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Colorado General Assembly

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MEMORANDUM

TO: Scott Wasserman and Kevin Vick

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: April 5, 2023

SUBJECT: Proposed initiative measure 2023-2024 #41, concerning assessment rates

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 initiative 2023-2024 #42. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memorandum for proposed initiative 2023-2024 #42, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in the other memorandum may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

Purposes

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

1. To repeal the constitutional requirement that each property tax levy be uniform upon all real and personal property within the territorial limits of the authority levying the tax and that is not exempt from taxation.
2. To provide that for property tax years commencing on and after January 1, 2024, the valuation for assessment of certain types of property be at a new assessment rates as follows:
 - a. The valuation for assessment of nonresidential property that is classified as lodging property and has an actual value of less than three million dollars is twenty-six percent minus the lesser of thirty thousand dollars or the amount that reduces the valuation for assessment to one thousand dollars;
 - b. The valuation for assessment of real and personal property that is classified as agricultural property or renewable energy production property that as an actual value less than three million dollars is twenty-six percent;
 - c. The valuation for assessment of nonresidential property that is not specified in § 39-1-104 (1) and (1.8)(a) and has an actual value of less than three million dollars is twenty-six percent;
 - d. The ratio for valuation for assessment for multi-family residential real property is six and one-half percent of the actual value; and
 - e. The ratio for valuation for assessment for residential real property other than multi-family residential real property and other than single family residential real property with actual value in excess of two million dollars or that is not owner-occupied is 6.5% of the actual value.
3. To repeal the provision in existing law concerning the calculation of the ratio of valuation for assessment of all residential real property other than multi-family residential real property for the property tax year commencing on January 1, 2024.
4. To allow voters to authorize the state to retain and spend state revenues in excess of the limitation on state fiscal year spending that the state would

otherwise be required to refund under section 20 (7)(d) of article X of the state constitution for the purposes of:

- a. Supplementing the state's share of a district's total program to offset any reduction in revenue available to fund the district's share of its total program as a result of the three percent property tax revenue limitation in the proposed initiative;
- b. Funding payments or grants to local government entities or special districts for fire protection programs, services, and equipment to offset any reduction in revenue to the local government entities or special districts for these purposes as a result of the three percent property tax revenue limitation in the proposed initiative; and
- c. Funding payments or grants to local government entities or special districts for water conservation programs and services to offset any reduction in revenue to the local government entities or special districts for these purposes as a result of the three percent property tax revenue limitation in the proposed initiative.

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. Is it the intent of the proposed initiative that the reduction in assessment rates set forth in the proposed initiative all be permanent for property tax years commencing on and after January 1, 2024? If so, why does the language throughout the proposed initiative say that the valuation for assessment or the ratio for valuation of assessment "is temporarily reduced"?
3. Regarding Section 2 of the proposed initiative:
 - a. With respect to the proposed amendment to subsection (1)(b) concerning nonresidential property that is classified as lodging property:
 - i. Should the language read that the valuation for assessment is "twenty-six percent of an amount equal to the actual value minus the lesser of thirty thousand dollars or the amount that reduces

the valuation for assessment to one thousand dollars[]"? If not, please explain how that language should be interpreted?

- ii. Does the calculation for the assessment rate that is the percentage "minus the lesser of thirty thousand dollars or the amount that reduces the valuation for assessment to one thousand dollars" violate section 6 of article X of the Colorado constitution, which states that "[A]ll laws exempting from taxation property other than that specified in this article shall be void[]", by creating a property tax exemption?
 - b. Is it the intent of the proposed initiative that for the property tax year commencing on January 1, 2024, real and personal property that is classified as agricultural property or renewable energy production property that has an actual value of three million dollars or more be assessed at a rate of twenty-six and four-tenths percent of the property's actual value, and for property tax years thereafter that such property be assessed at a rate of twenty-nine percent of the property's actual value?
 - c. The amendment to subsection (1.8)(b) states that the valuation for assessment is twenty-six percent for "this property" that has an actual value less than three million dollars. What is meant by "this property"? Does it have any intended impact on the temporary reduction in valuation for assessment provided for in subsection (1.8)(b)(I) for property listed by the assessor under any improved commercial subclass codes?
4. Regarding Section 3 of the proposed initiative:
- a. With respect to the proposed amendment subsection (3)(q) concerning multi-family residential real property, should the language read "the ratio **of** valuation for assessment" instead of "the ratio for valuation for assessment"?
 - b. Is the assessment ratio set forth in the proposed amendment to subsection (3)(q) intended to be calculated from the actual value of the property?
 - c. Is the intent of the amendment to subsection (3)(q) that multi-family residential real property has an assessment rate of six and one-half percent of the property's actual value for property tax years commencing on and after January 1, 2024?

- d. The amendment to subsection (3)(r) states that for the property tax year commencing on January 1, 2024, and each property tax year thereafter, the ratio of valuation for assessment "for all residential real property other than multi-family residential real property and other than single family residential real property with actual value in excess of two million dollars or that is not owner-occupied" will be six and a half percent of the actual value.
 - i. Is the assessment ratio intended to be calculated from the actual value of the property?
 - ii. Is it the intent of the proposed initiative that for property tax years commencing on and after January 1, 2024, unless the property is multi-family residential real property, single family residential real property with actual value of more than two million dollars, or single family residential real property that is not owner-occupied, the ratio of valuation for assessment for all other residential real property is 7.15% of such property's actual value?
 - iii. Is it the intent of the proposed initiative that single family residential real property with an actual value of two million dollars or less have an assessment rate of six and one-half percent of the property's actual value for property tax years commencing on and after January 1, 2024?
 - iv. Is it the intent of the proposed initiative that single family residential real property that is owner-occupied have an assessment rate of six and one-half percent of the property's actual value for property tax years commencing on and after January 1, 2024?

5. Regarding Section 5 of the proposed initiative:

- a. Is the amount of "state revenues in excess of the limitation on state fiscal year spending" (excess state revenues) that the proposed initiative authorizes the state to retain and spend limited to the amount needed to "off-set" reductions in local government revenue resulting from the proposed initiative or does the proposed initiative authorize the state to retain and spend all excess state revenues? If the proposed initiative authorizes the state to retain and spend all excess state revenues, can the

state spend the retained excess state revenues above the amounts needed for the purposes set forth in the proposed initiative for other purposes?

- b. The proposed initiative states that the state is authorized to retain and spend, as a voter-approved revenue change, state revenues in excess of the limitation on state fiscal year spending for the purpose of "supplementing the state's share of a district's total program as defined in section 22-54-106(1)(b), C.R.S., of the Public School Finance Act of 1994, or any successor act, to off-set any reduction in revenue available to fund the district's share of total program funding...". How will this provision impact the manner in which the state funds its share of a district's total program under current law?
- c. The proposed initiative states that the state is authorized to retain and spend, as a voter-approved revenue change, state revenues in excess of the limitation on state fiscal year spending for the purposes of "funding payments or grants to local government entities or special districts for fire protection programs, services, and equipment" and "funding payments or grants to local government entities or special districts for water conservation programs and services".
 - i. What is meant by the language "funding payments or grants"?
 - ii. What is meant by the term "local government entities"? Would the proponents consider defining the term?
 - iii. Does a local government entity or a special district have to provide, or have the authority to provide, fire protection programs, services, and equipment in order to receive payments or grants from the state pursuant to the provisions of the proposed initiative?
 - iv. Does a local government entity or a special district have to provide, or have the authority to provide, water conservation programs or services in order to receive payments or grants from the state pursuant to the provisions of the proposed initiative?
- d. How will the state calculate the amounts that are to be distributed to districts for total program funding, to local government entities, or to special districts in accordance with the requirements in the proposed initiative?

- e. A forecast of state revenue subject to the limitation on state fiscal year spending set forth in section 20 of article X of the state constitution is not available beyond state fiscal year 2024-2025. If such state revenue is under the Referendum C cap in a future year, is it the proponent's intent that any revenue reduction under the proposed initiative would result in reduced amounts in funding payments and grants to local governments and special districts?
6. How will the timing of the effective date of the proposed initiative interact with the statutory timelines for valuation, for example the requirement in § 39-5-128 (1), C.R.S., that no later than by August 25 of each year, the assessor certifies to various local taxing entities the total valuation of assessment of all taxable property located in the boundaries of the local taxing entity? How will assessors comply with their statutory duties for the property tax year 2024?

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. 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

In section 2 of the proposed initiative, the new statutory language beginning with "and except that" doesn't clearly fall under a numbered or lettered statutory subdivision. The proponents may consider restructuring the amendment to (1.8)(b) to read as follows:

"(b) The valuation for assessment of all nonresidential property that is not specified in subsection (1) or (1.8)(a) of this section is twenty-nine percent of the actual value thereof; except that:

(I) For the property tax year commencing on January 1, 2023, the valuation for assessment of this property is temporarily reduced to:

(I) (A) For all of the property listed by the assessor under any improved commercial subclass codes, twenty-seven and nine-tenths percent of an amount equal to the actual value minus the lesser of thirty thousand dollars or the amount that reduces the valuation for assessment to one thousand dollars; and

(I) (B) Twenty-seven and nine-tenths percent of the actual value of all other nonresidential property that is not specified in subsections (1), (1.8)(a), and (1.8)(b)(I) of this section.

(II) FOR PROPERTY TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2024, THE VALUATION FOR ASSESSMENT OF THIS PROPERTY THAT HAS AN ACTUAL VALUE LESS THAN THREE MILLION DOLLARS IS TEMPORARILY REDUCED TO TWENTY-SIX PERCENT."

In Section 5 of the proposed initiative, the proponents may consider relabeling subparagraphs (i), (ii), and (iii) as roman numerals (I), (II), and (III).

2. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate the first letter of the first word of each entry of an enumeration paragraphed after a colon.
3. In the Colorado Revised Statutes, names of acts are initial capped and put in quotation marks following the word "the". In subsection (1)(c)(i) of Section 5 of the proposed initiative, the proponents may consider putting quotation marks around "Public School Finance Act of 1994".
4. The following words are misspelled: In subsection (1)(c)(i) of Section 5 of the proposed initiatives, "off-set" should be spelled "offset".