

# STATE OF COLORADO

## Colorado General Assembly

Natalie Mullis, Director  
Legislative Council Staff

**Colorado Legislative Council**  
200 East Colfax Avenue Suite 029  
Denver, Colorado 80203-1716  
Telephone 303-866-3521  
Facsimile 303-866-3855  
Email: lcs.ga@state.co.us



Sharon L. Eubanks, Director  
Office of Legislative Legal Services

**Office of Legislative Legal Services**  
200 East Colfax Avenue Suite 091  
Denver, Colorado 80203-1716  
Telephone 303-866-2045  
Facsimile 303-866-4157  
Email: olls.ga@state.co.us

## MEMORANDUM

**TO:** Daniel Hayes and Julianne Page

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**DATE:** June 18, 2019

**SUBJECT:** Proposed initiative measure #109, concerning a proposition allowing voters to enact residential growth proposals on a countywide basis

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.

## Purposes

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

1. To enable the electors of various local governments to reserve the right to limit housing growth without legislative inhibition or penalty by initiative and referendum.

2. To further reserve this right on a countywide basis whereby electors throughout a county may elect to limit housing growth uniformly in all local governments and any part of such within such county by initiative and referendum.
3. To limit privately-owned residential housing growth in the cities and counties of Broomfield and Denver and countywide in the counties of Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer, and Weld, including all local governments within such counties, to one percent annually for the years 2021 and 2022.
4. To specify that in specified counties each local government and any part of such, and each such city and county, shall allot building permits so that housing growth does not exceed a one percent annual growth in the total number of dwelling units in each said year.
5. To prohibit the issuance of permits to build new privately-owned residential housing units within said counties beginning with the declaration of voter approval of the proposed initiative until January 1, 2021.
6. To implement signature, form, and content requirements for initiative and referendum proposals regulating the growth of privately-owned residential housing.

## **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. 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?

- 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](mailto:BallotImpactEstimates.ga@state.co.us).
- 4. The amending clause in the proposed initiative adds a new section 39-22-510. That section already exists in statute and the next available section number in that part 5 would be section 39-22-542. Is it the proponents' intent to add the new section to part 5 of article 22 of title 39, C.R.S.? If so, why are you adding these provisions to a subpart of title 39 containing special rules for the computation of the income tax that has nothing to do with the topic of regulating residential housing growth? It seems that title 29, which deals with local government matters in general, would be a more logical location for placing these new provisions.
- 5. What is the purpose or intended effect of the sentence at the beginning of the proposed initiative that reads: "A proposition allowing voters to enact residential growth proposals on a county-wide basis and enacting such for two years in eight counties beginning in 2021"? Is this intended to be a section heading (referred to as a "headnote") for the measure? If so, it should follow the section number and follow additional C.R.S. style conventions applicable to headnotes (see comment #1 in the "Technical Comments" section of this memo). If it's not intended as a headnote, it is out of place and does not conform to general drafting practice in Colorado. In addition, do you think the statement accurately portrays the proposed initiative?
- 6. With respect to subsection (1) of the proposed initiative:
  - a. Does "local county" as used in proposed subsection (1)(c) of the proposed initiative mean the same thing as the unincorporated portion of a county? If not, how would these terms differ? If so, why not use the more commonly accepted and understood phrase?
  - b. In proposed subsection (1)(c) what does the phrase "unincorporated county" mean?
  - c. With respect to the definition of "privately owned residential housing," contained in proposed subsection (1)(e), what is a "summation of

housing units"? Would the proponents consider clarifying their language on this point?

- d. Will it not be a source of endless confusion if the measure is enacted to have different definitions for "local counties" and counties on a countywide basis? Is there any other place in Colorado law where these distinctions are used?

7. With respect to subsection (2) of the proposed initiative:

- a. What does it mean to state "the electors of every city, town, city and county, or local county...reserve the right to limit housing growth..."? Would voter approval of the proposed initiative result in adoption of a limitation or is some other action required before such a limitation would become effective?
- b. What do the proponents mean by "electors" for purposes of the proposed initiative? For example, do the proponents intend this term to mean "registered electors" or is some other meaning intended? Would the proponents consider adding a definition of this term?
- c. What does it mean to give the people a right to limit housing growth "without legislative inhibition or penalty"? What is a "legislative inhibition or penalty" for purposes of the text of the proposed initiative?
- d. If it became law, how would the proposed initiative be inhibited by a legislative body? Are the proponents referring to the General Assembly or the governing body of particular local governments?
- e. What type of housing growth limitation is permissible under the first sentence of proposed subsection (2)? Specifically, the first sentence gives electors the power to "limit housing growth" on what and by what particular means?
- f. Are there any limitations on the type of growth restrictions the electors may vote to adopt under proposed subsection (2)? Specifically, are the electors restricted to approving a uniform limitation on housing growth as is authorized on a countywide basis in the last sentence of this proposed subsection or are other forms of growth limitations permitted? Could the electors, for example, ban any increase in housing growth for an indefinite amount of time? What would happen if a large number of counties in a metropolitan area adopted such restrictions? Would the proponents consider clarifying their intent with respect to these issues?
- g. Is it accurate to state that the first sentence of proposed subsection (2) empowers electors of local governments other than counties on a countywide basis whereas the second sentence applies to electors of

- counties on a countywide basis? If so, are there any differences in the types of housing limitations the respective forms of local government may enact?
- h. What do the proponents mean by "referendum" in this context? How would the power of referendum be exercised?
8. Also, with respect to subsection 2 of the proposed initiative:
    - a. How would the limits required by this proposed subsection (2) be applied?
    - b. Are the growth restrictions that would be required by the measure restrictions on the issuance of building permits by local governments or is some other meaning intended?
    - c. If the restriction required by proposed subsection (2) refers to building permits, to what extent are building permits granted before the effective date of the proposed initiative, if adopted, subject to its requirements?
    - d. Does the "right to limit housing growth" refer only to privately-owned residential housing growth or is it the intent of the proponents to include other forms of housing growth in this right? Would the proponents consider clarifying their intent with respect to this issue?
    - e. What does it mean to "limit housing growth uniformly in all local governments and any part of such...within such county"? Do the proponents mean that housing growth may be limited in some uniform manner throughout the land area located within the territorial boundaries, in whole or in part, of each local government? If so, would the proponents consider clarifying their intent?
    - f. What specific measures do the proponents intend a uniform restriction on housing growth to mean or include?
    - g. What do the proponents intend the term "uniformly" to mean? Does the term "uniformly" refer to a percentage of the population of a local government or does it require a numerically consistent housing growth limitation across the local government?
    - h. Does proposed subsection (2) mandate that limits be uniform or is it merely an authorization that uniform limits may be adopted? Would the proponents consider clarifying their intent with respect to these issues?
    - i. Proposed subsection (2) appears to restrict and thereby supersede the home rule power of Colorado municipalities. Is this the proponents' intent?
  9. Assuming the proposed initiative permits a county to adopt some level of uniform growth limitations affecting every local government within the county, what is the rationale for giving this power to the county? Why should there be a

uniform requirement across the county if different areas of the county are experiencing disparate growth rates?

10. With respect to subsection (3) of the proposed initiative:

- a. Subsection (1) of the proposed initiative defines "privately owned residential housing" and "annual growth." What is meant by "privately owned residential housing growth" as used in proposed subsection (3)? Is this the same as the annual growth rate in the total number of housing units or is some other meaning intended?
- b. Why are the requirements of this section imposed only upon certain counties? How did the proponents decide which counties are to be covered by the requirements of proposed subsection (3)?
- c. How did the proponents arrive at the years 2021 and 2022 as the years during which the one percent limitation is to apply?
- d. How did the proponents arrive at the one percent annual growth figure required by proposed subsection (3)? Does this requirement mean that privately owned residential housing growth shall only increase by one percent or less as compared with the prior year in the specified counties for the specified years indicated or is some other meaning intended?
- e. In the second sentence of proposed subsection (3), what does "any part of such" reference? Would the proponents consider modifying the language of this proposed subsection to make their intention on this point more clear?
- f. Is it accurate to state that the first sentence of proposed subsection (3) imposes the specified housing growth limit on the specified counties on a countywide basis for the years 2021 and 2022 and the second sentence permits local governments on less than a countywide basis to allot building permits for each of the specified years? If not, please explain how these sentences are intended to work together.
- g. Do the requirements in the second sentence of proposed subsection (3) apply to cities and counties on a countywide basis?
- h. How are local governments to allot building permits under the requirements of proposed subsection (3)?

11. Also, with respect to subsection (3) of the proposed initiative:

- a. How are the limits contained in proposed subsection (3) to be enforced?
- b. Is it a correct reading of the last sentence of subsection (3) of the proposed initiative that all existing growth limitations enacted pursuant to the powers authorized under subsection (3) remain in full force and effect unless amended or repealed by a subsequent initiative and referendum?

12. To what extent do the requirements of proposed subsection (3) constrain county, as contrasted with municipal, governments?
13. With respect to subsection (4) of the proposed initiative:
  - a. What kinds of "permits" are given for "residential housing units" as contrasted with the entire development project?
  - b. What is the relationship between the various growth limitations required by subsections (2), (3), and (4) of the proposed initiative? Is subsection (4) intended to cover the period between enactment of the proposed initiative and January 1, 2021? Is it fair to say that the limitation authorized in proposed subsection (3) is an additional and more precise requirement directed to particular local governments that flows from the general powers granted under proposed subsection (2)? How does proposed subsection (4) relate to proposed subsections (2) and (3)?
  - c. What is the "declaration of voter approval"? Is that the same thing as the governor's proclamation of the official declaration of the vote as referenced in section 1(4)(a) of article V of the state constitution?
14. Have the proponents considered how the proposed initiative would affect the powers of home rule cities and home rule counties?
15. With respect to subsection (5) of the proposed initiative:
  - a. What does the term "signature requirements" refer to? Does this term refer to the required number of signatures on a petition to commence initiative or referendum proceedings to enact, repeal, or amend proposals to regulate the growth of privately-owned residential housing?
  - b. What is the rationale for the disparity in signature requirements between local government proposals and countywide proposals?
16. Are the proponents aware that there is a general severability provision found in section 2-4-204, C.R.S., that covers all statutory enactments so there is no need for the inclusion of subsection (6) in the proposed initiative?

## **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. Each section in the Colorado Revised Statutes and the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to section 39-22-510 of the proposed initiative and be in bold-face type. For example:

**39-22-601. Definitions.** (1) As used in this section...

2. The word "county-wide" should be "countywide."
3. The definition in proposed subsection (1)(e) should be hyphenated: "Privately-owned residential property."
4. In proposed subsection (4) "Section" should be lower, i.e., "section."
5. In proposed subsection (5)(a) "initiative" and "referendum" should be plural ("initiatives" and "referendums").