

# STATE OF COLORADO

## 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:** September 15, 2025

**Subject:** Proposed initiative measure 2025-2026 #146, 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.

## **Purposes**

### **Purposes for Proposed Initiative 2025-2026 #146**

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 “[a]ny income tax law change after July 1, 1992 shall also require all taxable net income to be taxed at one rate, excluding refund tax credits or voter approved tax credits, with no added tax or surcharge”;
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 taxable years commencing on or after January 1, 2027, “all revenue collected under the income tax rates” of the graduated state income taxes on individuals, estates, and trusts, and on 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 subsection (7)(d) of section 20 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”; and
5. To specify that such “excess revenue [. . .] may be collected, retained, and spent for” certain programs and purposes, including programs and purposes related to “public school education”, “healthcare,” “childcare,” and “workforce development” as set forth in the proposed initiative.

## **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. The following comments and questions relate to sections 2 and 3 of the proposed initiative:
  - a. Both proposed new subsection (1.8) of section 39-22-104 and 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., relates to section 20 of article X of the Colorado constitution. Specifically, it provides, for any state fiscal year commencing on or after July 1, 2024, but before July 1, 2034 and if certain requirements are met,” there shall be a temporary downward adjustment of the state income tax rate to refund excess state revenues. “Excess state revenues” are defined in section 39-22-627 (10)(a), C.R.S., as “the total amount of the state revenues for the state fiscal year in excess of the limitation on state fiscal year spending imposed by section 20 (7)(a) of article X of the Colorado constitution that voters statewide have not authorized the state to retain and spend and that the state is required to refund under section 20 (7)(d) of article X of the Colorado constitution, including any adjustments for amounts specified in section 24-77-103.7 or 24-77-103.8.” Given the “voter approved revenue change” described in section 4 of the proposed initiative, 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. Section 39-22-627 (1)(a)(I), C.R.S., requires adjustment of the “state income tax rate” specified in “sections 39-22-104 (1.7) and 39-22-301 (1)(d)(I)”, C.R.S., as a method to make the required refunds. Similarly, section 39-22-627 (1)(b)(II), states, “For any state fiscal year commencing on or after July 1, 2025, if the permanent state income rate then in effect is four and twenty-five one-hundredths percent or less of the federal taxable income of every individual, estate, trust, and corporation, any otherwise applicable temporary income tax rate reduction outlined in subsection (1)(a) of this section does not take effect.” Because the language in section 39-22-627, C.R.S., is not consistent with the changes proposed in sections 2 and 3 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 introductory portions of new proposed subsections (1.8) of section 39-22-104 and (1)(d)(l)(L) of section 39-22-301, C.R.S., include the following phrase “with greater rates applying to higher income brackets, and each tax rate applying only to the income bracket for that tax rate.” This language appears to be nonessential in that it simply adds description without being necessary for proper imposition of the tax as specified in the statutory provisions that follow the introductory portions. What is the purpose of this language?
    - i. Is the phrase quoted in comment 3.c. above intended to provide a description or definition of “graduated income tax”? If so, the phrase should be omitted from the introductory portions of the new subsections and instead included in a separate definition provision in proposed subsection (1.8) similar to the other definitions included throughout section 39-22-104, C.R.S. That definition should then be cross-referenced in a separate definition provision for proposed subsection (1)(d)(l)(L) of section 39-22-301, C.R.S.
    - ii. Alternatively, the phrase should be omitted from both introductory portions and instead used to define “graduated income tax” in section 39-22-103, C.R.S., the general definitions provision for article 22. This approach avoids part but not all of the problem regarding the division of sections in the C.R.S., in section 3 of the proposed initiative explained below in technical comment 4.
  - d. As statutory changes, sections 2 and 3 of the proposed initiative may be amended by subsequent legislation enacted by the General Assembly. Is this your intention?
3. The following comments and questions relate to section 4 of the proposed initiative:
- a. Many existing statutory provisions require that excess state revenues be refunded. Section 4 must either repeal or distinguish those laws to avoid creating a statutory conflict. This may be accomplished by

specific cross-references or by using a phrase such as, “Notwithstanding any provision of law to the contrary,”.

- b. Section 4 begins with the phrase, “For taxable years commencing on or after January 1, 2027,”. The word taxable does not fit and is ambiguous in the context of state fiscal year spending as is the use of “years” plural. The phrase should be revised as follows: “For each fiscal year commencing on or after January 1, 2026,”
- c. Section 4 states that the “excess revenue” that may be generated by the proposed initiative “shall constitute a voter approved revenue change under subsection (7)(d) of section 20 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.” Section 4 also states that “the excess revenue specified in paragraph (1) of this subsection may be collected, retained, and spent” for certain programs and purposes.
  - i. What is the purpose of making the “excess revenue” a voter approved revenue change under section (7)(d) of section 20 of article X of the Colorado constitution?
  - ii. Is it the proponents’ intent to seek voter approval of a ballot issue in accordance with the requirements of section 20 of article X of the Colorado constitution and all applicable statutory requirements for state taxes to be increased and to authorize the state to keep and spend all “excess revenue” as a voter approved revenue change?
  - iii. Will voter approval be sought at the November 2026 general election?
  - iv. In accordance with section 20 (3)(b)(iii) of article X of the Colorado constitution, the title for the proposed initiative would be required to include, among other things, for the first full fiscal year of the proposed new graduated income taxes, an estimate of the maximum dollar amount of each increase. Have the proponents calculated or otherwise considered what those amounts might be?
  - v. If the proposed initiative is approved and the revenue generated exceeds the estimates required by section 20 (3)(b)(iii) for 2027,

then the “tax increase” or new graduated income tax rates would be required to be reduced “up to 100% in proportion to the combined dollar excess, and the combined excess revenue refunded in the next fiscal year”. How might this requirement be applied in the context of the proposed initiative?

- vi. Either subsection (1) or subsection (2) should be revised to expressly authorize the state to retain and spend all “excess revenue” as that authority does not appear anywhere in section 4 as currently written.
- d. How is “excess revenue” required to be calculated for purposes of section 4 of the proposed initiative?
- i. Who is responsible for performing the calculation?
  - ii. How often must the responsible individual or entity perform the calculation and when must they do so?
  - iii. Given the lack of any apparent end date, must the calculation of “excess revenue” be performed indefinitely?
  - iv. Because “excess revenue” is a term commonly used in the context of section 20 of article X of the Colorado constitution and also used in section 24-77-103.6, C.R.S., would the proponents consider using a different term or including an additional descriptive word or words together with “excess revenue”? “Excess revenue” or substitute term should also be defined in section 4.
  - v. Section 4 has no reporting requirement. Is it your intention that the “excess revenue” calculation need not be reported? If not, what reporting requirement or requirements would apply?
  - vi. Pursuant to section 24-77-106.5, C.R.S., the state controller prepares an annual financial report, audited by the state auditor, for purposes of ascertaining compliance with the provisions of article 77 of title 24, C.R.S. Consider revising the proposed initiative to include an amendment to section 24-77-106.5, C.R.S., to reflect the new requirement for the “excess revenue” calculation set forth in section 4 of the proposed initiative to ensure proper calculation and auditing in accordance with existing law.

- e. Subsection (2) of new section 24-77-103.3 states that the “excess revenue” “may be collected, retained, and spent for the following programs and purposes.” “May” means the action is permissible. Is it the proponents’ intent to make the collection, retention, and spending of the “excess revenue” for the specified program and purposes permissible but not required?
  - i. Would it be permissible for the state to not collect, retain, and spend the “excess revenue” specified in subsection (1)?
  - ii. Would it be permissible for the General Assembly to spend the “excess revenue” for a program or purpose not specified in subsection (2)? If not, then “may” should be changed to “shall”.
- f. If the proposed initiative is approved, where will the “excess revenue” be retained?
  - i. Section 24-77-103.6 (1)(b), C.R.S., authorizes the state, for each fiscal year commencing on or after July 1, 2010, “to retain and spend all state revenues that are in excess of the limitation on state fiscal year spending, but less than the excess state revenues cap for the given fiscal year.” It also creates the general fund exempt account “which consists of an amount of money equal to the amount of state revenues in excess of the state fiscal year spending that the state retains for a given fiscal year pursuant to this section.”
    - 1. Because section 4 of the proposed initiative does not specify a fund or account for the “excess revenue” specified in subsection (1), would it be consistent with the proponents’ intent for an amount of money equal to the “excess revenue” to be transferred to the general fund exempt account? If not, section 24-77-103.6, C.R.S., should be amended or repealed, as necessary, as part of the proposed initiative to ensure it is clear that the “excess revenue” from section 4 is not to be treated as “excess revenue” pursuant to section 24-77-103.6, C.R.S.
    - 2. If the general fund exempt account will not be used for the “excess revenue” identified in subsection (1) of section 4 of the proposed initiative, a separate account or fund should be created as part of section 4 to hold the money

that is equal to the amount of “excess revenue” collected. This is necessary to ensure, among other things, proper accounting, calculation of handling of interest, and subsequent transfers of amounts of money pursuant to law.

g. Concerning how the “excess revenue” would be spent:

- i. Subsection (2) of section 4 states that the “excess revenue [. . .] may be collected, retained, and spent” but does not state who has authority to spend the “excess revenue” on the permissible “programs or purposes” or provide any limitations or requirements for the manner of such spending. What is the proponent’s intent regarding who will have the authority to spend the “excess revenue” and how that spending would occur?
- ii. If the general assembly would be responsible for spending the “excess revenue”, how would that spending process work? For example, through individual, annual appropriations to individual programs or some other process?
- iii. The proposed initiative does not require any particular amount of “excess revenue” to be used to fund any particular state program. What, if any, requirements or limitations are intended to apply to how the “excess revenue” is spent?
- iv. Is the list in subsection (2) in order of priority or preference for spending of the “excess revenue”?
- v. Must the items listed receive an equal amount of money?
- vi. Must the items listed each receive some amount of money?
- vii. Would it be permissible for all “excess revenue” to be spent on a single item on the list?
- viii. May the spending of the “excess revenue” change over time? If so, how?
- ix. Must the spending of the “excess revenue” always be related to the items listed in subsection (2)?



- x. Subsection (2)(b)(I) refers to “replacing medicaid funding lost due to recent federal legislation and paying for implementing new federal requirements”.
  - 1. What does “recent federal legislation mean”?
  - 2. What does “new federal requirements” mean?
  - 3. The proposed initiative should be revised to change these phrases to the specific federal laws that they are intended to refer to.
- xi. In addition to members of the General Assembly, what other state officials, if any, would be involved with spending the “excess revenue” and what would their roles be? For example, would the controller or auditor be involved and how? The responsibilities of these officials, if any, should be specified in the proposed initiative.
- h. Although the collection, retention, and spending of the "excess revenue" would be voter-approved, the language in section 24-77-103.3, C.R.S., may be changed by subsequent legislation enacted by the General Assembly. Is that your intention?
- 4. Have the designated representatives considered the time and resources required for the Department of Revenue to implement the proposed initiative and whether the department should be allowed to retain and spend some amount of the “excess revenue” to cover the costs of implementation?

## **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. Section 4 of the proposed initiative references section 39-22-104 (1.9) and section 39-22-301 (1)(d)(I)(M). However, neither of these sections are added in the proposed initiative or exist in current law. These cross references should be removed in section 4 and the reference to section (1)(d)(I)(M) should also be removed from the amending clause for section 39-22-301.

2. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, if you intend to add a new article to title 39 of the Colorado Revised Statutes, you would include the following amending clause: "In Colorado Revised Statutes, **add** article \_\_ to title 39 as follows:".

The amending clause for section 3 should be revised as follows:

**"SECTION 3.** In Colorado Revised Statutes, 39-22-301, **amend** (1)(d)(I)(K); and **add** (1)(d)(I)(L) as follows:"

3. Each section in the Colorado Revised Statutes and the Colorado constitution has a headnote. Headnotes briefly describe the content of the section.

The headnote for section 4 includes the term "accountability". Consider whether this accurately reflects the contents of the section.

4. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

**X-X-XXXX. Headnote.** (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

In section 2, subsection (1.8), and in section 3, subsection (1)(d)(I)(L) the subparagraphs in each paragraph should be broken out into separate subparagraphs and separated by punctuation such as colons and semicolons and proper spacing consistent with standard drafting practice, taking into

consideration the limitations specified below regarding the division of statutes.

There can be no further division of a statutory section than a sub-subparagraph. Section 3 of the proposed initiative includes impermissible sub-sub-subparagraphs labeled (i) to (v) as well as sub-sub-sub-subparagraphs labeled (I) and (II) and must be rewritten to properly include the language in those additional subsections at the sub-subparagraph level or higher.

5. When referencing the section you are currently in, the section number does not need to be referenced. For all other article and section divisions, the number or letter of what you are referencing should be specified for every level of reference. For example:

- a. This section
- b. This article #
- c. Article #
- d. Part # of article #
- e. Section #
- f. Subsection #

All subsections, paragraphs, subparagraphs, and sub-subparagraphs of a section are referred to as “subsections” of the section. Accordingly, in section 4, the introductory portion of subsection (2) should be revised as follows: “paragraph (1) of this subsection” should be “subsection (1) of this section”.

6. 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 should not be capitalized: “Medicaid”, “Healthcare”, and “Excess”.

7. In sections 2 and 3 of the proposed initiative, to avoid confusion regarding whether income that is less than, equal to, or greater than a particular amount is or is not included in a tax bracket listed in (1.8)(a) to (d) the text should be changed as follows:
  - a. “Not over” should be revised to “less than or equal to”; and
  - b. “Over” should be revised to “greater than”.
8. The following citation should be corrected: “subsection (7)(d) of section 20 of article X of the Colorado constitution” should be written as “section 20 (7)(d) of article X of the Colorado constitution.