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## MEMORANDUM

**TO:** Dan Ritchie and Albert Yates

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**DATE:** March 18, 2016

**SUBJECT:** Proposed initiative measure 2015-2016 #117, concerning Retention of Excess State 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 2015-2016 #116 and #118. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memorandum for proposed initiative 2015-2016 #116, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum. Only new comments and questions are included in this memorandum.

## **Purposes**

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

1. To de-Bruce all state revenue for the 2016-17 fiscal year through the 2025-26 fiscal year;
2. Beginning in the 2026-27 fiscal year, to annually de-Bruce all state revenue up to the 2016 excess state revenues cap each fiscal year; and
3. To allow the state to use the state revenue it retains and spends as a result of the proposed initiative to fund education and transportation projects, and possibly mental health services and senior services.

## **Substantive Comments and Questions**

The substance of the proposed initiative raises the following comments and questions:

1. Is the effect of paragraph (b) of subsection (1) of the proposed initiative that the state will be able to retain and spend all state revenues that are less the 2016 election excess state revenues cap?
2. Are any state revenues that are equal to or greater than the 2016 election excess state revenues cap refunded under subsection (7) (d) of TABOR?
3. Are there any changes to subsections (2) to (4) of the proposed initiative compared to proposed initiative 2015-2016 #116?
4. Is it your intention that the state controller be responsible for determination of the 2016 election excess state revenues cap?
5. In determining the 2016 election excess state revenues cap, is it your intent that the state controller will:
  - a. Identify the fiscal year within the specified range that has the highest total state revenues, and annually adjust that amount by inflation and other factors for the 2026-27 fiscal year and each year thereafter;
  - b. Identify the fiscal year within the specified range that has highest total state revenues, and annually adjust that amount by inflation and other factors beginning with the next fiscal year after the fiscal year with the highest total state revenues and each year thereafter; or

- c. Separately adjust each of the ten years in the specified range for inflation and other factors, and identify the fiscal year with the highest adjusted revenue as of the 2026-27 fiscal year as the 2016 election excess state revenues cap?
6. The proponents may consider clarifying the definition of "2016 election excess state revenues cap" so that it is not subject to the multiple interpretations above.

## **Technical Comments**

No further technical comments are raised in this memorandum.