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MEMORANDUM¹

TO: Statutory Revision Committee

FROM: Jason Gelender, Office of Legislative Legal Services

DATE: January 9, 2020

SUBJECT: Correction of Senate Bill 19-263 Effective Date Clause

Summary

When reviewing Senate Bill 19-263 for the purpose of preparing a summary of the bill for the "2019 Digest of Bills", I noticed that the effective date section of the bill contains an error. If the error is not corrected and the voters of the state approve the ballot issue authorizing the state to issue transportation revenue anticipation notes (TRANs) that will be referred for their approval or rejection at the November 2020 general election, TRANs will be issued in addition to, rather than in lieu of, Senate Bill 17-267 lease-purchase agreements (lease-purchase agreements) that current law requires the state to execute during the 2020-21 and 2021-22 state fiscal years. That result would be directly contrary to the intent of the general assembly in enacting both Senate Bill 19-263 and Senate Bill 18-001 that any voter-approved TRANs be issued in lieu of, and not in addition to, the as yet unissued lease-purchase agreements.

¹ This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

Analysis

1. The clear intent of the general assembly is that TRANs be issued in lieu of, and not in addition to, FY 2020-21 and 2021-22 lease-purchase agreements.

Section 24-82-1303 (2)(a), C.R.S., enacted as part of Senate Bill 17-267, requires the state to execute up to \$2 billion of lease-purchase agreements in four equal tranches of up to \$500 million during each of the 2018-19, 2019-20, 2020-21, and 2021-22 state fiscal years. The state has executed the FY 2018-19 lease-purchase agreements and, as of the date of this memorandum, is expected to execute the FY 2019-20 lease-purchase agreements within the next few weeks. With the exception of the first \$120 million of proceeds of the 2018-19 lease-purchase agreements, all lease-purchase agreement proceeds are credited to the state highway fund for expenditure by the department of transportation for transportation projects that meet specified statutory criteria.²

Senate Bill 18-001 required a statewide ballot issue seeking authorization for the state to issue up to \$2.34 billion of TRANs to be referred to the voters of the state at the November 2019 statewide election unless the voters of the state approved a citizen-initiated ballot issue authorizing the state to issue TRANs at the November 2018 general election.³ Senate Bill 18-001 also provided that, if the voters approved the referred 2019 ballot issue, then the TRANs authorized would be issued in lieu of, rather than in addition to, the FY 2019-20, FY 2020-21, and FY 2021-22 lease-purchase agreements.⁴

² §§ 24-82-1303 (4)(a)(I) and (4)(b) and 43-4-206 (1)(b)(V), C.R.S.

³ At the 2018 general election, the voters rejected two competing citizen-initiated ballot issues, Propositions 109 ("Authorize Bonds for Highway Projects") and 110 ("Authorize Sales Tax and Bonds for Highway Projects") that would have authorized the state to issue TRANs. The referred ballot issue is codified in § 43-4-705 (13)(b)(III), C.R.S., and, as originally enacted in S.B. 18-001, stated:

43-4-705. Revenue anticipation notes - ballot issue - repeal. (13) (b) (III) The secretary of state shall submit to the registered electors of the state for their approval or rejection at the November 2019 statewide election the following ballot issue: "Shall state of Colorado debt be increased \$2,337,000,000, with a maximum repayment cost of \$3,250,000,000, without raising taxes, through the issuance of transportation revenue anticipation notes for the purpose of addressing critical priority transportation needs in the state by financing transportation projects, shall note proceeds and investment earnings on note proceeds be excluded from state fiscal year spending limits, and shall the amount of lease-purchase agreements required by current law to be issued for the purpose of financing transportation projects be reduced?"

⁴ See S.B. 18-001 §§ 3 and 13.

Senate Bill 19-263 delayed the referral of the Senate Bill 18-001 ballot issue from the November 2019 statewide election to the November 2020 general election. In addition, as evidenced by the title of the bill, part of the intent of the general assembly in enacting Senate Bill 19-263, was to ensure that any TRANs authorized would still be issued in lieu of, and not in addition to, as yet unexecuted lease-purchase agreements.⁵ Because, due to the delay in submitting the ballot issue to the November 2020 general election, the 2019-20 lease-purchase agreements would be issued before the submission of the referred ballot issue, the general assembly amended both the ballot issue itself and section 24-82-1303 (2)(a), C.R.S, to ensure that the aggregate amount of transportation funding from TRANs and lease-purchase agreements would remain unchanged by lowering the amount of TRANs authorized to be issued and repealing only the requirement that the state execute the FY 2020-21 and 2021-22 lease-purchase agreements and not the requirement that the state execute the FY 2019-20 lease-purchase agreements.⁶

2. If left uncorrected, an error in the effective date section of Senate Bill 19-263 could force the state to both issue TRANs and execute FY 2020-21 and FY 2021-22 lease-purchase agreements.

The effective date section of Senate Bill 19-263 states as follows:

⁵ The title of S.B. 19-263 is "Concerning the delay until the November 2020 general election of the requirement that a ballot issue seeking approval for the issuance of transportation revenue anticipation notes be submitted to the voters of the state at the November 2019 statewide election, and, in connection therewith, **amending the ballot issue to reduce the amount of notes authorized to be issued to offset the additional transportation funding that will result from the repeal of only two, rather than three, tranches of lease-purchase agreements authorized by Senate Bill 17-267 if the ballot issue is approved** and extending from twenty to twenty-one years the period for which annual fifty million dollar transfers from the general fund to the state highway fund are required." (**Emphasis added**)

⁶ See S.B. 19-263 §§ 4 and 5. S.B. 19-263 amended § 43-4-705 (13)(b)(III), C.R.S, which includes the ballot issue language as follows:

43-4-705. Revenue anticipation notes - ballot issue - repeal. (13) (b) (III) The secretary of state shall submit to the registered electors of the state for their approval or rejection at the November ~~2019 statewide~~ 2020 GENERAL election the following ballot issue: "Shall state of Colorado debt be increased ~~\$2,337,000,000~~ **\$1,837,000,000**, with a maximum repayment cost of ~~\$3,250,000,000~~ **\$2,560,000,000**, without raising taxes, through the issuance of transportation revenue anticipation notes for the purpose of addressing critical priority transportation needs in the state by financing transportation projects, shall note proceeds and investment earnings on note proceeds be excluded from state fiscal year spending limits, and shall the amount of lease-purchase agreements required by current law to be issued for the purpose of financing transportation projects be reduced?"

SECTION 8. Effective date. (1) Except as otherwise provided in subsection (2) of this section, this act takes effect upon passage.

(2) Section 24-82-1303 (2)(a)(I), (2)(a)(II), (2)(a)(III), (2)(a)(IV), (2)(b), and (2)(d)(II), Colorado Revised Statutes, as amended in section 4 of this act, takes effect only if a **citizen-initiated ballot issue** that authorizes the state to issue transportation revenue anticipation notes but does not authorize the state to collect additional tax revenue for the purpose of providing a revenue source for repayment of the notes is submitted to the registered electors of the state for their approval or rejection at the November 2020 general election and a majority of the electors voting on the ballot issue vote "Yes/For", and, in such case, section 24-82-1303 (2)(a)(I), (2)(a)(II), (2)(a)(III), (2)(a)(IV), (2)(b), and (2)(d)(II), Colorado Revised Statutes, as amended in section 4 of this act, takes effect on the date of the official declaration of the vote thereon by the governor. **(Emphasis added)**

The purpose of this effective date section was to ensure that if the voters of the state approve the referred ballot issue that authorizes the state to issue TRANs at the November 2020 general election, then the existing statutory language in section 24-82-1303, C.R.S., that requires the state to execute FY 2020-21 and 2021-22 lease-purchase agreement repeals so that the TRANs are issued in lieu of, rather than in addition to, those lease-purchase agreements. However, because the language of the effective date section references a "citizen-initiated ballot issue" rather than the referred ballot issue, it does not accomplish this purpose. Accordingly, it is necessary to amend the effective date section to correct the error and ensure that the intent of the General Assembly, as expressed in both Senate Bill 18-001 and Senate Bill 19-263, that TRANs be issued in lieu of the lease-purchase agreements is realized.

Statutory Charge⁷

This issue fits within the Statutory Revision Committee's charge because it corrects a defect in the law that will, if the voters of the state approve the referred ballot issue that authorizes the state to issue TRANs at the November 2020 general election,

⁷ The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

thwart the clear intent of the general assembly that TRANs be issued in lieu of, and not in addition to, FY 2020-21 and FY 2021-22 lease-purchase agreements.

Proposed Bill

If the Statutory Revision Committee directs the Office of Legislative Legal Services to prepare a bill draft, the draft will amend the 2019 Session Laws of Colorado to correct the error in the effective date section of Senate Bill 19-263 and thereby ensure that any TRANs authorized by voter approval of a referred ballot issue at the November 2020 general election state are issued in lieu of, rather than in addition to, FY 2020-21 and FY 2021-22 lease-purchase agreements.