

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Carol Hedges and Steve Briggs

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: January 17, 2019

SUBJECT: Proposed initiative measure 2019-2020 #179, concerning State Tax Policy

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 2019-2020 #179 to #195. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2019-2020 #180 to #195, 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.

Purposes

The major purpose of the proposed amendment to the Colorado constitution appears to be to establish standards for the state tax system.

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. Who are taxpayers? Does it include any person who pays any tax in the state? If it is something different, you might consider defining the term.
3. Does taxpayer or taxpayers have the same meaning each time it is used in the proposed initiative?
4. What is the "tax system"? Does the tax system include all taxes assessed by the state and local governments? Does it include federal taxes?
5. "System" means "a regularly interacting or interdependent group of items forming a unified whole."¹ Are all the taxes in the state interacting or interdependent or do they form a unified whole? Insofar as the term "tax system" does not have plainly understood meaning, you might consider defining the term.
6. What is a "fair and just tax system"? Do you have an example of one?
7. What happens if the tax system is not fair and just?
8. Does the first sentence establish a "constitutional requirement" as used in the fifth sentence of the proposed initiative? If so, how is this constitutional requirement satisfied?
9. Does the first sentence of the proposed initiative supersede any existing constitutional provisions? If so, which ones?

¹ Merriam-Webster Dictionary online, "System," <https://www.merriam-webster.com/dictionary/system> (accessed on January 20, 2019).

10. The following questions and comments relate to the second sentence of the proposed initiative:

- a. If all of the variables of a tax are codified, then is the tax predictable?
- b. What are examples of a predictable tax system and an unpredictable one?
- c. What does it mean for a tax system to be "sufficiently flexible to respond to changes in the economy"? What is a change in the economy that would require a response?
- d. What is "the community"? If all of the tax system comprises all the taxes in the state, then is the community the entire state?
- e. What is an example of a tax system responding to the needs of the community?
- f. Must the flexibility be embedded into the tax code, or does that mean governmental entities are responsible for making the necessary responsive change?
- g. Does this provision establish a "constitutional requirement" as used in the fifth sentence of the proposed initiative? If so, how is it satisfied?
- h. Does this provision supersede any existing constitutional provisions? If so, which ones?

11. The following questions and comments relate to the third sentence of the proposed initiative:

- a. What does it mean for a tax system to be competitive? For example, is the competition to be lower or higher? Or does it mean comparable?
- b. What are "other states"? If other states run the gamut from low to high taxes, then won't the effect of this provision depend on which other states the policy makers decide to be competitive with?
- c. The phrase "shall be" seems to establish a legal requirement or duty. Is it your intent to make a constitutional duty for governmental entities to make their tax system competitive?
- d. Does this provision establish a "constitutional requirement" as used in the fifth sentence of the proposed initiative? If so, how is it satisfied?

- e. Does this provision supersede any existing constitutional provisions? If so, which ones?

12. The following questions and comments relate to the fourth sentence of the proposed initiative:

- a. What is intended by calling this provision a "goal"? Does the sentence mean something different than: "To the extent practicable, all taxpayers shall pay the same percentage of income in total taxes."?
- b. How does this provision impact the ability of a governmental entity to impose or change a tax?
- c. Some taxpayers, such as businesses and property lessors, remit tax payments themselves and finance these by billing clients or lessees. For the purpose of satisfying the goal of equal tax payment according to income, should taxes of this type be considered to be paid by the person remitting the tax or the person from whom tax payments are financed?
- d. Property taxes are remitted only by those who owned property. Would this provision require the General Assembly to lower these taxpayers' income taxes so that they do not pay more than other taxpayers?
- e. Given that property taxes vary greatly based on the region of the state and variations in mill levies, is it possible to have each taxpayer pay the same percentage of income in total taxes?
- f. There are certain excise taxes that apply to a limited group of taxpayers, such as the severance, marijuana, tobacco, cigarette, gas and special fuels, and alcohol taxes. Other taxes, like the insurance premium, gaming, and sports betting taxes, likewise are paid by a relatively small percentage of taxpayers. Would this provision require the General Assembly to lower or eliminate those taxes, or lower the taxpayers' income taxes, so that they do not pay more than other taxpayers?
- g. Under article X, section 3 (1)(b) of the Colorado Constitution, nonresidential property taxpayers pay more than four times the taxes of residential property taxpayers. Would this provision of the proposed initiative require other taxes to be adjusted accordingly or for the General Assembly to change the assessment rates to avoid this discrepancy?

- h. Does "income" mean gross income, net income, or something else? And does this refer to the taxpayer's income, the government's income, or something else?
- i. How should policymakers pursue the goal of equal tax payment according to income with respect to taxpayers whose income is negative?
- j. Does this provision establish a "constitutional requirement" as used in the fifth sentence of the proposed initiative? If so, how is it satisfied?
- k. Does this provision supersede any existing constitutional provisions? If so, which ones?

13. The following questions and comments relate to the fifth sentence of the proposed initiative:

- a. Does stating that "taxpayers shall be subject to" create a legal duty on a governmental entity to create a tax that satisfies the conditions identified in the sentence?
- b. If a tax is determined not to be necessary to satisfy the conditions identified in the sentence, are taxpayers no longer subject to it?
- c. Is article IX, section 17 of the Colorado Constitution (Amendment 23) a "constitutional requirement" that must be satisfied? If so, given that the Colorado Supreme Court has determined that the school finance formula, which includes the budget stabilization factor, satisfies the state's constitutional requirement under Amendment 23, would this provision require the General Assembly to make any changes to state taxes?
- d. Article X, section 16 of the Colorado Constitution says that the General Assembly's appropriations cannot exceed state revenue, including taxes. Could the General Assembly intentionally over appropriate and then rely on this provision in the proposed initiative to raise taxes so that it satisfies the constitutional requirement of section 16?
- e. What other "constitutional requirements" must be satisfied?
- f. What do you mean by "establish justice"? By using the term "establish", do you intend to convey that justice does not exist as of now?
- g. Promoting the general welfare of individuals, families, and communities would seem to justify a limitless number of policies. Is that your intent?

- h. Does this provision conflict with any of the other sentences in the proposed initiative? For example, if the General Assembly determined that it was necessary to quadruple the severance tax on oil and gas in order to protect the environment and natural resources, would it matter if that was higher than any other state or that oil and gas operators may be paying a higher percentage of income in total taxes?
 - i. How does this provision interact with article X, section 20 of the Colorado Constitution (TABOR)? For example, if the General Assembly determined that a higher cigarette tax was necessary to promote the general welfare of individuals, then would the higher tax require voter prior approval?
 - j. Does this provision supersede any existing constitutional provisions? If so, which ones?
14. The measure establishes an entitlement in its first sentence, a goal in its fourth sentence, and requirements of the tax system and taxpayers in its second, third, and fifth sentences, respectively. Do the proponents intend for any of these provisions to take precedent over the others?
15. Does anything in the proposed initiative change the application of any of the provisions in TABOR, such as prior voter approval for certain tax changes, spending limits, one rate for income tax, or in any way change the effect of any provision? If so, which provisions of TABOR do you intend to change?
16. Does anything in the proposed initiative change the application of any other constitutional provision?
17. 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? And do you intend to submit this initiative along with any of the other 16 initiatives that were simultaneously submitted?
 - 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.

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. Before the amending clause, number each section, part, etc. that is being amended or added with a section number (e.g., **SECTION 1.**, **SECTION 2.**). For example:

SECTION 1. In the constitution of the state of Colorado, **add** section 22 as follows:

2. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to and stricken type, which appears as ~~stricken type~~, to show language being removed from the Colorado constitution or the Colorado Revised Statutes.
3. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate, such as the first letter of the first word of each sentence and headnote.