

# 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:** Emily Martini and Greg Kishiyama  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** March 18, 2020  
**SUBJECT:** Proposed initiative measure 2019-2020 #298 concerning Economic Impact Statement Requirement Pertaining to Ballot Titles

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.

### Purposes

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

1. To require that a summary of qualifying economic impact statements precede each ballot title; and

2. To set the conditions under which an economic impact statement shall qualify to be included in the summary.

## **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. Does the proposed initiative apply to all state and local ballot measures?
3. Does the proposed initiative apply to both initiated and referred ballot measures?
4. The introductory portion of proposed subsection (11) requires that "an objective summary of qualifying economic impact statements must precede each ballot title[...]", while paragraph (d) of the subsection states that "[p]receding each ballot title there shall be a summary of the economic impact statement."
  - a. Are these two requirements the same as or different from one another? If they are the same, the proponents may consider listing the requirement in only one place.
  - b. Do the proponents intend that the summary be "objective," which is a requirement in the introductory portion but not in paragraph (d)?
  - c. Do the proponents intend that the summary summarize only "qualifying" economic impact statements, which is a requirement in the introductory portion but not in paragraph (d)?
  - d. Do the proponents intend that the summary summarize multiple "statements," which is a requirement in the introductory portion but not in paragraph (d)?
5. The introductory portion of proposed subsection (11) states that "an objective summary must precede each ballot title"; however, paragraph (b) states that "[i]f no party submits a qualifying statement, then this section shall not apply." It appears that subsection (b) nullifies the requirement in the introductory portion if no party submits a qualifying statement. Is this the proponents' intent?

6. What does it mean for the summary to "precede each ballot title"? Does this mean that the summary is required to appear on the ballot itself?
7. Will voters be able to know who submitted the economic impact statement, or who commissioned the statement?
8. The measure does not specify whether the objective summary may identify qualitative or quantitative effects on employment, state GDP, and state revenues.
9. In an instance where a ballot measure, such as this measure, is expected to have no effect on one or more of employment, GDP, or state revenues, does the measure require that the objective summary state that no such effect(s) are expected?
10. Qualifying economic impact statements and the objective summary must include the estimated effect the measure will have on "state GDP" and "state revenues."
  - a. "[S]tate GDP" presumably means the gross domestic product of Colorado, which measures the total economic output of the private and public sectors.
  - b. Read alongside "state GDP," "state revenues" could likewise mean revenues across the entire state economy. If the proponents intend for "state revenues" to mean revenue collected by the state government, they may consider adding the word "government" to this phrase.
  - c. Most fiscal analyses produced by federal and state economists evaluate the effects on government revenues in tandem with the effects on government expenditures; however, the measure requires an evaluation of revenue effects only.
11. The statement of sufficiency is not limited by a modifier. Is it the statement for the ballot measure?
12. The requirement that the secretary of state examine petition signatures and issue a statement of sufficiency does not appear in the constitution. Does this proposed measure create a constitutional requirement that the secretary of state issue statements of sufficiency?
13. The measure allows "any interested party" to submit an economic study and statement. Who is an interested party? Does this mean something different than "any person"?

14. The measure allows any interested party to submit "an economic impact study and statement," and requires that "[t]he statement shall be a summary of the findings in the study." The measure does not define an economic impact study.
  - a. What is an economic impact study?
  - b. What, if anything, must be included in the study beyond the information required to be summarized in the economic impact statement?
15. The state chief economist of the general assembly is not currently an officer in the constitution or statute.
  - a. Is this the same person as the chief economist of the staff of the legislative council?
  - b. As this office is not currently referenced in law, is it the proponents' intent that the general assembly always be required to designate a chief economist?
16. A qualifying economic impact study and statement is required to have been "completed by an economist."
  - a. There is no public certification for an economist analogous to that for a physician or attorney. In light of this, what qualifications, if any, must a person possess in order to perform an economic impact study?
  - b. What documentation, if any, must an interested party provide to the state chief economist of the general assembly in order to prove that the economic analysis was performed by an economist?
17. A qualifying economic impact study and statement is required to be one that "utilizes dynamic economic modeling."
  - a. What is "dynamic economic modeling"?
  - b. Must a study reach any of its conclusions by way of dynamic economic modeling, so long as it utilizes a dynamic economic model?
  - c. Must a study reach all of its conclusions by way of dynamic economic modeling?
  - d. Does the requirement that an economic impact statement utilize dynamic economic modeling add anything to the requirements in paragraph (a)?

18. The assumptions used in the study and statement are required to be reviewed and validated as reasonable by an expert in the subject matter relevant to the analysis.
  - a. What qualifications, if any, must a person possess in order to qualify as an expert for the purposes of this requirement?
  - b. What documentation, if any, must an interested party provide to the state chief economist of the general assembly in order to prove that the assumptions were reviewed and validated as reasonable by an expert in the field?
  - c. What is "the analysis"? Is it the same as the study?
  - d. Is there a circumstance where a person would be an expert in the subject matter relevant to the analysis, but not an expert in the subject matter relevant to the ballot measure?
19. For the purposes of proposed paragraph (b), who is the "state chief economist"? Is this person the same as the "state chief economist of the general assembly" in proposed paragraph (a)?
20. "Subsections 1 and 2 of this section" refers to subsections (1) and (2) of article V, section 1. These subsections do not relate to the statements, and therefore, this cross-reference appears to be incorrect.
21. Proposed paragraph (b) requires the state chief economist, or designee, to review the statements. Does the measure require anything to be done to ensure that the studies themselves comply with the other provisions of the proposed initiative?
22. What, if anything, is to be done with submitted studies?
23. What does it mean for the state chief economist, or designee, to review the statements for "compliance"? Does this mean to determine whether economic impact studies and statements satisfy the requirements for qualification pursuant to the introductory portion and paragraph (a) of proposed subsection (11)?
24. What should be included in the objective summary?
25. Proposed paragraph (b) states that "[I]f no party submits a qualifying statement, then this section shall not apply." This suspends the entirety of article V, section 1, not just subsection (11). Is that intentional?

26. Is it correct to interpret proposed paragraph (b) as requiring the chief economist or designee to determine that the statement is qualified, regardless of its methodological value, bias, or conclusions?
27. Dynamic models are often proprietary products subject to user agreements that do not allow for public sharing of their methodology. If an interested party submitting an economic impact study and statement does not allow the chief economist to examine the methodology used to create the study, how will the chief economist determine whether the study uses dynamic modeling?
28. Is it the proponents' intent that the chief economist or designee evaluate economic impact studies for methodological soundness or flaws?
29. Commercially available dynamic economic models are complex and rely on the correct calibration of hundreds or thousands of assumptions in order to produce accurate results. Does the requirement that the assumptions used be reviewed and validated as reasonable by an expert in the relevant subject matter require the expert to ensure that the model is correctly calibrated to produce accurate results? If not, who, if anyone, will ensure that the dynamic model used to prepare an economic impact study is correctly calibrated?
30. What does it mean for the state chief economist to "certify" the content of the summary to the secretary of state?
31. Does "the content of the summary" mean the same as "the objective summary"?
32. What, if anything, should the secretary of state do upon receipt of the certification?
33. What is the basis of a challenge under proposed paragraph (c)?
34. For the purpose of proposed paragraph (c), what is "the county in which the petition has been filed"? Will this always be the city and county of Denver?
35. Does the phrase "the court shall conduct a summary proceeding on the record and shall be concluded within ten days after the commencement thereof" mean that the summary proceeding must be conducted within ten days after the filing of a challenge?
36. Do the proponents intend to specify a date by which the review of the district court decision shall be reviewed by the Colorado Supreme Court? For instance, section 1-40-107, C.R.S., requires that a ballot title challenge "shall be disposed of promptly."

37. The objective summary must be finalized in time for local governments to print millions of statewide ballots. Given the timing of filings, and the possible appeals, what happens if a final economic impact statement is not ready at the deadline for local election officials to print the ballot?
38. 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](mailto:BallotImpactEstimates.ga@state.co.us).

## 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. Each section in Colorado constitution has a headnote. The headnote should be added as follows:

**Section 1. General assembly - initiative and referendum.** (11) FOR THE PURPOSE OF...

2. The constitution is typically 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

If subsections (1), (2), and (3) are intended as subparts of the introductory portion of subsection (11), the proponents should reletter those as paragraphs (a), (b), (c), and so forth, to follow standard drafting practice.

3. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to and stricken type, which appears as ~~stricken type~~, to show language being removed from the Colorado constitution or the Colorado Revised Statutes. 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.