

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

To: Suzanne Taheri and Michael Fields

From: Legislative Council Staff and Office of Legislative Legal Services

Date: August 21, 2025

Subject: Proposed initiative measure 2025-2026 #137, concerning voter approval for tax expansions

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 #137

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

1. To require advance voter approval for any tax expansion; and
2. To create a definition of “tax expansion” that applies to the Taxpayer’s Bill of Rights (TABOR).

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. Article V, section 1 (4)(a) of the Colorado Constitution requires that when the majority of voters approve an initiative, the initiative is effective on and after the date of the official declaration of the vote and proclamation of the governor.

Because the proposed initiative does not contain an effective date, this would be the default effective date. Does this default effective date satisfy your intent? If not, consider including an alternative desired effective date, which must not be earlier than the default effective date.

3. What is “a tax not previously assessed”?
 - a. How does this category differ from what would be encompassed by “any new tax” or “a tax policy change directly causing a net tax revenue gain to any district,” which require voter approval pursuant to subsection (4)(a) of TABOR?
 - b. What are the legal consequences to a TABOR district that imposes a tax not previously assessed without advance voter approval?
 - i. Would a district be subject to the refund plus 10% interest penalty in subsection (1) of TABOR?

- ii. Can the legal consequences be avoided if voter approval is obtained after the tax is assessed?
- 4. For “the removal or partial removal of a tax exemption, subtraction, deduction, or tax credit” (collectively referred to in this memorandum as a “tax expenditure”):
 - a. If a tax expenditure was created by the General Assembly to be temporary, would voter approval be required before its planned expiration?
 - b. If a tax expenditure was created by the General Assembly to include a trigger mechanism or formula based on objective components that results in a temporary reduction or suspension of that tax expenditure, would voter approval be required before its temporary reduction or suspension?
 - c. What is a “partial removal” of one of the listed tax expenditures?
 - i. Does this include any amount of reduction in the available amount of a tax expenditure?
 - ii. Does this include any restriction or reduction on who is allowed the tax expenditure?
 - iii. Does this include any restriction on what the tax expenditure is allowed for?
 - d. What are the legal consequences to a TABOR district that removes or partially removes a tax expenditure without advance voter approval?
 - i. Would a district be subject to the refund plus 10% interest penalty in subsection (1) of TABOR?
 - ii. Can the legal consequences be avoided if voter approval is obtained after the removal or partial removal occurs?
- 5. What is a “tax classification”?
- 6. What is a “change in tax classification”?
 - a. Does this include:
 - i. A change in the law that redefines or modifies a tax classification?

- ii. A law that creates a new tax classification?
- iii. An individual or agency interpretation that a specific item or parcel should be differently classified for tax purposes? If so, how would a district obtain advance voter approval for this?
- iv. A change in tax classification even if that change does not increase the relevant district's tax revenue?

b. What are the legal consequences to a TABOR district that changes a tax classification without advance voter approval?

- i. Would a district be subject to the refund plus 10% interest penalty in subsection (1) of TABOR?
- ii. Can the legal consequences be avoided if voter approval is obtained after the tax classification change occurs?

7. Is it your intent that voter approval be required for any tax expansion, even one that causes an incidental and de minimis revenue increase to the district? What about a tax expansion that decreases revenue to a district?

Technical Comments

The form of the proposed initiative raises no technical comments.