

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
TDD 303-866-3472



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: November 16, 2018

SUBJECT: Proposed initiative measure 2019-2020 #4, 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 purposes of the proposed amendment to the Colorado Constitution appear to be:

1. To repeal provisions that relate to the following topics from article X, section 20 of the Colorado Constitution, which is commonly referred to as "TABOR":
 - a. Prior voter approval for certain district tax increases, multiple fiscal year direct or indirect district debt or other financial obligations, and for the weakening of other limits on district revenue, spending, and debt;
 - b. Election provisions related to TABOR ballot issues, including the ability of the state to conduct an election at an odd-numbered year election;
 - c. The requirement that a district maintain an emergency reserve;
 - d. District spending limits; and
 - e. Prohibitions on new or increased transfer tax rates on real property, new state property tax, local district income tax, income tax rate or a new state definition of taxable income before the next year, and multiple income tax rates.

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. What does repealing the December 31, 1992, effective date in subsection (1) of TABOR accomplish? Is repealing the effective date necessary to ensure that the repeal of other TABOR requirements is not retroactive?
3. Do any of the provisions from the provisions of TABOR that are not repealed relate to an enterprise? If not, then why keep an enterprise as an exception to the definition of "district"?

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 existing section 20 of article X of the state constitution contains headnotes and language that appear in bold. Please update the proposed initiative to include all instances of bold type.
2. It is standard drafting practice to maintain the structural designation (subsection number, paragraph letter, etc.) of any part of a section that is deleted by amendment. For example, in section 20 (2)(a), all of the constitutional language is stricken, but the designation "(a)" should not be stricken, as is the case for all similar instances in the proposed initiative.

Example:

(a) "~~Ballot issue~~" means a non-recall petition or referred measure in an election.

Further, because the designations do not change in the amended section 20, it is not necessary to reletter (2)(d) as (2)(c); it is not necessary to renumber (8) as (3); and it is not necessary to renumber (9) as (4).