

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: November 16, 2018

SUBJECT: Proposed initiative measure 2019-2020 #3, concerning State Fiscal Policy

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 #3 to #21. 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 #3 to #21, 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:

1. To repeal all of article X, section 20 of the Colorado Constitution, which is commonly referred to as "TABOR".

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. Is it your intent that the proposed initiative will take effect upon the Governor's proclamation?
3. Subsection (1) of TABOR permits suits to enforce the provisions of TABOR. How would the proposed initiative impact any existing lawsuits based on the provisions of TABOR? For example, the TABOR Foundation has sued the state on the basis that the hospital provider fee violates TABOR because it was a tax enacted without requisite prior voter approval. If that suit is still pending, would the repeal make the plaintiffs' claims moot?
4. Is it your intent to allow "other limits on district revenue, spending, and debt" to be weakened without future voter approval?
5. How would the proposed initiative impact a court order that a district as defined in TABOR¹ was required to refund revenue illegally collected, kept, or spent under TABOR?
6. Does the repeal of TABOR eliminate any future lawsuits based on actions that were done prior to the repeal? For example, prior to the repeal, a district did not comply with the election provisions in subsection (3) or it illegally kept revenue in violation of subsection (7).

¹ As used throughout this series of memoranda, "district" has the same meaning as set forth in subsection (2)(b) of TABOR.

7. Subsection (3)(a) of TABOR permitted statewide elections to occur on the first Tuesday in November of odd-numbered years. With the repeal of the provision, all statewide elections will be governed by article V, section 1 of the Colorado Constitution and article XIX, section 2 of the Colorado Constitution, which limit statewide elections to the biennial regular general election. Is that your intent?
8. With the repeal of TABOR, is it your intent to allow districts to increase taxes without prior voter approval?
9. With the repeal of TABOR, is it your intent to allow districts to create multiple-fiscal year direct or indirect district debt or other financial obligations without prior voter approval?
10. How does the repeal of TABOR impact taxes for which a district previously received prior voter approval under subsection (4) of TABOR?
11. If a district previously received voter approval for a tax to be used to build parks and TABOR is repealed, could the district use that revenue for any purpose? Is there any limitation from the prior voter approval that continues after the repeal of TABOR?
12. With the repeal of TABOR, is it your intent to eliminate all constitutional spending limits for all districts?
13. With the repeal of subsection (8)(a) of TABOR, are the following statements true:
 - a. New or increased transfer tax rates on real property are permitted;
 - b. The General Assembly could enact legislation establishing a state property tax, subject to the limitations in article X, section 11 of the Colorado Constitution;
 - c. A home rule city could enact an income tax;
 - d. The General Assembly could enact legislation that increases the income tax rate or changes the definition of income that applies before the next tax year; and
 - e. The General Assembly could enact legislation that taxes net taxable income at more than one rate?
14. Subsection (8)(b) of TABOR creates an exception to article X, section 6 of the Colorado Constitution, which states that "All laws exempting from property

- taxation property other than that specified in this article shall be void." Under this authority, the state and local governments have enacted business personal property exemptions. If subsection (8)(b) of TABOR is repealed, then would these exemptions violate the state constitution?
15. Would local governments be required to levy and collect the property tax on business personal property for the property tax year in which the repeal of TABOR becomes effective? For any property tax years prior to the repeal?
 16. Subsection (8)(c) of TABOR requires the actual value of residential real property for property tax purposes to be determined solely by the market approach. This superseded the requirement in article X, section 3 of the Colorado Constitution that the actual value of this property be determined by the consideration of the cost and market approaches to appraisal. Is it your intent to require an appraising officer to consider the cost approach to appraisal, along with the market approach, to determine the actual value of residential real property?
 17. After the repeal of subsection (9) of TABOR, does a local government have any authority to reduce or end its subsidy to any program delegated to it by the general assembly for administration?
 18. The following provisions of the Colorado Constitution have cross-references to TABOR: Article V, section 1 (7.5)(c); article IX, section 17 (2)(b), (3), and (4); article X, sections 3.5 (2) and (3); article X, section 21 (4); Art. XVIII, section 9 (7)(e) and (7)(f); and Art. XX, section 12. While the proponents should consider striking any references that may be obsolete as a result of repealing TABOR, there are two provisions that may require further clarification:
 - a. Article IX, section 17 (2)(b) of the Colorado Constitution defines "inflation" as having the same meaning as defined in subsection (2)(f) of TABOR. (Subsection (1) of the same section requires certain state funding for education to grow by inflation.) If TABOR is repealed, what is the definition of "inflation" for purposes of this provision?
 - b. Article XVIII, section 9 (7)(e) of the Colorado Constitution states that if the limited gaming control commission's increases of taxes from a specified level are "effective only if approved by voters at a statewide election held under section 20(4)(a) of article X of this constitution." If TABOR is repealed, does this mean that the commission would never be able to increase above the specified level because there are no longer elections under the repealed provision or that there is no limitation on

the commission's authority to increase taxes without a statewide election?

19. If TABOR is repealed, is it your intent that the Colorado General Assembly should repeal any inconsistent provisions in the Colorado Revised Statutes that were enacted to implement TABOR?
20. Current state law codifies the limit on state fiscal year spending at section 24 77-103, C.R.S., and includes mechanisms for refunding revenue that exceeds the limit, e.g. at section 39-22-2002, C.R.S. The proposed initiative does not repeal these statutory requirements. If the limit is removed from the constitution, do the proponents intend that the General Assembly repeal these statutes? If the statutes are not repealed, the requirement that excess revenue be refunded may continue to apply.
21. The proposed initiative contains what appears to be a note for descriptive purposes ("Proposal 1 – TABOR – Repeal (Full TABOR Repeal)"). Because it follows the enacting clause of the proposed initiative, this language will be included as part of the text of the proposed initiative. If this is not your intent, then this language should be removed.
22. 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. Will you submit the initiative along with any of the other 18 initiatives that were submitted with this initiative?
 - c. 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?
 - d. 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.

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 constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed in a standard format, for example:

SECTION 1. In the constitution of the state of Colorado, **repeal** section 20 of article X.

2. The proposed initiative is written as a "straight repeal", which has an amending clause but does not include the language being repealed. The proponents may also consider a "friendly repeal", which includes the full language in stricken type, for the purpose of being reader-friendly.