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MEMORANDUM

TO: Jason Legg and Scott Cadiz

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: February 5, 2016

SUBJECT: Proposed initiative measure 2015-2016 #89, concerning the Voter Tax Credit

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.

An earlier version of this proposed initiative, proposed initiative, 2015-2016 #58, was the subject of a letter to the proponents dated November 25, 2015, advising the proponents that no review and comment hearing is necessary pursuant to section 1-40-105 (2), C.R.S. An earlier version of this proposed initiative, proposed initiative 2015-2016 #49, was the subject of a memorandum dated November 16, 2015, which was discussed at a public meeting on November 18, 2015. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, except as necessary to fully un-

derstand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

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

1. To increase electoral participation and increase the likelihood that elected officials will feel accountable to the entirety of the electorate, thereby diluting the influence of contributions and expenditures from large corporations and special interests;
2. To impose a tax of one-half percent on Colorado taxable income in excess of \$405,000, to be adjusted for inflation, of every individual, estate, and trust; and
3. To use the revenue generated by said taxes to create a tax credit available to any individual who casts a ballot in a Colorado general election.

Substantive Comments and Questions

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

1. Why did the proponents decide to change the proposed initiative so that, under the latest iteration, it amends the state constitution instead of the Colorado Revised Statutes? Are the proponents aware that, if the proposed amendment is added to the state constitution, it may only be amended by a subsequent amendment to the state constitution? Is this your intention?
2. With respect to the language in the declaration portion of the proposed initiative, how will giving each voter who casts a ballot a relatively modest tax credit increase the likelihood that elected officials will “feel accountable to the entirety of the electorate” when arrayed against the allegation elsewhere in the declaration that the government disparately represents large corporations and special interests?
3. Subsection (2) (A) of the proposed initiative says that the tax on income in excess of \$405,000 is to be adjusted for inflation. When does the inflation adjustment start? Is the tax that is imposed on \$405,000 in the 2017 income tax year to be adjusted for inflation in future tax years or is the amount of the tax to be adjusted for inflation upon passage of the proposed initiative in 2016?

4. Is the tax credit intended as an incentive to get more people to cast a ballot in general elections? If so, do the proponents have any empirical data that would demonstrate by how much turnout in general elections will be increased if the tax credit were in effect?
5. Subsection (9) of the proposed initiative states that any funds not claimed for the particular general election are required to be refunded in the next fiscal year in a reasonable manner. How is the “reasonableness” of the method of refunding the moneys to be determined? Which person or entity decides how the moneys are to be refunded? What methodology will be used to determine the amount of each refund to be paid? What do the proponents consider a reasonable method of refunding such moneys?
6. Section 20 (8) (a) of article X of the Colorado constitution (TABOR) states that “[a]ny income tax law change after July 1, 1992 shall also require all taxable net income to be taxed at one rate...with no added tax or surcharge.” How is the proposed measure to be reconciled with this provision of TABOR or do proponents assume this potential legal conflict would be addressed by the courts? If this is a modification of or an exception to TABOR, does it fit within the single subject of the proposed initiative pursuant to article V, section 1 (5.5) of the Colorado constitution?

Technical Comments

1. To conform to standard drafting practice, the headnote of the new section should be shown in lower case type as in the following example:

Section 13. Voter tax credit - declaration.
2. It is standard drafting practice when referencing statutory sections to include the word "section" before the number, and if necessary, to list C.R.S. after the number. For example, "section 39-22-104, C.R.S."
3. Since the number of the C.R.S. provisions referenced in the proposed initiative may change over time, statutory citations should be followed with a phrase such as “or any successor section” or words of comparable meaning.