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Colorado General Assembly

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MEMORANDUM

To: Lydia McCoy and Paulina Erices-Ocampo

From: Legislative Council Staff and Office of Legislative Legal Services

Date: November 14, 2025

Subject: Proposed initiative measure 2025-2026 #181, concerning a graduated state income tax

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 and questions 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 and questions intended to aid designated representatives, and the proponents they represent, in determining the language of their proposal and to avail the public of the contents of the proposal. Our first objective is to be sure we understand your intended purposes of the proposal. We hope that the comments and questions in this memorandum provide a basis for discussion and understanding of the proposal. Discussion between designated representatives or their legal representatives and employees of the Colorado Legislative Council and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

An earlier version of this proposed initiative, proposed initiative **2025-2026 #146**, was the subject of a memorandum dated **September 15, 2025**. Proposed initiative **2025-2026 #146** was discussed at a public meeting on **September 17, 2025**. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, 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

Purposes for Proposed Initiative 2025-2026 #181

The major purposes of the proposed amendments to the Colorado Constitution and the Colorado Revised Statutes appear to be:

1. To repeal the requirement in section 20 (8)(a) of article X of the Colorado Constitution that “all taxable net income . . . be taxed at one rate, excluding refund tax credits or voter-approved tax credits”;
2. To impose, commencing on or after January 1, 2027, a graduated state income tax on the federal taxable income of every individual, estate, and trust;
3. To impose, commencing on or after January 1, 2027, a graduated state income tax on the Colorado net income of every domestic C corporation, foreign C corporation, and combined group doing business in the state;
4. To designate, for each fiscal year commencing on or after January 1, 2026, “all revenue collected under the income tax rates” of the graduated state income taxes on individuals, estates, trusts, and corporations, “in excess of the revenue that would be generated in any such taxable year by applying the income tax rate that existed as of December 31, 2026,” as “a voter approved revenue change under section 20(7)(d) of article X of the Colorado Constitution, and an exception to the limits that would otherwise apply without limiting or affecting the collection or spending of other revenues”;
5. To specify that such “excess revenue [. . .] shall be collected, retained, and spent for” certain programs and purposes, including programs and purposes related to “public school education,” “healthcare,” “child care,” and “workforce development” as set forth in the proposed initiative;
6. To require the director of research of the legislative council to annually prepare a report “to be transmitted to the General Assembly and made publicly available,” which “must at a minimum contain the . . . amount of such excess revenue; and . . . specification and description of the amounts,

programs and purposes to which such revenue has been allocated and appropriated”; and

7. To require the office of the state auditor to audit the annual report prepared by the director of research of the legislative council.

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. What will be the effective date of the proposed initiative?
3. The following comments and questions relate to section 1 of the proposed initiative:
 - a. If the proposed initiative is approved, section 20 (8)(a) of article X of the Colorado Constitution will provide that “[a]ny income tax law change after July 1, 1992 shall also require no added tax or surcharge.” However, in sections 2 and 3 of the proposed initiative, the way the upper-bracket rates function will require certain high-income taxpayers to pay an additional tax on the same income base. How is this consistent with the prohibition on any income tax law change that requires added tax?
 - b. The proposed initiative changes income tax law from a single-rate structure to a graduated rate structure requiring certain taxpayers to pay a higher marginal rate. How is the new structure not an added tax on those taxpayers?
4. The following comments and questions relate to sections 2 and 3 of the proposed initiative:
 - a. Unlike the current provisions setting the individual and corporate income tax rates, sections 39-22-104 (1.7)(c), C.R.S. and 39-22-301 (1)(d)(I)(K), C.R.S. respectively, neither proposed new subsection (1.8) of section 39-22-104, C.R.S. or proposed new subsection (1)(d)(I)(L) of section 39-22-301, C.R.S., begin with the phrase, “Except as otherwise

provided in section 39-22-627.” Section 39-22-627, C.R.S., provides “a temporary downward adjustment of the state income tax rate to refund excess state revenues,” if certain requirements are met. If the initiative is approved how would that affect the application of section 39-22-627, C.R.S., for state fiscal years commencing on or after July 1, 2027, but before July 1, 2034?

- b. Because the language in section 39-22-627, C.R.S., is not consistent with the changes proposed in sections 2 to 4 of the proposed initiative, and given the impact of the proposed initiative as a whole on the refund mechanism set forth in section 39-22-627, C.R.S., the designated representatives should add a section to the initiative amending or repealing section 39-22-627, C.R.S., as necessary, to reflect the changes that would be effectuated by the proposed initiative.
 - c. The proposed new subsection 39-22-301 (1)(d)(I)(L) imposes a graduated income tax on “Colorado net income, as determined under this section, of every . . . combined group, as defined in section 39-22-303 (12)(a.3).” Is it the proponents’ intent that the tax brackets apply per entity in a combined group or per the group as a single taxpayer?
5. The following comments and questions relate to section 4 of the proposed initiative:
- a. Subsection (1) of section 4 of the proposed initiative describes “Excess revenue” as follows: “[F]or each fiscal year commencing on or after January 1, 2026, all revenue collected under the [new graduated income tax rates] in excess of the revenue that would be generated in any such taxable year by applying the [2026 single income tax rate] ..” A “fiscal year” and “taxable year” are not synonymous in Colorado law. To ensure proper calculation of “excess revenue,” the same term should be used for both years.
 - b. The formula for calculating “excess revenue” set forth in subsection (1) of section 4 of the proposed initiative requires the calculation of a counterfactual baseline annually (i.e. amount of revenue that would have been generated under the 2026 single income tax rate). How would future income tax rate or base changes be accounted for, if at all, in this counterfactual baseline calculation?

- c. Subsection (3) of section 4 of the proposed initiative requires the director of research of the legislative council to prepare a report that includes “the amount of such excess revenue.” How is this provision intended to interact with section 24-77-106.5, C.R.S., pursuant to which the state controller prepares an annual financial report and provides certification of excess state revenues for purposes of compliance with article X of section 20 of the Colorado Constitution?
- d. Why is the report in subsection (3) of section 4 of the proposed initiative required to be prepared by the director of research of the legislative council, rather than the state controller?
- e. Subsection (3) of section 4 of the proposed initiative states the director of research “shall prepare a report, to be transmitted to the General Assembly and made publicly available.” The report must have a “plain language summary.” In contrast, section 24-77-106.5 (1)(b), C.R.S., requires that, “based upon the financial report prepared” by the controller, the controller must “certify to the governor, the general assembly, and the executive director of the department of revenue no later than September 1 following the end of a fiscal year” the total amount of excess state revenues and the amount the state is authorized to retain and spend pursuant to law. Why does subsection (3) of section 4 of the proposed initiative not include a requirement for the director of research of the legislative council to certify the amount of excess state revenue?
- f. When and how is the report required by subsection (3) required to be transmitted to the General Assembly?
- g. Is the report in subsection (3) or any information from that report required to be certified by the director of research of the legislative council?
- h. Subsection (3) of section 4 of the proposed initiative states “[t]he report shall be audited by the office of the state auditor.” The word “shall” means “duty to.” A report cannot perform a legal duty. Pursuant to section 2-3-103, C.R.S., the state auditor has the authority to conduct such an audit. To avoid confusion, the state auditor’s duty should be stated in active, rather than passive, voice.
- i. When and how often is the audit of the report required to be conducted?

- j. What is the purpose of the audit requirement, since there is no requirement for the creation or transmittal of any audit report?
- k. Have the proponents considered whether additional individuals or entities should receive the report or any information related to the audit required by subsection (3) of section 4 for purposes of effective administration of the “excess revenue”?
- l. Subsection (3) of section 4 of the proposed initiative requires the report to “be made reasonably available in other formats when requested.” What does “other formats” mean? What does reasonably available mean?
- m. Have the designated representatives considered the time and resources required for the legislative council to perform the annual calculations of “excess revenue” and prepare the report required by subsection (3) of section 4?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiatives. These comments will be read aloud at the public hearing only if the designated representatives so request. You will have the opportunity to ask questions about these comments at the review and comment hearing. Please consider revising the proposed initiative as follows:

- 1. 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.

The following words in section 4 should not be capitalized: “Excess,” “Director of Research,” “General Assembly,” “People of Colorado.”

- 2. The following words are misspelled: “healthcare” and “childcare.”
- 3. The amending clause for section 3 should be revised so “add” is in bold.