

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: February 22, 2019

SUBJECT: Proposed initiative measure 2019-2020 #38 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.

This initiative was submitted with a series of initiatives including proposed initiatives 2019-2020 #33 to 50. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2019-2020 #33 to #50, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

Earlier versions of this proposed initiative, 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. 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 initiative. 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 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.

Substantive Comments and Questions

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

1. In light of the repeal of the fiscal year spending limit, what does "refunds made in the current or next fiscal year" mean in the context of the definition of "fiscal year spending"?
2. In the definition of "tax measure", only proposed section 20 (1)(d)(I) is modified by "any". Did you intend for the other subsections in proposed section 20 (1)(d) to be more limited than said subsection (1)(d)(I)?
3. The last type of tax measure includes the phrase a "net tax revenue gain to the district". In TABOR, the phrasing is a "net tax revenue gain to *any* district." (*emphasis added*.) The state makes tax policy changes for statutory cities and counties, special districts, and other districts. Was this change to the definition of tax measure intended to allow the state to make a tax policy change for any local government without prior voter approval?
4. The following questions and comments relate to the definition of "total projected revenue from tax measures" in proposed section 20 (1)(e):

- a. As used in this proposed section, total appears to mean "a product of addition: sum:". ¹ Therefore, it would appear that total projected revenue from tax measures is equal to the sum of what is described in subsection (1)(e)(I) and (1)(e)(II). If subsection (1)(e)(II) includes "all measures", wouldn't the measure at issue be double counted? Is it supposed to be "all other measures"?
- b. Proposed section 20 (1)(e)(I) refers to "the next full fiscal year after the proposed tax measure is to take effect," while proposed section 20 (1)(e)(II) refers to "measures[...] that are to take effect in the same fiscal year." Does "the same fiscal year" mean the fiscal year when the measure takes effect, or does it mean the next full fiscal year after the measure takes effect as discussed in subparagraph (1)(e)(I)?
- c. For a tax measure that takes effect on July 1, 2022, the next full fiscal year after the proposed tax measure is to take effect is fiscal year 2023-24.
 - i. Does the proposed initiative require comparison of revenue projected to be generated from this tax measure in fiscal year 2023-24 to district fiscal year spending for fiscal year 2022-23? If so, district fiscal year spending will be unknown at the time that the measure is proposed.
 - ii. For this tax measure, does proposed section 20 (1)(e)(II) refer to fiscal year 2023-24 revenue projected for all tax measures enacted without voter approval that are to take effect in fiscal year 2022-23? Or does it refer to fiscal year 2023-24 revenue projected for all tax measures enacted without voter approval that are to take effect in fiscal year 2023-24?
- d. Does it matter if the tax is phased-in? For example, if a proposed tax increase is for .01% in the first, full fiscal year and in the second full fiscal year it is 10%, would the revenue from the .01% tax increase be used to calculate this amount?

¹ Merriam-Webster Dictionary Online, "Total," <https://www.merriam-webster.com/dictionary/total> (accessed February 21, 2019).

- e. Could a measure from a prior year with a delayed effective date be considered as part of what needs to be included in the amount calculated as subsection (1)(e)(II)?
 - f. Because the revenues are projected, does that mean that for purposes of applying the exception in proposed section 20 (3)(b), the actual revenues that the district receives are irrelevant?
 - g. Will the "projected revenue" be judged using a good-faith standard?
5. Is it your intent to change when TABOR-related elections can take place?
 6. The definition of "propose" is "to form or put forward a plan or intention."² For the Colorado General Assembly, a measure would seem to be proposed when it is introduced. So read literally, proposed section 20 (3)(a) would appear to require a district to have voter approval in advance before introducing a tax measure that would increase revenue. What do you intend the phrase "that a district proposes" to mean?
 7. The subject in proposed section 20 (3)(a) is a measure, while in the existing language of TABOR that is similar, the subject of the sentence is a district. Does the change from the active voice to the passive voice change to interpretation?
 8. What is the "last complete fiscal year" for the purpose of proposed section 20 (3)(b)? Is this the fiscal year before a tax measure takes effect, or the fiscal year before a tax measure is proposed?
 - a. A district generally is not able to compute its fiscal year spending until after the fiscal year is complete. If district fiscal year spending for the last complete fiscal year is unknown at the time that a tax measure is proposed, how is the district to determine whether voter approval is required?
 9. What happens if a district violates proposed section 20 (3)(a)? Would a district be required to refund any revenue that was taxed in violation of this provision?
 - a. For purposes of applying the exception in proposed section 20 (3)(b), is it possible that a district may have some measures that meet the

² Merriam-Webster Dictionary Online, "Propose," <https://www.merriam-webster.com/dictionary/propose> (accessed February 21, 2019).

exception while others do not? Or will the exception either apply to all measures or none of them?

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. Although the new text of the proposed initiative is in small capital letters, use an uppercase letter to indicate capitalization where appropriate, for example the first letter at the beginning of a sentence.
2. It is standard drafting practice, when repealing and reenacting language, to only include the newly reenacted language in small caps. It is not necessary to include the stricken language of the material you are repealing.
3. The use of sub-paragraphs are indicated by a break in the formatting. For example:

(d) "TAX MEASURE" MEANS:

(I) ANY NEW TAX;

(II) TAX RATE INCREASE;

And so on...