

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: February 4, 2019

SUBJECT: Proposed initiative measure 2019-2020 #251, concerning Policy Changes Pertaining to State Income Taxes

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 #251 to #256, and earlier versions of this proposed initiative, proposed initiatives 2019-2020 #179 to #195, were the subject of memoranda dated, January 17, 2020, which were discussed at a public meeting on January 22, 2020. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meetings, except as necessary to fully understand 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 and the Colorado Revised Statutes appear to be:

1. To repeal the constitutional requirement that the income tax have a single rate;
2. To establish a graduated individual income tax that lowers the income tax rate for the first bracket and increases the tax rate for the three brackets above it;
3. To allow the state to retain and spend the additional revenue from the graduated income tax notwithstanding any constitutional limits;
4. To require this additional tax revenue to be used to address the impacts of a growing population and a changing economy; and
5. To create a fair tax review commission.

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. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the legislative council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
 - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
 - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
 - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be

submitted to the legislative council staff at
BallotImpactEstimates.ga@state.co.us.

All of the remaining questions relate to the fair tax review commission created in proposed section 39-22-104 (1.9).

3. The deadline for creating the commission is July 1, 2029. Who creates it? Is it created when all or some portion of the members have been appointed?
4. Do you intend for "home rule or statutory city or city and county" to include towns?
5. Does the governor fill vacancies for the members identified in proposed subsection (1.9)(a)(I)(A)? If not, do you mean that the appointing authority fills vacancies?
6. How long is a board member's term?
7. Does the commission's name describe the functions set forth in proposed subsection (1.9)(b)?
8. Is the "rate structure of the state income tax system" the graduated income tax created in the measure and the current corporate income tax?
9. Proposed subsection (1.9) states that the "commission shall include recommendations for modifications to the rate structure of the state income tax system contained in this section." Do you intend to mandate that the commission recommend a modification? Or is such inclusion only necessary if the members agree that a modification is appropriate?

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. 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

Proposed section 29-22-104 (1.9) includes statutory subdivisions that are not used in the Colorado Revised Statutes. For example "(1.9)(a)(I)(A)(i)" is one too many subdivisions. In addition, (1.9)(a)(I) is incorrectly subdivided, as it does not follow an introductory portion (a paragraph ending in a colon that precedes a series) in (1.9)(a).

To remedy both of these issues, the proponents can change (1.9)(a)(I) to (1.9)(b). The subsequent divisions would be renumbered/relettered to eliminate the extra subdivision as follows:

(1.9) Fair tax review commission...

- (a) ON OR BEFORE JULY 1, 2029...
- (b) THE COMMISSION SHALL CONSIST OF...
 - (I) FOUR NONVOTING TASK FORCE MEMBERS...
 - (A) THE DIRECTOR OF RESEARCH...
 - (B) THE DIRECTOR OF THE OFFICE OF...

If the proponents subdivide subsection (1.9) as suggested, please also update the internal citation in proposed subsection (1.9)(a)(III).

2. Although the text of the proposed initiative is in small capital letters, use an uppercase letter to indicate capitalization where appropriate, such as the first letter of the first word of each sentence.