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Colorado General Assembly

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MEMORANDUM

To: Suzanne Taheri and Michael Fields

From: Legislative Council Staff and Office of Legislative Legal Services

Date: August 21, 2025

Subject: Proposed initiative measure 2025-2026 #136, concerning Voter Approval of New Fees and Fee Increases

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.

Purposes

Purposes for Proposed Initiative 2025-2026 #136

The major purposes of the proposed amendment to the Colorado Constitution appear to be:

1. To require advance statewide voter approval for any fee imposed by state law that is established or increased on or after January 1, 2027, and that is projected to generate over \$100 million in revenue in its first five fiscal years, which includes revenue from multiple fees that are collected to fund similar purposes and that have been created within the same year or the preceding five years, except for fees charged by institutions of higher education;
2. To require the ballot title for the creation or increase of such a fee to begin with specified language; and
3. To create a definition of “fee” that applies to Colorado law.

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. Article V, section 1 (4)(a) of the Colorado Constitution requires that when the majority of voters approve an initiative, the initiative is effective on and after the date of the official declaration of the vote and proclamation of the governor.

Because the proposed initiative does not contain an effective date, this would be the default effective date. Does this default effective date satisfy your intent? If not, you should include an alternative desired effective date, which must not be earlier than the default effective date.

3. The following comments and questions relate to the definition of “fee”:
 - a. What is a “voluntarily incurred” charge?

- b. What is a “governmental charge?” Does this apply to charges imposed by enterprises, which are government-owned businesses?
 - c. What is included in the term “specific benefit conferred on the payer”?
 - i. Must the specific benefit be directly received and used by the payer?
 - ii. Must the payer choose to avail themselves of the specific benefit?
 - iii. Must the specific benefit be made available only to fee payers?
 - d. What is included in the “costs incurred by the government in providing said specific benefit”?
 - e. Who determines what approximates a payer’s “fair share of the costs incurred” in providing a specific benefit?
 - f. What does the phrase “as used in Colorado law” mean?
 - i. Is this definition intended to apply to the Taxpayer’s Bill of Rights (TABOR) and the Colorado Revised Statutes?
 - ii. Is this definition intended to apply elsewhere?
4. If a charge does not satisfy the definition of “fee,” would that cause the voter approval requirement not to apply? For example, if the charge does not reasonably approximate the payer’s fair share of the costs incurred by the government, does that have the effect of exempting it from the approval requirement?
5. In the voter approval requirement for newly created or increased fees, what kinds of fees are “imposed by state law”? Does this include:
- a. A fee that is imposed throughout the entire state pursuant to a state law or state rule and for which fee revenue is credited to the state?
 - b. A fee that is imposed by the state in only a portion of the state and for which fee revenue is credited to the state?
 - c. A fee that is imposed by the state and for which all or a portion of the fee revenue is distributed to local governments? If revenue from a fee imposed by the state is distributed to both the state and local governments, is all fee revenue or only the portion of fee revenue that is distributed to the

state counted for purposes of determining whether the fee revenue exceeds \$100 million in the first five fiscal years?

- d. A fee for which a specific amount or range is specified in state law but that is collected by and for the benefit of one or more local governments, such as a county clerk and recorder document filing fee?
 - e. A fee authorized by state law that is imposed by and at the discretion of a local government, which is collected by and for the benefit of the local government?
6. It appears that the proposed initiative intends to require advance statewide voter approval for a fee that is projected to generate over \$100 million in revenue in its first five fiscal years. This requirement also appears to apply to fees with actual revenue collected over \$100 million.
- a. What does the actual collection of revenue over \$100 million trigger if advance voter approval was not already obtained based on projected revenue?
 - b. If the actual collection of revenue over \$100 million triggers voter approval to continue collecting the fee, what happens between the time of reaching the \$100 million revenue threshold and the statewide election to approve the fee?
 - c. Does the ballot language required in the measure adequately account for a case where voter approval was not obtained in advance, but is instead required after the actual collection of \$100 million in revenue? In such a case, the fee in question would neither be “imposed” nor “increased” as a result of the outcome of the election.
 - d. Alternatively, does collection of more than \$100 million in fee revenue trigger a refund of the excess? If so, how would the refund be administered?
7. Does anything happen if the fees collected exceed the estimated full dollar collection amount that was included in the required ballot title language and approved by the voters?
8. How does the first five fiscal years calculation apply to an increase of a fee?

- a. If a fee has a set maximum amount, are increases that remain below that maximum amount covered by this provision?
 - b. Are fees that are automatically increased—for instance, those indexed to inflation or that contain a time frame, schedule, adjustment, or mathematical formula with predetermined objective components for increasing the fee—covered by this provision?
- 9. What constitutes “similar purposes” for purposes of the fee revenue aggregation requirement in subsection (4.5)(b)?
 - a. Do the fees need to be collected by the same district or enterprise?
 - b. Who determines whether fees are “collected to fund similar purposes”?
- 10. Section 2 of the proposed initiative states that the voter approval provisions of the initiative “apply to fees enacted or increased on or after the effective date of the act.” But Section 1 of the proposed initiative applies the voter approval requirement to fees established or increased “on or after January 1, 2027.” If the effective date of the act is after January 1, 2027, then a fee established or increased on or after January 1, 2027, but before that effective date would not require voter approval. Is that correct?

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 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. In subsection (4.5)(b) of the proposed constitutional amendment, please rephrase “the provisions of section (4.5)(a)” to “the provisions of subsection (4.5)(a) of this section”.