

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Nathan Clay and Mark Tejada

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: March 29, 2019

SUBJECT: Proposed initiative measure 2019-2020 #61, concerning the "Tax Credit for Voting Act"

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.

Purposes

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

1. To create a tax credit for Colorado registered voters in the amount of \$40 for participants that voted in the primary elections and \$40 for participants that voted in the general elections.

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. What will be the effective date of the proposed initiative?
3. How will the tax credits be funded? Generally, tax expenditures in Colorado such as tax credits are funded out of the general fund unless there is a dedicated revenue source for the expenditure. In 2018, an estimated 2.5 million ballots were cast for the office of governor. If each of those voters claimed a \$40 tax credit for casting a ballot, the payer, presumably the state government, would be paying out over \$101 million out of the state's general fund to finance this tax credit. Another approximately 940,000 voters cast a ballot in the gubernatorial primary elections. That would theoretically result in payment out of the general fund of another \$37 million. (The figures on votes cast are taken from the Secretary of State's website). Do you anticipate your proposal having this kind of fiscal impact?
4. How did the proponents determine that the amount of the tax credit will be \$40 for participating in the primary or general election?
5. What does it mean for the tax credit to be refundable? Why is the tax credit refundable? Have you considered the fiscal impact and administrative complexities of making the tax credit refundable? If a taxpayer doesn't use a credit in a particular year, can it be carried forward to a future tax year?
6. How will it be determined that a voter "participated" in the primary or general election? For purposes of the proposed initiative, does "participated" mean casting a ballot or is some other meaning intended? To minimize confusion or uncertainty, would the proponents consider clarifying their intent on this issue?
7. Is the tax credit limited to voters who voted in the general or primary election for governor and state or federal congressional seats? If so, why is the definition restricted to voters voting in these contests? How will it be possible to determine whether a voter cast a ballot in either the primary or general election for these particular contests?
8. With respect to the definition of "voter" in proposed section 39-22-5202, what is a "state...congressional seat"? Do you mean a seat in the Colorado General

Assembly? Would the proponents consider clarifying their intent on this provision of the proposed initiative?

9. Would a voter be able to submit a blank ballot and still obtain the tax credit?
10. Is the tax credit made available under the proposed initiative a credit against Colorado state income tax? To minimize confusion or uncertainty, would the proponents consider clarifying their intent on this issue?
11. Assuming the tax credit is a credit against the state income tax, how will the tax credit be administered in the case of a taxpayer whose state income tax obligations are solely met through withholding?
12. What does a voter have to do to voluntarily claim the tax credit on their income tax forms? Specifically, what information would need to be submitted to verify a voter's participation?
13. Is it the proponents' intent that the tax credit be claimed for the income tax year that corresponds to the calendar year in which the primary and general elections are held? Can a taxpayer claim both credits if he or she votes in both the primary and general elections?
14. How do the proponents foresee the process by which information on which voters voted will be transmitted to the entity issuing the tax credit?
15. 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 the initiative 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.

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. Section 1 of the proposed initiative adds a new part 52 to title 39 of the Colorado Revised Statutes. A part title should be added preceding the first section and replace "ARTICLE 22".
2. It is standard drafting practice for section headnotes to be shown in regular type and in bold, and to include periods after headnotes and appropriate punctuation at the end of each sentence and subsection.
3. It is standard drafting practice not to include "and/or" in statutory language. Instead, the preferred choice to show permissible alternatives is "or". The word "and" is used to show multiple choices that must all be satisfied.
4. It is standard drafting practice to use "shall" or "must" to indicate a mandatory command. The words "will be" or "will have" are disfavored because it is less clear whether their use requires that an actor be required to complete the task assigned.
5. Proposed section 39-22-5202 is titled "Definitions". Standard drafting practice is to indicate in a definitions section the parts of the Colorado Revised Statutes to which the definitions apply. For example, "AS USED IN THIS TITLE 39, "VOTER" MEANS..." or "AS USED IN THIS ARTICLE 22, "VOTER" MEANS..." To what parts of the Colorado Revised Statutes are the definitions intended to apply?