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MEMORANDUM

To: Chris deGruy Kennedy and Kiyana Newell

From: Legislative Council Staff and Office of Legislative Legal Services

Date: January 20, 2026

Subject: Proposed initiative measures 2025-2026 #199, #200, #201, and #202, concerning a graduated state income tax

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Legislative Council Staff 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 initiatives.

The purpose of this statutory requirement of the directors of Legislative Council Staff 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 proposals and to avail the public of the contents of the proposals. Our first objective is to be sure we understand your intended purposes of the proposals. We hope that the comments and questions in this memorandum provide a basis for discussion and understanding of the proposals. Discussion between designated representatives or their legal representatives and employees of the Legislative Council Staff and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

Proposed initiatives **2025-2026 #199** through **#202** were submitted by the same designated representatives as a part of a group of related proposed initiatives, including proposed initiatives **2025-2026 #203** through **#210**. The comments and questions raised in this memorandum do not include comments and questions that were addressed in the memorandum for proposed initiatives **2025-2026 #203** through **#206** or for proposed initiatives **2025-2026 #207** through **#210**, except as necessary to fully

understand proposed initiatives **2025-2026 #199** through **#202**. Comments and questions addressed in those memoranda may also be relevant, and those questions and comments are considered part of this memorandum.

Earlier versions of these proposed initiatives, proposed initiatives **2025-2026 #189** through **#196**, submitted by the same designated representatives, were the subject of a memorandum dated January 2, 2026, and were discussed at a public meeting on January 6, 2026. The comments and questions raised in this memorandum do not include comments and questions that were addressed in the earlier memorandum or at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiatives. Prior comments and questions that are not restated in this memorandum continue to be relevant and are considered part of this memorandum.

Purposes

Purposes for Proposed Initiatives 2025-2026 #199 through #202

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

1. Make legislative findings and declarations;
2. Repeal the language in section 20 (8)(a) of article X of the Colorado Constitution that specifies that all taxable net income is required be taxed “at one rate, excluding refund tax credits or voter-approved tax credits,”;
3. Impose, commencing on or after January 1, 2027, a graduated state income tax on the federal taxable income of every individual, estate, and trust;
4. Specify that income from the sale or exchange of a principal residence exceeding the amount excluded from federal taxable income under the federal internal revenue code is subject to a 4.4% state income tax;
5. Impose, commencing on or after January 1, 2027, a graduated state income tax on the Colorado net income of every domestic C corporation, foreign C corporation, and combined group doing business in the state;
6. Designate, for each state fiscal year commencing on or after January 1, 2026, “all revenue collected under the income tax rates” of the graduated state income taxes on individuals, estates, trusts, and corporations, “in

excess of the revenue that would be generated in any such state fiscal year by applying the income tax rate that existed as of December 31, 2026,” (excess revenue) as “a voter approved revenue change under section 20(7)(d) of article X of the Colorado constitution,” and state that such excess revenue “may be collected, kept, and spent notwithstanding any other limits in subsection 20(7)(d)” of article X of the Colorado Constitution;

7. Create the Colorado’s future account (account) in the general fund, which consists of an amount of money equal to the amount of excess revenue specified in the proposed initiatives;
8. Require the General Assembly to appropriate or transfer the money in the account for certain programs and purposes, including programs and purposes related to:
 - a. For proposed initiative #199, public school education, including specified purposes such as kindergarten through 12th grade, early childhood, and post-secondary education; health care, including specified purposes; and child care, including specified purposes, as set forth in the proposed initiative;
 - b. For proposed initiative #200, public school education, health care, and child care;
 - c. For proposed initiative #201, kindergarten through 12th grade public school education, including specified purposes; health care, including specified purposes; and early child care and education, including specified purposes, as set forth in the proposed initiative; and
 - d. For proposed initiative #202, kindergarten through 12th grade public education, health care, and early child care and education;
9. Specify that the money spent from the account:
 - a. For proposed initiatives #199 and #201, “must supplement and not supplant current levels of appropriations” for the programs and purposes set forth in the proposed initiatives; and
 - b. For proposed initiatives #200 and #202, is “intended to supplement and not supplant current levels of appropriations” for the programs and purposes set forth in the proposed initiatives;

10. For each fiscal year commencing on or after January 1, 2026, require the director of research of the legislative council to annually prepare a report “to be transmitted to the general assembly and made publicly available,” that “must at a minimum contain the [...]amount of such excess revenue; and [...]specification and description of the amounts, programs and purposes to which such revenue has been allocated and appropriated or transferred”; and
11. Require the office of the state auditor to audit the annual report prepared by the director of research of the legislative council.

Substantive Comments and Questions

The substance of the proposed initiatives 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 each of the proposed initiatives?
2. 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. Because the proposed initiatives do not contain an effective date, this would be the default effective date for each of the proposed initiatives. Does this default effective date satisfy your intent? If not, the designated representatives should include the desired effective date that is not earlier than the default effective date to comply with this constitutional requirement.
3. The following comments and questions relate to the amendment of section 20 (8)(a) of article X of the Colorado Constitution (TABOR) in section 2 of the proposed initiatives:
 - a. How is the amendment to TABOR in the proposed initiatives different from the amendment to TABOR in proposed initiatives 2025-2026 #203 to #206, which were submitted at the same time as these measures?

- b. How is the amendment to TABOR in the proposed initiatives different from the amendment to TABOR in proposed initiatives 2025-2026 #207 to #210, which were submitted at the same time as these measures?
 - c. How is the amendment to TABOR in the proposed initiatives different from the amendment to TABOR in proposed initiatives 2025-2026 #189 to #192, which were submitted by the same proponents on a prior date?
 - d. How is the amendment to TABOR in the proposed initiatives different from the amendment to TABOR in proposed initiatives 2025-2026 #193 to 196, which were submitted by the same proponents on a prior date? In other words, what is the effective difference between keeping the phrase “no added tax or surcharge” versus only the phrase “no added surcharge”?
 - e. Pursuant to the amendment to TABOR in the proposed initiatives, section 20 (8)(a) will state, “Any income tax law change after July 1, 1992 shall also require all taxable net income to be taxed . . . with no added tax or surcharge.” Since taxable income is by definition and law already subject to income tax, what is the purpose of the amendment? Does the amendment render this constitutional language superfluous or without purpose?
4. Regarding the proposed statutory changes to sections 39-22-104 and 39-22-301, C.R.S., in sections 3 and 4, respectively, of the proposed initiatives,
- a. both proposed new subsection (1.8) of section 39-22-104, C.R.S., and proposed new subsection (1)(d)(I)(L) of section 39-22-301, C.R.S., state that the new graduated income tax brackets apply “with respect to taxable years commencing on or after January 1, 2027”. Does this mean the graduated income tax system in the proposed initiatives is not intended to apply to the 2026 income tax year for which taxes are being paid in 2027?
5. The following comments and questions relate to proposed section 24-77-103.3, C.R.S., to be added to the Colorado Revised Statutes, in section 5 of the proposed initiatives:
- a. State fiscal years commence on July 1. Proposed section 24-77-103.3 (1), C.R.S., refers to a state fiscal year “commencing **on** or after January 1, 2026”. (Emphasis added.) Do the proponents intend for this to refer to state fiscal years that only commence after January 1, 2026 (which means the 2026-27 state fiscal year that commences on July 1, 2026, and later

state fiscal years), or do the proponents intend for this to refer to state fiscal year 2025-26 and later state fiscal years? If the proponents intend the second, would they consider amending this language to refer to state fiscal years commencing on or after July 1, 2025? If the proponents intend the first, would they consider amending this language to refer to state fiscal years commencing on or after July 1, 2026?

- b. Are all uses of the word “revenue” in proposed section 24-77-103.3 (1), C.R.S., only meant to refer to income tax revenue? If so, would the proponents consider amending the subsection to state that?
- c. When is the amount of “excess revenue” specified in proposed section 24-77-103.3 (1), C.R.S., known for a tax year or a state fiscal year?
- d. How does the date when “excess revenue” is known interact with the General Assembly’s appropriation or transfer of money from the Colorado’s future account created in proposed section 24-77-103.3 (2), C.R.S.?
- e. What happens if the General Assembly transfers or appropriates an amount from the Colorado’s future account that is either greater than or less than actual “excess revenue”?
- f. How is it determined whether an appropriation or transfer supplements and does not supplant “current levels of appropriations thereto” as required in proposed section 24-77-103.3 (2), C.R.S.?

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 meeting only if the designated representatives so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiatives as follows:

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 4 of the proposed initiatives, the proponents have further divided sub-subparagraphs into small roman numerals. This is not standard drafting practice, as sub-subparagraphs are the last possible division in the Colorado Revised Statutes.

2. It is standard drafting practice for the second to last item in a numbered or lettered list to end in a conjunction that connects the items, either "; and" or "; or". For example, proposed subsection (2)(a)(I) in section 1 of the proposed initiatives should end with "; and".
3. Although the text of the proposed initiatives 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 capitalized, as well as the first letter of a sentence.
4. The following is the standard drafting language used for creating a definitions section:

As used in this [title/article/part/section/subsection], unless the context otherwise requires:

(1) "[The term]" means [the definition of the term].

(2) "[The term]" means [the definition of the term].

In section 5 (1) of the proposed initiatives, there appears to be a definition “(“excess revenue”)”. Consider creating a separate subsection for this definition.

5. It is standard drafting practice to use "money" instead of "moneys."