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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 4, 2023
SUBJECT: Proposed initiative measure 2023-2024 #35, concerning property tax revenue

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 2023-2024 ##36 to 38. Comments and questions addressed in those other memoranda for proposed initiatives 2023-2024 ##36 to 38 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 the **Colorado Revised Statutes** appear to be:

1. To ensure that tax revenue on property does not increase by more than three percent annually unless the property is nonresidential real property with actual appraised value of more than three million dollars, adjusting for inflation, or the property is single family residential real property with actual appraised value of more than two million dollars, adjusting for inflation.
2. 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. Section 1 (5.5) of article V of the state constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. The initiative states that "no tax revenue on a property shall increase...".
 - a. What is meant by "tax revenue"?
 - b. What is meant by "a property"? Is the proposed initiative meant to affect personal property and real property?

- c. Is this language meant to limit the amount of aggregate mill levies all governmental entities can impose on a property?
 - i. If so, how would that be implemented? What would happen if revenue in excess of the limit is collected? Will it need to be refunded?
 - ii. Will governmental entities be required to coordinate their mill levies?
 - iii. Who is ultimately responsible for ensuring that tax revenue does not increase in accordance with the provisions of the proposed initiative?
 - iv. Does the proposed initiative have any implications for the duty of the board of county commissioners to levy property taxes pursuant to § 39-1-111, C.R.S.?
3. What is meant by the term "actual appraised value" as it is used in the proposed initiative?
4. What is meant by the term "nonresidential real property" as it is used in the proposed initiative? Is the term meant to encompass all real property that is not "residential real property" as that term is provided for in section 3 (1)(b) of article X of the state constitution?
5. What is meant by the term "single family residential real property"?
6. What is meant by the term "inflation"? Does the term as used in the proposed initiative mean increases in value determined by annual assessments and the biennial reassessment cycle, the consumer price index, a home price index, or some other measure either nationally or locally?
7. What period of time should be considered when determining the amount of inflation relevant to determine the "actual appraised value"?
8. For "nonresidential real property with actual appraised value in excess of three million dollars, adjusted for inflation" and for "single family residential real property with actual appraised value in excess of two million dollars, adjusted for inflation", is there any limitation on the revenue that can be collected on the property?

- a. If there is not any limitation on the revenue that can be collected, would governmental entities need to bifurcate the mill levies they impose based on type of property?
 - b. Who would be responsible for accounting for mill levies imposed in such a manner?
9. Would the limitation on tax revenue increases on a property apply regardless of changes in use, improvements, sale, unusual conditions, or other factors that impact value?
10. Do the proponents foresee any impact that the proposed initiative will have on property valuation as set forth in existing law?
11. If property tax revenue on a property decreases in any year, does the limitation apply to the lower revenue from the previous year, or some other time period?
12. How does reduced revenue under the measure interact with the state backfill requirements pursuant to Senate Bill 22-238 for the 2023 and 2024 property tax years?
13. What is the purpose of the sentence stating, "Nothing in this subsection (1)(a) of section 3 or [sic] article X of the constitution shall be construed to change the applicability of the homestead exemption for qualifying seniors and qualifying disabled veterans as set forth in section 3.5 of article X of the constitution"?
14. 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?
15. 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?
16. 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".
 - a. What is meant by the language "funding payments or grants"?
 - b. What is meant by the term "local government entities"? Does the term necessarily include special districts? Would the proponents consider defining the term "local government entities"?
 - c. 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?
 - d. 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?
 17. 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?
 18. 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?
 19. If the proposed initiative were adopted, how should revenue reductions be estimated in future years considering potential changes in assessment rates, local mill levies, or new voter-approved local property taxes?
 20. Taking into consideration the requirements of the Local Government Budget Law of Colorado set forth in §§ 29-1-101, et al., C.R.S., in particular the

requirement that a budget be prepared and submitted to governing bodies no later than October 15 of each year pursuant to § 29-1-105, C.R.S., the requirement that governing bodies must certify their mill levies by no later than December 15 of each year to the board of county commissioners pursuant to § 39-5-128, C.R.S., and the timing for payment of taxes pursuant to § 39-10-102, C.R.S., will there be enough time after adoption of the initiative for the state and local governments to implement this initiative?

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 proponents may consider changing the subparagraphs labelled (i), (ii), and (iii) to 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 capitalization where appropriate. The first

- letter of the first word of each entry of an enumeration paragraphed after a colon should be large-capitalized.
3. It is standard drafting practice for "except that" to be preceded by a semicolon.
 4. When referencing the title of an act in the Colorado Revised Statutes, the first letter of each word in the act name should be large-capitalized and the entire name after the word "the" should be placed in quotation marks. In section 2 of the proposed initiative, the proponents may consider putting quotation marks around "Public School Finance Act of 1994".
 5. The following words are misspelled:
 - a. In the last sentence of Section 1, the word "or" should be "of" in the following language: "...this subsection (1)(a) of section 3 or article X of the constitution...".
 - b. In Section 2, the word "off-set" should not be hyphenated and should be spelled "offset" in subsections (1)(c)(i), (1)(c)(ii), and (1)(c)(iii) of the proposed initiative.