

STATE OF COLORADO

Colorado General Assembly

Natalie Mullis, Director
Legislative Council Staff

Colorado Legislative Council
200 East Colfax Avenue Suite 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
Email: lcs.ga@state.co.us



Sharon L. Eubanks, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 East Colfax Avenue Suite 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Facsimile 303-866-4157
Email: olls.ga@state.co.us

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 #181, concerning Voter Approval of Tax Measures

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, #180 and #182 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, #180 and #182 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 create an exception to the prior voter approval requirement for new state taxes and state tax rate increases that is based on the state's projected revenue from such tax measures.

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. Voter approval is already required for a tax measure under article X, section 20 (4)(a) of the Colorado Constitution (TABOR). The proposed initiative reiterates this requirement, but then creates an exception. Therefore, it appears that this exception likewise applies to TABOR (4)(a). Is that your intent?
3. If this provision is intended to be an exception to an existing constitutional requirement, why not expressly describe it as such or amend the existing provision?
4. Does the exception have any impact on the other tax changes identified in TABOR (4)(a) that require prior voter approval?
5. Does the proposed initiative have any effect on when local districts may require prior voter approval under TABOR (4)(a)?
6. If the state is able to enact a tax measure without prior voter approval, is the revenue fiscal year spending subject to the state fiscal year spending limit set forth in TABOR (7)?
7. If the state is required to make a TABOR refund during a fiscal year that such a tax measure becomes effective, the additional revenue will increase the amount of the state's refund. Is that correct?

8. If the General Assembly wanted to be able to retain and spend all of the revenue associated with the tax measure so that it would constitute a voter-approved revenue change to the state fiscal year spending limit, could it refer the tax measure to the voters for their approval even though the exception may apply?
9. Both of the conditions identified in subsection (1)(b) must be met for the voter approval exception to apply. Is that correct?
10. Does it matter if the state underestimates the projected revenue and it turns out that the actual revenue causes the revenue from the new tax measures to exceed the amounts necessary for the voter approval exception to apply?
11. If the exception does not apply, and the state is required to have voter approval under TABOR and the proposed initiative, then do the TABOR election provisions that are not in conflict with the proposed initiative—such as the election notice requirements or ballot language—still apply?
12. For purposes of the definitions in proposed subsections (3)(b) and (3)(c):
 - a. The date a measure takes effect is usually when a statutory obligation or duty will begin to apply. For purposes of a tax measure, does it take effect when the tax will first be imposed?
 - b. If the General Assembly enacts legislation with a tax measure, which is signed by the Governor on May 1, 2020, that has a tax that starts on January 1, 2022. When does this tax measure take effect?
 - c. If in the prior example, the tax measure takes effect on January 1, 2022, then for purposes of the calculation described in subsection (3)(b), is the fiscal year 2022-23 the next complete fiscal year?
 - d. Do you include the proposed tax measure, which will only take effect if it becomes law, when considering whether the exception may apply? Or do you only look at those that have been enacted?
 - e. Is revenue from an initiated tax measure approved by voters included in the calculations?
 - f. If a tax measure is enacted in a bill that also reduces tax revenue, would the net of these changes be used for purposes of this calculation? (The proposed initiative would not appear to not allow a netting of the revenue.)

- g. For purposes of subsection (3)(c), is "the next "complete fiscal year" the same for tax measures that took effect in preceding years as those that are also included in subsection (3)(b)?
 - h. If a tax measure has a phased-in rate, what rate should be used for purposes of calculating the revenue? Is it whatever rate applies for "the next complete fiscal year" that is used for purposes of the calculation?
13. What is the "last complete fiscal year" for which fiscal year spending is determined? Complete as of what—the date the tax measure is enacted, it takes effect, or something else?
 14. To the extent there are tax measures that took effect in the preceding four fiscal years prior to a tax measure being considered, is the revenue from those measures included in the fiscal year spending in the "last complete fiscal year"?
 15. If a subsequent tax measure is approved that would cause the state's projected revenue in a fiscal year to exceed the limits in either subsection (1)(b)(I) or (1)(b)(II), would that impact of the previously enacted taxes that became effective without voter approval? Does the exception still apply to them?
 16. The definition of "fiscal year spending" in TABOR (2)(e) is similar to the definition in proposed subsection (3)(a), but not quite the same. The exclusion in the proposed initiative does not include "those for refunds made in the current or next fiscal year." By not including this language in the proposed initiative definition, do you intend to include refunds in the calculation used to determine whether the voter approval exception applies?

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. It is standard drafting practice to add "**- definition**" to the end of a headnote when making a definition.
2. The quotation mark in the beginning of subsection (3)(c) should not be bold.