Milo, executive director of the Colorado Contractors Association, recently told Dan Njegomir of *Colorado Politics*:

We don't have a sustainable, long-term funding source for transportation infrastructure. Every year, advocates for transportation infrastructure head to the state Capitol to battle for resources against advocates for other worthy budget priorities – from education to health care to public safety. And, every year, our infrastructure falls further and further behind. The answer is to identify and implement a long-term, sustainable funding source for transportation.

Led by the Colorado Contractors Association and the Metro Denver Chamber of Commerce, the coalition is advocating a ballot proposal, Initiative 153, that would increase for two decades the state sales-and-use tax by 0.62 percent, which would bring the tax to 3.52 percent beginning January 1, 2019.

The proposal also authorizes CDOT to issue up to $6 billion in bonds to be spent on state transportation projects.

The new sales tax revenue would be earmarked according to the following formula:

- 45 percent for state transportation funding and debt service (principal plus interest) on the bond repayment;
- 40 percent for local governments; and
- 15 percent for multimodal transportation.

The Legislative Council prepared an "Initial Fiscal Impact Estimate" for the Ballot Title Setting Board. If the initiative qualifies for the ballot, then the Legislative Council will prepare a revised Estimate for the *Blue Book Voter Guide* if new information surfaces.

The petition measure was approved on May 18th by the Ballot Title Setting Board for circulation for signatures.

According to the Estimate, in the 2018-2019 fiscal year beginning this July 1st, the additional sales tax revenue would be $366 million, which is a half-year impact. In the following fiscal year, the tax increase would bring in an estimated $766.7 million. The increases would continue for the next 18 years through fiscal year 2039-2040.

Given economic uncertainties, including recessions, the legislature's analyst cannot now predict how much total revenue would be raised from the sales tax increase over the twenty-year period.

State Highway Fund

As mentioned, 45 percent of the new revenue raised by the sales tax increase would go to the State Highway Fund (SHF).

The priority for the new revenue would be to service the debt (repayment of principal plus interest) on up to $6 billion in bonds issued by the Colorado Department of Transportation (CDOT). The remainder of the money would go to state transportation projects.

In the coming fiscal year, 2018-2019, the new revenue from the sales tax increase going to the SHF would be $164.7 million, and in the following year it would be $345 million.

TRANs Bonds

CDOT would be authorized to begin selling up to $6 billion in bonds called "Transportation Revenue Anticipation Notes" (TRANs) in fiscal year 2018-2019. Total bond repayment cost would be $9.4 billion over the twenty years.

The Estimate projects that the annual debt service cost would be $470 million beginning in fiscal year 2019-2020.

In the first fiscal year, 2018-2019, as noted above, the estimated revenue from the tax increase would be $164.7 million for half a year (the increase would take effect January 1, 2019) but there would be no debt service because the bonds would be first issued in this year.

In the second fiscal year, 2019-2020, as noted above, the sales tax increase would be $345 million, but the debt service would be $470 million. In other words, there would be a deficit of $125 million that would have to be covered by the SHF for fiscal year 2019-2020.

The remainder of the money must be spent by the Transportation Commission on "priority maintenance and priority construction projects, including multimodal capital projects, as determined by the Commission."

Toll Lanes: A Controversial Issue

The use of toll lanes is a divisive issue among Coloradans when discussing solutions to Colorado's congested public highways, and the Express Lanes on U.S. 36 between Denver and Boulder are a case in point.

Currently, some Douglas and El Paso County residents are vocal in their opposition to CDOT's plan to add a north-bound and a south-bound toll lane to the (in)famous I-25 South "Gap" between Monument and Castle Rock where the highway now only has two lanes in each direction.

Addressing this bottleneck, which is frequently congested and has delays due to accidents, has long been a top priority for CDOT and the residents of the two counties.

This spring, CDOT held two meetings, one in each county, about its plan to add toll lanes at a total projected cost of $350 million to eliminate the 18-mile Gap. According to *The Colorado Springs Gazette*, residents at two meetings were adamant in their objection to the CDOT proposal, saying that they would be taxed twice for the project (through local and state taxes) and that it would only benefit those willing to pay the toll.

CDOT, however, plans to begin work late this summer. Project funding includes Federal funding plus $250 million in new state transportation dollars and $35 million from Paso and Douglas Counties.

On Tuesday, CDOT announced that the U.S. Department of Transportation will grant $65 million for the Gap project. The Federal funds will come from the "Infrastructure for Rebuilding America" competitive grant program.

In announcing the grant, CDOT stated the rationale for adding two Express Lanes:

The Preferred Alternative is widening an 18-mile segment of I-25 from Monument to Castle Rock by adding an Express Lane in each direction. Following more than a year of study from the Planning and Environmental Linkages process and the Environmental Assessment, CDOT found this option would best meet the project's purpose and need to improve safety, travel reliability and mobility. Express Lanes provide a level a travel reliability that other options do not. Motorists will always have a choice to either take the two general purpose lanes for free or travel the Express Lane, one in each direction, for a variable toll. Tolls would be higher during peak travel times and lower during non-peak times to ensure the CHOICE of a free-flowing lane. Travel times will improve across all lanes.

Toll Roads and Lanes and Initiative 153

Initiative 153 addresses both toll lanes and toll roads.

First, the Transportation Commission is barred from spending any of the new sales-tax revenue "to support new toll highways."

Second, CDOT cannot spend the new revenue to support "toll lane construction or maintenance" unless a "federal record of decision" has been issued and six specific criteria are met:

1. "Meaningful public participation and input" have been provided to CDOT during the planning stages
2. Toll revenue is not collected "for the singular or primary purpose of revenue generation,"
3. Toll revenue is used "as a mechanism to increase travel time reliability and mitigate congestion,"
4. Th project contains "one or more multimodal or alternative modes of travel for nontoll paying persons, including, but not limited to, bus, rapid transit, interregional bus service, local bus service, or high-occupancy passenger vehicles."
5. Toll revenue remains on the corridor where it was raised for "maintenance, operations, or construction of mobility improvements" by CDOT.
6. A toll lane is "constructed adjacent to one or more untolled lanes and the addition of the toll lane will result in demonstrably lower congestion in the untolled lanes."

Citizen Oversight

Initiative 153 would create a citizen oversight commission that would report each year on how the bond proceeds were used.

Local Governments

As mentioned above, 40 percent of the new sales tax revenue would go to a newly created Local Transportation Priorities Fund, which would be used by local governments to pay for the maintenance and construction of highways. In the first fiscal year, this would amount to $146.4 million and $306.7 million in the second.

The funds would go half to municipalities and half to counties for transportation projects with the "current law distribution formula" governing how much an individual municipality or county receives. According to the Estimate:

Under current law, local governments must spend transportation revenue transferred from the state for construction and maintenance of public highways, together with acquisition of rights-of-way and access rights, and for the construction and maintenance of transit-related projects.

Multimodal

As mentioned above, 15 percent of the new revenue from the sales tax increase would be allocated to a newly created Multimodal Transportation Options Fund, which would be $54.9 million in the first fiscal year and $115 million in the second. Multi-model transportation purposes include mass transit, rail, bicycle lanes and walking paths, for example.

Counties and municipalities must provide a 50 percent match for the amount that they request from this Fund for their multi-modal projects. The CDOT Transportation Commission can prioritize projects that receive monies from this Fund.

Impact on Average Taxpayer

Initiative 153 will increase average household sales-and-use taxes by $130.63, according to the Estimate.

Political Support

Initiative 153 is backed by such regional organizations as Club 20 (Western Slope) and Pro 15, formerly Progressive 15 (northeastern Colorado), as well as the Metro Mayors Caucus.

Among the most prominent Democrats leaning towards supporting it are House Speaker Crisanta Duran (Denver) and Governor John Hickenlooper.

Political Opposition

Some regions of the state may be less than enthusiastic about the sales tax increase idea.

In opposing a state sales tax increase, *The Colorado Springs Gazette* on May 1st editorialized:

Colorado's highways and bridges are not in shambles because the state has been without resources. They are neglected by design. Politicians believe voters will tire of bad roads, getting so disgusted they will raise taxes to fix them. Meanwhile, they spend lavishly on

Medicaid expansion. They ponder subsidizing more “affordable housing” and other social programs that fall outside the core responsibilities of state government.

Citing coalition information, *The Denver Business Journal* said 59 percent of the additional sales tax revenue would come from the metro Denver region but only 41 percent of the transportation funding would be directed back to the region. In other words, the metro Denver area would subsidize out-state areas.

Option Two: Sell Bonds, Use Current Revenue to Pay Debt

Jon Caldara, the colorful-and-quotable chief of the conservative think tank, The Independence Institute, is pushing Initiative 167, a measure–now in the signature-gathering phase–that would force the legislature to pay the debt service on $3.5 billion in transportation bond sales.

The Institute is often labeled “free market” or “libertarian” by the mainstream news media.

Called “Fix Our Damn Roads,” Initiative 167 would require the legislature to first make debt-service payments before allocating General Fund revenue to such other programs as K-12 and higher education, corrections and social services, including Medicaid, which the Democratic-controlled legislature expanded in January 2014 under the Federal Affordable Care Act. (The 2018-2019 budget for the fiscal year beginning July 1st is about $29 billion.)

The Initial Fiscal Impact Statement points out that the proposal mandates that CDOT issue the TRANs no later than July 1, 2019. Debt service consists of repayment of principal plus interest.

Total TRANs repayment is capped at $5.2 billion over the two decades. The average annual repayment would be a projected $260 million. The actual repayment, however, would be a function of when the TRANs are issued, the terms of the TRANs and the interest rate.

In other words, over twenty years State spending on other governmental services would be reduced by $5.2 billion through fiscal year 2038-2039.

Under Initiative 167, no money would go to local governments or for multi-modal purposes. No money would be spent on mass transit.

The proceeds from the sale of the bonds would be spent only on road-and-bridge expansion, maintenance, construction and repair for 66 specific projects–called Tier 1–located in each of the state's 15 transportation planning regions.

For these 66 projects, the current Tier 1 funding need, according to CDOT, is $5.6 billion. The amount is "subject to change due to inflation, project delays, and the availability of federal and local match funding," according to the Estimate. CDOT and the Transportation Commission would determine the selection and order of projects for funding.

Democrats are concerned that, during the next recession, the legislature would be forced to make deep cuts in education, corrections and social services programs because the $350 million would first have to be paid to service the bond debt.

A state that defaults on bond payments faces the drastic prospect that its credit rating could be drastically downgraded, which would raise borrowing costs.

The Political Odds

Among prominent Republican leaders leaning towards supporting the Initiative 167 are Senate President Kevin Grantham (Canon City) and House Minority Leader Patrick Neville (Castle Rock).

According to *Colorado Politics*, "A poll by Magellan Strategies and Public Policy Polling shows 73 percent support for "Fix our damn roads" among likely voters."

Colorado Voters' History: Two Votes on Transportation Funding

1999: Voters Approve TRANs Bonds

In 1999, Colorado voters approved a transportation funding proposal, Referendum A, by a 61 percent margin. The measure authorized CDOT to borrow up to $1.7 billion by selling TRANs, which had a maximum repayment cost to $2.3 billion. State and Federal dollars were used to repay the bonds. The funds were used for 28 prioritized projects, including the famous T-REX project on I-25 in south Denver and beyond. In the end, CDOT issued $1.5 billion in TRANs and made a total repayment of $2.3 billion.

2005: Voters Defeat Referendum D

In 2005, Referendum D, a measure to bond $2.072 billion, was defeated by the voters when it garnered only 49 percent of the vote. The measure would have provided $1.7 billion for transportation projects.