

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Carol Hedges and Steve Briggs

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: January 17, 2019

SUBJECT: Proposed initiative measure 2019-2020 #180, concerning Voter Approval of Certain Tax Increases

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 2019-2020 #179 and #181 to #195. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2019-2020 #179 and #181 to #195, 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.

Purposes

The major purpose of the proposed amendment to the Colorado Constitution appears to be to reiterate the requirement that the state have voter approval for any new state tax or state tax rate increase that applies to taxpayers whose income is in the lowest 90% of income subject to tax.

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. The following questions and comments relate to how subsection (1) of the proposed initiative relates to article X, section 20 of the Colorado Constitution (TABOR):
 - a. Under TABOR (4)(a), the state "must have voter approval in advance for . . . any new tax [or] tax rate increase." Do you intend to repeal this requirement and replace it with your new one?
 - b. If not, what does this provision add to TABOR (4)(a)? For example, are there any taxes that are covered by this new provision that would not be covered by TABOR (4)(a)?
 - c. Do you intend for subsection (1) to limit when the state is required to have voter approval for valuation for an assessment ratio increase for a property class, or an extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain to any district?
 - d. Do you intend for subsection (1) to limit when the state is required to get voter approval for a new state tax or state tax rate increase under TABOR (4)(a)?

- e. TABOR (4)(a) requires voter approval for a new state tax or state tax rate increase that applies to taxpayers in the highest 10% of income subject to tax. How would subsection (1) change that requirement?
 - f. Do you intend to create an exemption from the current voter approval requirement for a new state tax or a state tax rate increase that applies to taxpayers whose income is in the highest 10% of income subject to tax? If so, how does the language of the proposed initiative accomplish that goal?
 - g. Unlike TABOR (4)(a), which requires "voter approval in advance" for certain tax changes, the proposed initiative simply requires voter approval. Is the "voter approval" described in the proposed initiative the same? If not, do you intend to modify when voter approval under TABOR (4)(a) must be sought?
 - h. If you want to override or modify any portion of TABOR (4)(a), you might want to make that clear in this amendment or by amending TABOR itself.
3. What does the phrase "whose income is in the lowest ninety percent of income" mean?
 4. Insofar as the lowest 90% of income must be determined based on income data from the Colorado Department of Revenue, does "income" mean federal taxable income? And is it based only on Coloradans?
 5. Should corporate and individual income be considered together for purposes of determining the amount of the lowest 90% of income?
 6. TABOR (8)(a) requires all taxable net income to be taxed at one rate. Therefore, for purposes of the income tax, would voter approval be required for any state tax rate increase?
 7. For purposes of subsection (1), does it matter if, in addition to taxpayers whose income is in the lowest 90% of income, the new tax or tax rate increase also applies to taxpayers whose income is in the highest 10% of income too?
 8. What is the purpose of subsection (2)?
 9. In the absence of subsection (2), what other income data is available and might be considered for purposes of subsection (1)?

Technical Comments

There are no new technical comments.