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MEMORANDUM

To: Suzanne Taheri and Michael Fields

From: Legislative Council Staff and Office of Legislative Legal Services

Date: September 3, 2025

Subject: Proposed initiative measures 2025-2026 #141 and #142, concerning Voter Approval for Tax Expansion

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 initiatives.

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.

Proposed initiatives **2025-2026 #141** and **#142** were submitted by the same designated representatives as a series of proposed initiatives. The comments and questions raised in this memorandum address both proposed initiatives **2025-2026 #141** and **#142**.

An earlier version of this proposed initiative, proposed initiative **2025-2026 #137**, was submitted by the same designated representatives, was the subject of a

memorandum dated August 21, 2025, and was discussed at a public meeting on August 21, 2025. The comments and questions raised in this memorandum do not include comments and questions that were addressed in the earlier memorandum or at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiative. Prior comments and questions that are not restated in this memorandum continue to be relevant and are considered part of this memorandum.

Purposes

Purposes for Proposed Initiative 2025-2025 #141

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

1. To change the existing standard of review that courts apply to challenges to laws or policies under the Taxpayer's Bill of Rights (TABOR) by:
 - a. Removing the presumption of constitutionality so that a party challenging the constitutionality of a law or policy under TABOR is not required to prove the unconstitutionality of the law or policy beyond a reasonable doubt; and
 - b. Allowing a party challenging the constitutionality of a law or policy under TABOR to prove the unconstitutionality of the law or policy by a preponderance of the evidence;
2. To require advance voter approval for any tax expansion on and after the effective date of the initiative; and
3. To create a definition of tax expansion that applies to TABOR.

Purposes for Proposed Initiative 2025-2025 #142

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

1. To change the existing standard of review that courts apply to challenges to laws or policies under TABOR by:
 - a. Removing the presumption of constitutionality so that a party challenging the constitutionality of a law or policy under TABOR

is not required to prove the unconstitutionality of the law or policy beyond a reasonable doubt; and

- b. Allowing a party challenging the constitutionality of a law or policy under TABOR to prove the unconstitutionality of the law or policy by a preponderance of the evidence;
- 2. To require advance voter approval for any tax expansion on and after July 1, 2025; and
 - 3. To create a definition of tax expansion that applies to TABOR.

Substantive Comments and Questions

The substance of the proposed initiatives raise 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 each of the proposed initiatives?
- 2. The following questions and comments relate to the language to be added to the existing subsection (1) of TABOR. This language concerns the standard of judicial review for alleged TABOR violations.
 - a. It appears that the intent of this language is to change the existing standard of review that courts apply to challenges to laws or policies under TABOR. Specifically, instead of requiring a party challenging the constitutionality of a law or policy to prove its unconstitutionality beyond a reasonable doubt, a party challenging the constitutionality of a law or policy under TABOR would only need to prove the unconstitutionality of that law or policy by a preponderance of the evidence. Is that correct?
 - b. What do you intend to cover with the phrase “law or policy”?
 - c. Is the phrase “compliance shall be determined by a preponderance of the evidence” intended to mean that a party challenging a law or policy as unconstitutional due to a violation of TABOR may establish the unconstitutionality of that law or policy by a preponderance of the evidence? If not, what is this phrase intended to mean?

- d. The following questions relate to the application of this new standard of review. Does this change to the standard of review:
 - i. Apply only to alleged noncompliance or violations that occur after the effective date of this measure?
 - ii. Apply to noncompliance or violations alleged to have occurred before the initiative's effective date, so long as an action is brought after the effective date?
 - iii. Allow for the refiling of actions that have been resolved under the prior standard of review?
- 3. The following questions and comments relate to proposed subsection (2)(h), which concerns the definition of "tax expansion."
 - a. Is this definition intended to capture tax-related changes that could otherwise be considered new taxes or tax policy changes requiring voter approval under TABOR, had those tax-related changes not been both incidental and de minimis?
 - b. The text of the proposed initiative requires voter approval for the removal or partial removal of a tax exemption, exclusion, subtraction, or deduction. It does not appear to apply to the removal or partial removal of tax credits. Is that correct?
 - c. What is a tax "exclusion"?
 - d. What is included in "tax qualifications, assessments, or calculations"?
 - e. Does "tax classification" apply only to property tax classifications or does it include something else? If so, what?
 - f. It appears that all items listed in subsection (2)(h)(1) of the proposed initiatives are only tax expansions requiring voter approval if they have a "net effect of increasing a taxpayer's tax burden," regardless of the amount of such increase. Is that correct? If so, consider re-wording the definition to make this clear.
 - g. What is something having "the net effect of increasing a taxpayer's tax burden"?

- i. “Net” typically refers to something that remains from a total or a whole after certain deductions are made or exclusions are applied. What does “net” mean in this definition?
 - ii. Does this include a law or policy that adds a tax exemption and removes another but where the policy as a whole does not increase a taxpayer’s tax burden?
 - iii. How closely tied do the cause (law or policy) and effect (increased tax burden) need to be?
 - 1. Does the law or policy need to directly cause the increased tax burden? If so, consider adding that to the definition.
 - 2. If not, how indirect can the effect be?
 - iv. What is a taxpayer’s “tax burden”? If a law or policy makes a tax credit non-refundable but allows the taxpayer to claim the same amount of the tax credit against their tax liability, does the non-refundability change increase that taxpayer’s “tax burden”?
 - v. Does this definition include a law or policy that increases one individual taxpayer’s tax burden, regardless of decreases in others’ tax burdens or district revenue?
 - h. Because subsection (2)(h)(2) of the proposed initiatives does not contain the same “net effect” language, it appears that any change in tax classification — even one that decreases an individual taxpayer’s tax burden — would be a tax expansion requiring voter approval. Is that correct?
4. What are the legal consequences to a TABOR district that effectuates a tax expansion without advance voter approval?
5. The following questions and comments relate to the language to be added to the existing subsection (4) of TABOR in proposed initiative #142.
- a. It appears that the language would require advance voter approval for any tax expansion on or after July 1, 2025. Is this correct?
 - i. Given that this initiative would be placed on the November 2026 ballot, how would this work?

- b. The existing language in the introductory portion of subsection (4) of TABOR references a requirement of voter approval. The language to be added by this proposed initiative references a requirement of an election. Do you intend a difference by using different terminology? If so, what is that difference?

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 initiatives as follows:

1. TABOR is divided into sections, and each section may contain subsections, paragraphs, and subparagraphs according to the following numbering and lettering conventions. Consider changing the subparagraphs in subsections (2)(h)(1) and (2)(h)(2) of both proposed initiatives to follow these conventions. Please also change the reference to “each instance listed above in Subsection (1)” accordingly.

(2) Subsection

(h) Paragraph

(i) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(ii) Subparagraph

2. Please add an “or” between “subtraction,” and “deduction” in subsection (2)(h)(1) of the proposed initiatives.
3. Please ensure that the language in the existing subsection (4) of TABOR included in the proposed initiatives accurately reflects existing language. This would require replacing “or a tax policy change any district.” with “or a tax policy change directly causing a net tax revenue gain to any district.”

4. Proposed initiative #142 does not amend language in every part of subsection (4) because it does not amend any language in subsection (4)(b). Given this, consider making the following changes:
 - a. Change the amending clause of proposed initiative #142 so that the operative portion reads as follows: “**amend** (1), (4) introductory portion, and (4)(a);”.
 - b. Remove subsection (4)(b) from the proposed initiative, as it is not being amended.
5. 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.