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Colorado General Assembly

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MEMORANDUM

To: Joshua Rodriguez and Amy Rodriguez

From: Legislative Council Staff and Office of Legislative Legal Services

Date: August 20, 2025

Subject: Proposed initiative measure 2025-2026 #135, concerning a Colorado Income Tax Repeal

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 #135

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

1. To reduce the state income tax on individuals, estates, and trusts beginning with the 2027 state income tax year; and
2. To repeal the state income tax on individuals, estates, and trusts for state income tax years beginning on or after January 1, 2036.

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 (8) of the Colorado Constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado". To comply with this constitutional requirement, this phrase must be added to the beginning of the proposed initiative.
3. 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.

Given this default effective date, the language in the applicability clause stating that the act "shall become effective following voter approval at the November 2026 general election" should be removed. If the default effective date does not satisfy your intent, consider including an alternative desired effective date, which must not be earlier than the default effective date.

4. The statutes governing the submission of proposed initiatives state that the draft of the proposed initiative that proponents must submit is "the typewritten proposed text of the initiative which, if passed, becomes the actual language of the constitution or statute, together with language concerning placement of the measure in the constitution or statutes." With this understanding, the substance of the proposed initiative raises the following questions and comments:
 - a. Would you like the language of section 1 of the proposed initiative, the "Declaration of Intent", to be included in the Colorado Revised Statutes?
 - i. If so, please add language to explain where you would like this section 1 to be added. This could mean moving the language of this section 1 into section 2 of the proposed initiative, which already includes an amending clause explaining where that language would be placed in the Colorado Revised Statutes (if you would like all of your proposed language to be placed in the same location).

- ii. If so, please also replace the bullet point list with a list that follows the drafting style of the Colorado Revised Statutes, which is outlined in Technical Comment #3 on page 7 of this memorandum. This would mean that your declaration of the intent of the people of Colorado would begin with a (1) and each bullet point would be replaced with (a) through (d). Because these form a list, please also replace the period at the end of each bullet point with a semi-colon and add an “and” between the second-to-last item and the final item in the list.
 - b. Please remove the information under the headings “10-Year Fiscal Transition Plan” and “Key Fiscal Strategy Elements” at the end of the proposed initiative. This does not appear to be information that you intend to include in the statutory language and, therefore, should not be included in the text of the proposed initiative.
 - i. These portions of the proposed initiative suggest certain sources of replacement revenue, but the statutory language does not require that the reduction in income tax revenue be replaced. Is that correct?
5. The following comments and questions relate to the provisions concerning the income tax phase-out in Section 2 of the proposed initiative.
- a. The phase-out schedule uses the terms “in tax year 202X.” The income tax year for individuals, estates, and trusts normally aligns with the calendar year so that it begins on January 1. Do you intend the applicable changes to occur on and after January 1 of the relevant income tax years?
 - b. The phase-out schedule states that, beginning with income tax year 2027, the income tax rate is “reduced by ten percent of the prior year’s rate.” In an example where the income tax rate is 4% in income tax year 2026, this would mean that the income tax rate for income tax year 2027 would be 3.6%. Is that correct?
 - c. The phase-out schedule states that, in each tax year after income tax year 2027, the income tax rate is “reduced by an additional ten percent of the prior year’s rate.” Does this mean that the income tax rate is reduced by 20% of the prior year’s rate?

- i. Taking the same assumptions as in the above example, if the income tax rate is 4% in income tax year 2026, this would mean that the income tax rate for income tax year 2027 would be 3.6% (a ten percent reduction). In income tax year 2028, the rate would be 2.88%, and in income tax year 2029, the rate would be 2.3% (reductions of twenty percent). Is that correct?
 - d. If your intent is to reduce the income tax rate by ten percent of its current rate of 4.4% each year for ten years until the tax is eliminated, you may wish to simply specify the precise rate that is to apply for each income tax year. This would require simply reducing the prior's year's rate by 0.44%. For example: 4.0% for 2027, 3.56% for 2028, 3.12% for 2029, and so on.
 - e. How does section 39-22-627, C.R.S., which requires income tax rate reductions to be used to refund excess state revenues in specified circumstances, interact with your proposed statutory rate phase-out?
6. The Colorado Constitution is superior legal authority to the Colorado Revised Statutes, overrides any conflicting statutory provision, and therefore cannot be altered, amended, or repealed by a statutory change. Accordingly, what is your intent in including subsection (2) of Section 2 of the proposed initiative, titled "Preservation of TABOR"?
 7. What is your intent in including subsection (3) of Section 2 of the proposed initiative, titled "Local and corporate income tax authority unaffected"?
 8. Subsection (5) of Section 2 of the proposed initiative repeals all of part 1 of article 22 of title 39, C.R.S. What is your intent in repealing the entire part?
 - a. Various elements of that part, such as definitions, are referred to elsewhere in statute. What is your intent with regard to these definitions?
 - b. Various elements of that part also establish income tax credits, including those that are refundable. Do you intend such refundable tax credits to be available after the repeal of the income tax on individuals, estates, and trusts? If so, how do you intend for these credits to work after the state income tax is no longer imposed?
 - c. The repeal of the entire part is effective January 1, 2036. Because an income tax is still in effect for income tax year 2035 and taxes for that year would typically be filed in calendar year 2036, you should consider delaying the

effective date of this repeal. Our standard drafting practice would suggest a repeal after five years, in 2040.

9. Although the proposed initiative lowers the state income tax rate for individuals, estates, and trusts, it does not lower the state alternative minimum tax rate (AMT). The AMT is a tax that some Colorado taxpayers with higher taxable incomes are required to pay in addition to individual state income tax. Have you considered making corresponding adjustments to the state alternative minimum tax rate and the credit that may be applied to a taxpayer's alternative minimum tax liability?
10. Section 1-40-106 (3)(e), C.R.S., requires that the ballot title for initiatives “that reduce state tax revenue through a tax change” begin with the following language:

"Shall there be a reduction to the (description of tax) by (the percentage by which the tax is reduced in the first full fiscal year that the measure reduces revenue) thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to (the three largest areas of program expenditure) by an estimated (projected dollar figure of revenue reduction to the state in the first full fiscal year that the measure reduces revenue) in tax revenue...?"

That statute also states that, if an initiative specifies the public services or programs that are to be reduced by the tax change, those public services or programs must be stated in the ballot title. Given this, do you intend to amend the proposed initiative to specify “the public services or programs that are to be reduced by the tax change”? If so, what public services or programs do you intend to reduce by the tax change?

11. There is a generally applicable severability clause in section 2-4-204, C.R.S., which states:

“If any provision of a statute is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of the statute are valid, unless it appears to the court that the valid provisions of the statute are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or unless the court

determines that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.”

Given this generally applicable severability clause that applies to all Colorado Revised Statutes, it is not necessary to include subsection (4) of Section 2 of the proposed, which contains the severability clause.

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 initiative as follows:

1. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, if you intend to add a new section to the Colorado Revised Statutes, you would include the following amending clause: "In Colorado Revised Statutes, **add** 39-22-104.9 as follows:".
2. Each section in the Colorado Revised Statutes and the Colorado Constitution has a headnote. Headnotes briefly describe the content of the section and are in bold-face type as shown in Technical Comment #3 (below). Please bold the headnote for proposed section 39-22-104.9.
3. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

X-X-XXXX. Headnote. (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

5. 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.

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.
6. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), C.R.S., and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), C.R.S., "means that a person or thing is required to meet a condition for a consequence to apply."