

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

INITIATIVE 2023-2024 #3**MOTION FOR REHEARING**

From: Natalie Menten, Colorado registered elector

Initiative 2023-2024 #3 title was set by the Title Board on December 21, 2022.

Ballot Title and Submission initially set by the board:

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes concerning funding to increase attainable housing, and, in connection therewith, on and after January 1, 2024, imposing a community attainable housing fee, payable by the purchaser, upon the recording of deeds for real property equal to 0.1% of the amount by which the purchase price exceeds \$200,000; defining attainable housing as housing that is attainable by a household that makes between 80% and 120% of the area median income and is priced so that the household need not spend more than 30% of its income on housing costs; requiring the net fee revenue to be deposited in the Colorado attainable housing fund and used only to fund new and existing programs administered by the division of housing that support the financing, purchase, refinancing, construction, maintenance, rehabilitation, or repair of attainable housing in Colorado; and exempting the fee revenue from the limitation on state fiscal year spending?

Hearing December 21, 2022

Single subject approved; staff draft amended; titles set.
Board members: Melissa Kessler, David Powell, Jason Gelender
Hearing adjourned 11:16 AM.

** Unofficially captioned "Establishment of a New Attainable Housing Fee" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.*

I am requesting a rehearing for the following reasons.

SINGLE SUBJECT ISSUES

1. Proposed Initiative #3 contains more than one subject pertaining to what is actually taxed or feed.

The ambiguous provisions listed in 29-4-1202 (Definitions) and 29-4-1203 (Community Attainable Housing Fee) regarding property valuation contain multiple subjects.

Proponents' primary purpose and "fee" (tax) calculation

29-4-1202(13), "The primary purpose of imposing a community attainable house fee upon the transfer of **real property** is to finance attainable housing."

29-4-1202(g) defines value, "the amount of the full actual consideration paid or to be paid for the **real property**, including the amount of any liens on the property created or imposed as a result of the conveyance, minus two hundred thousand dollars."

29-4-1203(b) states that "the **amount of the fee is computed** on the basis of the value of the transferred property **as specified in the deed.**"

It's not uncommon for the purchase amount listed in the deed to include business and personal property and those items may not be listed by separate value. Such items could include: appliances, equipment, tools, artwork, or vehicles.

e.g. JJ Ranch is selling 400 acres with home and barns. The purchase also includes a combine harvester, seeders, balers, ATVs, snowplows, diesel trucks, semi-trucks, dump truck, livestock, plus other business and personal property. The value for all items is wrapped into one price of \$3 million but only \$1.5 million is for the land, home and barns. The remaining \$1.5 million is business or personal property.

As written, Initiative #3 has expanded its primary purpose by including non-real property in calculating the fee to be determined by a county clerk and recorder. This constitutes a fee on personal property which is a separate subject.

2. The Board lacks jurisdiction over Initiative #3, as it violates the Constitution's single-subject requirement.

Proposed initiative #3 inappropriately attempts to skirt Article X, Section 20 (8a) of the Colorado Constitution by labeling the funding mechanism as a "fee".

The Taxpayer's Bill of Rights prohibits real property transfer taxes.

(8) (a) Revenue limits. New or increased transfer tax rates on real property are prohibited. No new state real property tax or local district income tax shall be imposed. Neither an income tax rate increase nor a new state definition of taxable income shall apply before the next tax year.

Initiative #3 doesn't comply with the single-subject requirement because at this moment in time, it seeks to add a "fee" disguised as a property transfer tax which is and has been, prohibited by Colorado Constitution since December 31, 1992. The proponents are trying to amend our constitution without using the proper legal process. See historical reference below.

Current Proposed Initiative #3 vs 2007-2008 - #86

Initiative #3 is not the first time that a property transfer tax has been presented to the Title Board.

See [2007-2008 - #86](#) Colorado Housing Investment Fund

#86 is a worthy reference for previous title board actions. The #86 initiative proponents attempted to create a housing fund to be funded by a property transfer **tax** but they realized they needed to amend the constitution. **#86 was denied title setting.**

Ballot Title and Submission Clause

1. The buyer is paying this “fee” or more accurately a property transfer tax. A tax increase or additional fee doesn’t make housing more attainable for the buyer, it’s not more attainable for them when it costs more. The word “attainable” is inaccurate and should be struck out, also a catch phrase as the buyer pays the fee which makes the housing less affordable or attainable.

2. Section 29-4-1203(4)(a) states the property transfer “fee” will fund – “The construction, maintenance, rehabilitation, or repair of attainable housing in the state for **rental** purposes or home ownership;”

The title and submission clause do not include reference to “rental” and it should be included. Going back to fee on a home buyer – they are now paying to increase rental units. Initiative #3 is not a legit fee.

3. The proponents have said that the funds may not be used for general government purposes. Per 29-4-103(3), the county clerk may retain 5% to cover administration costs. It takes no more time to process a \$400,000 property than a \$4 million dollar property. The money retained by the county clerk in excess of the actual labor cost goes where? Into the clerk’s general fund or special fund? How would we know and it’s likely a different answer from the 64 county clerks. Noting the 5% retention fee would be helpful.

4. The last clause, exempting the fee revenue from the limitation on state fiscal year spending, would be improved by adding “Section 20, Article X of the Colorado Constitution”.

5. The title and submission should all be capitalized and include the estimated first full-year of revenue as required by Section 20, Article X of the Colorado Constitution.

example: SHALL STATE TAXES BE INCREASED by \$70 MILLION IN 2024 AND IN EACH YEAR THEREAFTER FROM A PROPERTY TRANSFER TAX IMPOSED ON BUYERS OF REAL PROPERTY AT A RATE OF 0.1% OF THE AMOUNT BY WHICH THE SALE VALUE OF THE PROPERTY, AS SPECIFIED IN THE RECORDED DEED, EXCEEDS \$200,000; AND SUCH TAXES BE DEPOSITED INTO A NEW STATE HOUSING FUND ADMINISTERED BY THE DIVISION OF HOUSING WITHIN THE DEPARTMENT OF LOCAL AFFAIRS TO BE SPENT ON ATTAINABLE HOUSING FOR HOUSEHOLDS MAKING EIGHTY PERCENT TO 120 PERCENT OF THE AREA MEDIAN INCOME AND PRICED SO THAT HOUSEHOLD NEED NOT SPEND MORE

THAN THIRTY PERCENT OF ITS INCOME ON HOUSING COSTS; REQUIRING THE NET FEE REVENUE TO BE DEPOSITED IN THE COLORADO ATTAINABLE HOUSING FUND AND USED ONLY TO FUND NEW AND EXISTING PROGRAMS ADMINISTERED BY THE DIVISION OF HOUSING THAT SUPPORT THE FINANCING, PURCHASE, REFINANCING, CONSTRUCTION, MAINTENANCE, REHABILITATION, OR REPAIR OF ATTAINABLE HOUSING FOR RENT OR HOME OWNERSHIP IN COLORADO; AND SUCH TAX REVENUE SHALL BE EXEMPT FROM REVENUE THAT THE STATE IS OTHERWISE REQUIRED TO REFUND TO TAXPAYERS IN YEARS IN WHICH A REFUND IS DUE?

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