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Colorado General Assembly

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MEMORANDUM

To: Steven Ward and Michael Fields

From: Legislative Council Staff and Office of Legislative Legal Services

Date: July 18, 2025

Subject: Proposed initiative measure 2025-2026 #123, 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.

This proposed initiative **2025-2026 #123** was submitted by the same designated representatives as a part of a group of related proposed initiatives, including proposed initiatives **2025-2026 ##121, 122, and 124**. The comments and questions raised in this memorandum do not include comments and questions that were addressed in the memorandum for proposed initiative **2025-2026 #121**, except as necessary to fully understand proposed initiative **2025-2026 #123**. Comments and

questions addressed in that memorandum may also be relevant, and those questions and comments are considered part of this memorandum.

Purposes

Purposes for Proposed Initiative 2025-2026 #123

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

1. To require advance statewide voter approval for a statewide fee that is imposed 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 imposition or increase of such a fee to begin with specified language;
3. To require advance voter approval for any tax expansion; and
4. To create definitions of “fee” and “tax expansion” that apply to the Taxpayer’s Bill of Rights (TABOR).

Substantive Comments and Questions

The substance of the proposed initiative raises the following additional 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 the definition of “tax expansion”:
 - a. What is “a tax not previously assessed”? How does this differ from something that would qualify as a “new tax,” which already requires advance voter approval pursuant to subsection (4)(a) of TABOR?
 - b. For “a tax incorrectly categorized as a fee”:

- i. Who determines if a tax has been incorrectly categorized as a fee?
 - ii. When is the advance voter approval requirement triggered in the case of “a tax incorrectly categorized as a fee”?
 - iii. What are the legal consequences to a district that imposes “a tax incorrectly categorized as a fee” without advance voter approval?
 - 1. Would a district be subject to the refund plus 10% interest penalty in subsection (1) of TABOR?
 - 2. Can the legal consequences be avoided if voter approval is obtained after a determination is made that a tax has been “incorrectly categorized as a fee”?
- c. For “the removal of a tax exemption”:
 - i. Does this category include only tax exemptions or does it include any type of tax subtraction? Does it include a tax credit?
 - ii. Does the planned expiration of a temporary tax exemption fall under this category?
 - iii. Does a reduction in the amount of a tax exemption allowed, but not a complete elimination of the tax exemption, fall under this category?
 - iv. What are the legal consequences to a TABOR district that removes a tax exemption without advance voter approval? Would a district be subject to the refund plus 10% interest penalty in subsection (1) of TABOR?
- d. What is a “change in tax classification”?
 - i. Does this apply to changes in law that redefine or modify tax classifications?
 - ii. Does this apply to a law that creates a new tax classification?
 - iii. Does this apply to an individual or agency interpretation that a specific item or parcel should be differently classified? If so, how would a district obtain advance voter approval for this?

- iv. Does this apply to a change in tax classification even if that change does not increase the relevant district's tax revenue?
 - v. What are the legal consequences to a TABOR district that changes a tax classification without advance voter approval?
 - 1. Would a district be subject to the refund plus 10% interest penalty in subsection (1) of TABOR?
 - 2. Can the legal consequences be avoided if voter approval is obtained after the tax classification occurs?
3. The following comments and questions relate to section 2 of the proposed initiative, which contains the applicability clause:
- a. Section 2 states that "This definition applies to fees and new taxes enacted or increased on or after January 1, 2027." Should "new taxes" be "tax expansions"? Or should this clause only apply to the definition of "fee"?
 - b. By default, the new definitions would only apply after the effective date of the proposed initiative. What is the intent of having this definition apply on or after January 1, 2027?
 - c. Consider reworking the sentence to clarify that the phrase "enacted or increased" applies to "fees" rather than "tax expansions," if that is what you intend.

Technical Comments

The following new 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 the comments at the review and comment hearing. Please consider revising the proposed initiative as follows:

- 1. It is standard drafting practice to separate items in an unsubdivided list, like the list in section (2)(h) of the proposed initiative, with commas rather than semicolons.
- 2. Because section 2 only contains one sentence, it does not need a subsection number and "(2)" can be removed.