

# 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:** November 16, 2018

**SUBJECT:** Proposed initiative measure 2019-2020 #50, concerning State Fiscal 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 #33 to 50. 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 #33 to #50, 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.

Earlier versions of this proposed initiative, proposed initiatives 2019-2020 #3 to 9, 11, 13, 15, 17, and 19, were the subject of memoranda dated November 16, 2018, which

were discussed at a public meeting on November 18, 2018. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meetings, 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.

## **Purpose**

The major purpose of the proposed amendment to the Colorado constitution appears to be:

1. To create an exception to article X, section 20 of the Colorado Constitution (TABOR) that applies if a district's total projected revenue from tax measures is five percent or less of the fiscal year spending in the last complete fiscal year.

## **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. In the definition of "tax measure", what do you intend to be included by proposed subsection (2)(h)(VI), a "single or multiple tax rates by the state on income"? The state currently has a single rate and if it increased the rate, it would be covered by proposed subsection (2)(h)(II), so would a single rate mean a rate decrease?
3. Does a "multiple rate by the state on income" mean a graduated state income tax?
4. What does subsection (10) mean? How is it supposed to work?
5. Does it nullify every provision of TABOR in the years when it applies?
6. "Does not apply" for whom? If one district meets the exception, is the provision inapplicable for everyone?
7. How does the timing of the exception work? For example, assuming the initiative was current law, if the state has no tax measures for the 2021-22 fiscal year, does TABOR not apply for the 2021-22 fiscal year? If it is based on

- projected revenue does that imply that TABOR does not apply currently based on the total projected revenue from tax measures for the next or future fiscal years?
8. If a district has no tax measures for a given year, new revenue from tax measures would be zero. As a result, would this district be exempt from TABOR?
  9. Is another way to describe this proposed initiative that TABOR does not apply to a district unless it enacts a tax increase or increases that are greater than 5% of the prior year's fiscal year spending?
  10. Some requirements under TABOR relate to occurrences from prior fiscal years. So for example, there may be a lawsuit pending during the fiscal year 2021-22, which was brought under subsection (1) of TABOR based on a district illegally retaining and spending money from a prior year. Or a district may need to make a refund in fiscal year 2021-22 for revenues that exceed its fiscal year spending limit for 2020-21. Given these examples, what would happen to this lawsuit or refund obligations that are based on prior years, if the exception under subsection (10) applies to the state for the fiscal year 2020-21?
  11. It seems possible for a district to alternate between being exempt from TABOR under subsection (10) and not. What happens when an action is undertaken while TABOR does not apply, but then in the future it does apply? For example, if the state increased the tax rate while the exception applies, and then in the next fiscal year the cap no longer applies, then for that subsequent fiscal year is the state illegally retaining and spending revenue for which it did not receive prior voter approval?
  12. Two of the items listed in the definition of "tax measure" are currently prohibited under subsection (8) of TABOR—new or increased transfer tax rates on real property and multiple income tax rates. Their inclusion in the definition appears to permit an exception to those prohibitions so long as revenue from those tax measures and others is less than 5% of the district's last fiscal year spending amount. But does the timing work? For example, if the general assembly wanted to enact a graduated income tax during the 2022 session that applies during the 2023 income tax year, wouldn't the state need to be exempt from TABOR during the 2021-2022 fiscal year in order to enact the graduated rate in the first place?
  13. If TABOR no longer applies under proposed subsection (10), what happens to a local government that previously created a business personal property tax

exemption? In the absence of the grant of authority under subsection (8)(b) of TABOR all business personal property must be taxed. Would this exception effectively eliminate a business personal property exemption?

14. The state often makes tax policy changes that impact local governments. For example, it sets the sales and use tax base for statutory cities and counties and it sets the residential assessment rate and makes other property tax changes. If the exception applies to the state for a given fiscal year based on its tax measures, could it raise taxes for a local government because TABOR does not apply?

## 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. It appears the proponents are amending section 20 (2) and adding a new subsection (10). Therefore, the amending clause should reflect these changes and the inclusion of unchanged language within section 20 of article X is not necessary. For example:

In the Constitution of the state of Colorado, section 20 of article X, **amend** (2); and **add** (10) as follows: