

# 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:** April 19, 2019

**SUBJECT:** Proposed initiative measures 2019-2020 #84, 86, and 88 to 101, 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.

These initiatives were submitted as a series including proposed initiatives 2019-2020 #84 to 101. Proposed initiatives #85 and 87 did not raise any new questions or comments and are therefore not addressed in this memorandum.

Earlier versions of these proposed initiatives, 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, and proposed initiatives 2019-2020 #33 to 50 were the subject of memoranda dated February 22, 2019, which were discussed at a public meeting on February 26, 2019.

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 initiatives. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

## **Purposes**

The major purposes of the proposed amendments to the Colorado Constitution appear to be unchanged from prior similar versions of the proposed initiatives. Accordingly, the purposes for each of the proposed initiatives addressed in this memorandum are described in reference to those prior proposed initiatives as follows:

1. Proposed initiative 2019-2020 #84 has the same purposes as proposed initiative 2019-2020 #33;
2. Proposed initiative 2019-2020 #86 has the same purposes as proposed initiative 2019-2020 #35; and
3. Proposed initiatives 2019-2020 #88 to 101 have the same purposes as proposed initiatives 2019-2020 #37 to 50 respectively.

The purposes for the prior proposed initiatives 2019-2020 #33, 35, and 37 to 50 are attached as an addendum to this memorandum and will not be read at the review and comment meeting. Copies of this memorandum, including the addendum, will be available through the Legislative Council Staff and Office of Legislative Legal Services.

## **Substantive Comments and Questions**

The substance of the proposed initiatives raises the following comments and questions:

1. The following question and comments apply to proposed initiatives 2019-2020 #84, 86, and 88:
  - a. The exception to the 55% vote requirement in article V, section 1 (4)(b) of the Colorado constitution applies to "an initiated constitutional amendment that is limited to repealing, in whole or in part, any provision of this constitution." The proposed initiative repeals parts of TABOR, but it also adds a headnote to subsection (8). Although the headnotes are not substantive, does the proposed initiative still meet the 55% vote exception?

2. The following comment applies to proposed initiative 2019-2020 #89:
  - a. The amending clause for section 1 is incorrect, as it describes the change in the section as a "**repeal**" but the changes in the section are "**repeal and reenact, with amendments**", similar to other proposed initiatives in this series.
3. The following questions and comments apply to proposed initiatives 2019-2020 #89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, and 101:
  - a. Consider the following example of a phased-in tax for purposes of calculating the "total projected revenue from tax measures": A district creates a new tax that has the following rates and projected revenues:
    - .1% rate for fiscal year 1 that is projected to raise \$1,000;
    - .2% rate for fiscal year 2 that is projected to raise \$2,000; and
    - 10% rate for fiscal year 3 that is projected to raise \$100,000.
    - i. Is fiscal year 2 the "year after fiscal year in which the tax takes effect," so that \$2,000 would be used in the calculation of "total projected revenue from tax measures"?
    - ii. Does it matter when during the first fiscal year the new tax takes effect? Or so long as the new tax applied for at least one day of the fiscal year 1, would the \$2,000 still be used in the calculation?
    - iii. The projected revenue for fiscal year 3 would not be used in the calculation. Is that correct?
  - b. The second component of "total projected revenue from tax measures" is ambiguous or incorrect. The first component of the definition refers to "the revenue that . . . any proposed tax measure will generate". In contrast, the second component simply says "the revenue that . . . will be generated", and the rest of the sentence does not necessarily limit it to just those revenues derived from tax measures. Instead, the tax measures are only used as a reference point to describe the fiscal year for which the revenue projection must be done. To the extent that it is your intent to limit the projected revenue to apply to only other tax measures that are to take effect in the same fiscal year, then you'll need to rewrite this provision.

- c. Using the example in question 3.a., is fiscal year 1 the "same fiscal year" in the definition of "total projected revenue from tax measures"? If not, which one would be?
- 4. The following questions and comments relate to proposed initiative 2019-2020 #101:
  - a. There are two different versions of subsection (10). One should be eliminated.
  - b. If you prefer the first version, which appears after the definitions, it should be moved to the proper location. In addition, "(1) – (9)" should read "(1) to (9)" if that is the intent.
  - c. Please describe how you intend subsection (10) to work.
  - d. The first version of subsection (10) states that "subsections (1) – (9)" do not apply when the exception is triggered. Does one district's satisfaction of the requirements of the exception trigger the exception for all districts in the state?
  - e. How would the first version of subsection (10) apply to the example in question 3.a? It would appear that fiscal year 2 for the tax measure, along with other tax measures for the same fiscal year, would be used to determine whether the exception applies, but the exception would apply for fiscal year 1. Is that correct?
  - f. If the exception did not apply for fiscal year 2 because of the large increase in fiscal year 3, then would the district need voter approval for the tax increase to apply in fiscal years 2 and 3?
  - g. For the second version of subsection (10):
    - i. Are the tax measures those enacted during a given fiscal year in which it is being determined whether the exception applies?
    - ii. For how long does the exception apply to the district?
    - iii. The exception applies to all of Article X, Section 20, including subsection (10) itself. Is this your intent?
  - h. For years when the exception applies, a district would be empowered to enact policies that are prohibited under Article X, Section 20, including for example the imposition of a local district income tax or the taxation of income at multiple rates. If the district ceases to satisfy the

requirements of the exception in subsequent years, would the reimposition of the remainder of Article X, Section 20, render such policies unconstitutional?

5. 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 these initiatives 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).

## 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 meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting.

1. In initiative 2019-2020 #101, it appears that the numbering of subsection (2)(j) of the definitions section is missing the "(II)" that appears in the other initiatives.
2. As a general note, 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. Headnotes appear in regular type even if the language is new, and are in bold.

- a. 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.

## **Addendum A**

### **Purposes for Proposed Initiatives 2019-2020 #33, 35, and 37 to 47 (84, 86, and 88 to 101)**

#### **1. Proposed Initiatives 2019-2020 #33 and #84**

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

1. To repeal provisions that relate to the following topics from article X, section 20 of the Colorado constitution (TABOR):
  - a. Voter approval for certain district tax increases and the weakening of other limits on district revenue, spending, and debt;
  - b. Election provisions related to TABOR ballot issues;
  - c. The requirement that a district maintain an emergency reserve;
  - d. District spending limits; and
  - e. Prohibitions on new or increased transfer tax rates on real property, new state property tax, local district income tax, income tax rate or a new state definition of taxable income before the next year, and multiple income tax rates.

#### **2. Proposed Initiatives 2019-2020 #35 and #86**

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

1. To repeal provisions that relate to the following topics from article X, section 20 of the Colorado constitution (TABOR):
  - a. Voter approval for certain district tax increases and the weakening of other limits on district revenue, spending, and debt;
  - b. Election provisions related to TABOR ballot issues;
  - c. The requirement that a district maintain an emergency reserve;
  - d. District spending limits; and
  - e. Prohibitions on new or increased transfer tax rates on real property, new state property tax, local district income tax, income tax rate or a new

state definition of taxable income before the next year, and multiple income tax rates.

2. To repeal the requirement, commonly referred to as the "Gallagher Amendment", that the general assembly adjust the property tax residential assessment rate in accordance with a formula designed to maintain the percentage of the aggregate statewide valuation that is attributable to residential property in the state; and
3. To repeal the requirement that the nonresidential property tax assessment rate is 29%.

### **3. Proposed Initiatives 2019-2020 #37 and #88**

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

1. To repeal provisions that relate to the following topics from article X, section 20 of the Colorado constitution (TABOR):
  - a. Voter approval for certain district tax increases and the weakening of other limits on district revenue, spending, and debt;
  - b. Election provisions related to TABOR ballot issues;
  - c. The requirement that a district maintain an emergency reserve;
  - d. District spending limits; and
  - e. Prohibitions on new or increased transfer tax rates on real property, new state property tax, local district income tax, income tax rate or a new state definition of taxable income before the next year, and multiple income tax rates;
2. To repeal the requirement, commonly referred to as the "Gallagher Amendment", that the general assembly adjust the property tax residential assessment rate in accordance with a formula designed to maintain the percentage of the aggregate statewide valuation that is attributable to residential property in the state;
3. To repeal the requirement that the nonresidential property tax assessment rate is 29%; and



4. To repeal the funding requirements for public school preschool through twelfth grade education included in article IX, section 17 of the Colorado constitution, which is commonly referred to as "Amendment 23".

#### **4. Proposed Initiatives 2019-2020 #38 and #89**

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

1. To repeal article X, section 20 of the Colorado constitution (TABOR), and create a new version of the prior voter approval requirement for tax measures that does not include prior voter approval for any assessment ratio increase for a property class; and
2. To create an exception to the prior voter approval requirement for tax measures based on a district's total projected revenue from tax measures.

#### **5. Proposed Initiatives 2019-2020 #39 and #90**

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

1. To repeal provisions that relate to the following topics from article X, section 20 of the Colorado constitution (TABOR):
  - a. Voter approval for certain district tax increases and the weakening of other limits on district revenue, spending, and debt;
  - b. Election provisions related to TABOR ballot issues;
  - c. The requirement that a district maintain an emergency reserve;
  - d. District spending limits; and
  - e. Prohibitions on new or increased transfer tax rates on real property, new state property tax, local district income tax, income tax rate or a new state definition of taxable income before the next year, and multiple income tax rates;
2. To create a new version of the prior voter approval requirement for tax measures that does not include prior voter approval for any assessment ratio increase for a property class; and
3. To create an exception to the prior voter approval requirement for tax measures based on a district's total projected revenue from tax measures.

## **6. Proposed Initiatives 2019-2020 #40 and #91**

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

1. To repeal article X, section 20 of the Colorado constitution (TABOR), and create a new version of the prior voter approval requirement for tax measures that does not include prior voter approval for any assessment ratio increase for a property class<sup>1</sup>;
2. To create an exception to the prior voter approval requirement for tax measures based on a district's total projected revenue from tax measures;
3. To repeal the requirement, commonly referred to as the "Gallagher Amendment", that the general assembly adjust the property tax residential assessment rate in accordance with a formula designed to maintain the percentage of the aggregate statewide valuation that is attributable to residential property in the state; and
4. To repeal the requirement that the nonresidential property tax assessment rate is 29%.

## **7. Proposed Initiatives 2019-2020 #41 and #92**

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

1. To repeal provisions that relate to the following topics from article X, section 20 of the Colorado constitution (TABOR):
  - a. Voter approval for certain district tax increases and the weakening of other limits on district revenue, spending, and debt;
  - b. Election provisions related to TABOR ballot issues;
  - c. The requirement that a district maintain an emergency reserve;
  - d. District spending limits; and

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<sup>1</sup> The phrase "prior voter approval for any assessment ratio increase for a property class" was inadvertently repeated in the review and comment memorandum for proposed initiatives #40, 42 but the mistake is not repeated here.

- e. Prohibitions on new or increased transfer tax rates on real property, new state property tax, local district income tax, income tax rate or a new state definition of taxable income before the next year, and multiple income tax rates;
2. To create a new version of the prior voter approval requirement for tax measures that does not include prior voter approval for any assessment ratio increase for a property class;
3. To create an exception to the prior voter approval requirement for tax measures based on a district's total projected revenue from tax measures;
4. To repeal the requirement, commonly referred to as the "Gallagher Amendment", that the general assembly adjust the property tax residential assessment rate in accordance with a formula designed to maintain the percentage of the aggregate statewide valuation that is attributable to residential property in the state; and
5. To repeal the requirement that the nonresidential property tax assessment rate is 29%.

## **8. Proposed Initiatives 2019-2020 #42 and #93**

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

1. To repeal article X, section 20 of the Colorado constitution (TABOR), and create a new version of the prior voter approval requirement for tax measures that does not include prior voter approval for any assessment ratio increase for a property class;
2. To create an exception to the prior voter approval requirement for tax measures based on a district's total projected revenue from tax measures;
3. To repeal the requirement, commonly referred to as the "Gallagher Amendment", that the general assembly adjust the property tax residential assessment rate in accordance with a formula designed to maintain the percentage of the aggregate statewide valuation that is attributable to residential property in the state;
4. To repeal the requirement that the nonresidential property tax assessment rate is 29%; and

5. To repeal the funding requirements for public school preschool through twelfth grade education included in article IX, section 17 of the Colorado constitution, which is commonly referred to as "Amendment 23".

## **9. Proposed Initiatives 2019-2020 #43 and #94**

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

1. To repeal provisions that relate to the following topics from article X, section 20 of the Colorado constitution (TABOR):
  - a. Voter approval for certain district tax increases and the weakening of other limits on district revenue, spending, and debt;
  - b. Election provisions related to TABOR ballot issues;
  - c. The requirement that a district maintain an emergency reserve;
  - d. District spending limits; and
  - e. Prohibitions on new or increased transfer tax rates on real property, new state property tax, local district income tax, income tax rate or a new state definition of taxable income before the next year, and multiple income tax rates;
2. To create a new version of the prior voter approval requirement for tax measures that does not include prior voter approval for any assessment ratio increase for a property class;
3. To create an exception to the prior voter approval requirement for tax measures based on a district's total projected revenue from tax measures;
4. To repeal the requirement, commonly referred to as the "Gallagher Amendment", that the general assembly adjust the property tax residential assessment rate in accordance with a formula designed to maintain the percentage of the aggregate statewide valuation that is attributable to residential property in the state;
5. To repeal the requirement that the nonresidential property tax assessment rate is 29%; and
6. To repeal the funding requirements for public school preschool through twelfth grade education included in article IX, section 17 of the Colorado constitution, which is commonly referred to as "Amendment 23".

## **10. Proposed Initiatives 2019-2020 #44 and #95**

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

1. To repeal article X, section 20 of the Colorado constitution (TABOR);
2. To create a new version of the prior voter approval requirement for tax measures that:
  - a. Repeals the prior voter approval requirement for any valuation for assessment ratio increase for a property class;
  - b. Eliminates the requirement that local governments receive prior voter approval for any type of tax or debt measure;
  - c. Permits the state to make tax policy changes that directly cause a net tax revenue gain to local governments without prior voter approval; and
  - d. Creates an exception to the prior voter approval requirement for tax measures based on the total projected revenue from state tax measures.

## **11. Proposed Initiatives 2019-2020 #45 and #96**

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

1. To repeal provisions that relate to the following topics from article X, section 20 of the Colorado constitution (TABOR):
  - a. Voter approval for certain district tax increases and the weakening of other limits on district revenue, spending, and debt;
  - b. Election provisions related to TABOR ballot issues;
  - c. The requirement that a district maintain an emergency reserve;
  - d. District spending limits; and
  - e. Prohibitions on new or increased transfer tax rates on real property, new state property tax, local district income tax, income tax rate or a new state definition of taxable income before the next year, and multiple income tax rates; and
2. To create a new version of the prior voter approval requirement for tax measures by:

- a. Repealing the prior voter approval requirement for any valuation for assessment ratio increase for a property class;
- b. Eliminating the requirement that local governments receive prior voter approval for any type of tax measure;
- c. Permitting the state to make tax policy changes that directly cause a net tax revenue gain to local governments without prior voter approval; and
- d. Creating an exception to the prior voter approval requirement for tax measures based on the total projected revenue from state tax measures.

## **12. Proposed Initiatives 2019-2020 #46 and #97**

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

- 1. To repeal article X, section 20 of the Colorado constitution (TABOR);
- 2. To create a new version of the prior voter approval requirement for tax measures by:
  - a. Repealing the prior voter approval requirement for any valuation for assessment ratio increase for a property class;
  - b. Eliminating the requirement that local governments receive prior voter approval for any type of tax measure;
  - c. Permitting the state to make tax policy changes that directly cause a net tax revenue gain to local governments without prior voter approval; and
  - d. Creating an exception to the prior voter approval requirement for tax measures based on the total projected revenue from state tax measures;
- 3. To repeal the requirement, commonly referred to as the "Gallagher Amendment", that the general assembly adjust the property tax residential assessment rate in accordance with a formula designed to maintain the percentage of the aggregate statewide valuation that is attributable to residential property in the state; and
- 4. To repeal the requirement that the nonresidential property tax assessment rate is 29%.

### **13. Proposed Initiatives 2019-2020 #47 and #98**

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

1. To repeal provisions that relate to the following topics from article X, section 20 of the Colorado constitution (TABOR):
  - a. Voter approval for certain district tax increases and the weakening of other limits on district revenue, spending, and debt;
  - b. Election provisions related to TABOR ballot issues;
  - c. The requirement that a district maintain an emergency reserve;
  - d. District spending limits; and
  - e. Prohibitions on new or increased transfer tax rates on real property, new state property tax, local district income tax, income tax rate or a new state definition of taxable income before the next year, and multiple income tax rates;
2. To create a new version of the prior voter approval requirement for tax measures by:
  - a. Repealing the prior voter approval requirement for any valuation for assessment ratio increase for a property class;
  - b. Eliminating the requirement that local governments receive prior voter approval for any type of tax measure;
  - c. Permitting the state to make tax policy changes that directly cause a net tax revenue gain to local governments without prior voter approval; and
  - d. Creating an exception to the prior voter approval requirement for tax measures based on the total projected revenue from state tax measures;
3. To repeal the requirement, commonly referred to as the "Gallagher Amendment", that the general assembly adjust the property tax residential assessment rate in accordance with a formula designed to maintain the percentage of the aggregate statewide valuation that is attributable to residential property in the state; and
4. To repeal the requirement that the nonresidential property tax assessment rate is 29%.

#### **14. Proposed Initiatives 2019-2020 #48 and #99**

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

1. To repeal article X, section 20 of the Colorado constitution (TABOR);
2. To create a new version of the prior voter approval requirement for tax measures by:
  - a. Repealing the prior voter approval requirement for any valuation for assessment ratio increase for a property class;
  - b. Eliminating the requirement that local governments receive prior voter approval for any type of tax measure;
  - c. Permitting the state to make tax policy changes that directly cause a net tax revenue gain to local governments without prior voter approval; and
  - d. Creating an exception to the prior voter approval requirement for tax measures based on the total projected revenue from state tax measures;
3. To repeal the requirement, commonly referred to as the "Gallagher Amendment", that the general assembly adjust the property tax residential assessment rate in accordance with a formula designed to maintain the percentage of the aggregate statewide valuation that is attributable to residential property in the state;
4. To repeal the requirement that the nonresidential property tax assessment rate is 29%; and
5. To repeal the funding requirements for public school preschool through twelfth grade education included in article IX, section 17 of the Colorado constitution, which is commonly referred to as "Amendment 23".

#### **15. Proposed Initiatives 2019-2020 #49 and #100**

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

1. To repeal provisions that relate to the following topics from article X, section 20 of the Colorado constitution (TABOR):
  - a. Voter approval for certain district tax increases and the weakening of other limits on district revenue, spending, and debt;



- b. Election provisions related to TABOR ballot issues;
  - c. The requirement that a district maintain an emergency reserve;
  - d. District spending limits; and
  - e. Prohibitions on new or increased transfer tax rates on real property, new state property tax, local district income tax, income tax rate or a new state definition of taxable income before the next year, and multiple income tax rates;
2. To create a new version of the prior voter approval requirement for tax measures by:
    - a. Repealing the prior voter approval requirement for any valuation for assessment ratio increase for a property class;
    - b. Eliminating the requirement that local governments receive prior voter approval for any type of tax measure;
    - c. Permitting the state to make tax policy changes that directly cause a net tax revenue gain to local governments without prior voter approval; and
    - d. Creating an exception to the prior voter approval requirement for tax measures based on the total projected revenue from state tax measures;
  3. To repeal the requirement, commonly referred to as the "Gallagher Amendment", that the general assembly adjust the property tax residential assessment rate in accordance with a formula designed to maintain the percentage of the aggregate statewide valuation that is attributable to residential property in the state;
  4. To repeal the requirement that the nonresidential property tax assessment rate is 29%; and
  5. To repeal the funding requirements for public school preschool through twelfth grade education included in article IX, section 17 of the Colorado constitution, which is commonly referred to as "Amendment 23".

## **16. Proposed Initiatives 2019-2020 #50 and #101**

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.