

# 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 #9, 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 appears to be:

1. To repeal article X, section 20 of the Colorado Constitution, which is commonly referred to as "TABOR", excluding the requirement for prior voter approval for tax measures;
2. To eliminate the requirement for prior voter approval for any assessment ratio increase for a property class; and
3. To create an exception to the prior voter approval requirement for tax measures based on the total projected revenue from all of a district's concurrent 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. If an entity has the power to tax, can it qualify as an enterprise? If not, then why keep an enterprise as an exception to the definition of district?
3. In light of the repeal of TABOR refunds, what does "refunds made in the current or next fiscal year" mean in the context of the definition of "fiscal year spending"?
4. By eliminating the prior voter requirement for any assessment ratio increase for a property class, is it your intention that the General Assembly may increase the residential assessment rate if required by article X, section 3 (1)(b) of the Colorado Constitution?
5. Does increasing an assessment rate for property taxation constitute a "tax policy change directly causing a net tax revenue gain to a district" in the proposed initiative's definition of "Tax Measure"? Article V, section 20 (4)(a) currently requires prior voter approval for "any new tax, tax rate increase, mill levy above that for the prior year, valuation for assessment ratio increase for a property class, *or* extension of an expiring tax, *or a* tax policy change directly causing a net tax revenue gain to any district." (*emphasis added.*) In the definition

of "tax measure", the conjunction "or" preceding an "extension of an expiring tax" and the adjective "a" prior to "tax policy change" were omitted.

- a. Were these omissions intentional?
  - b. Is it your intent to make the phrase "directly causing a net tax revenue gain to a district" a series qualifier? If so, you should consider making this change more explicit because under the rule of the last antecedent, the qualifier may still only apply to a "tax policy change."
  - c. If you did not intend to change the types of tax measures that may require prior voter approval, then you might consider using the existing language from TABOR.
6. What happens if a district enacts a tax measure without the voter approval required by subsection (2) of the proposed initiative?
  7. Does a taxpayer have standing to challenge the tax?
  8. Is there any penalty for the district that illegally levies the tax?
  9. May the district keep and spend revenue that it collects?
  10. Is there any specific ballot language required for a district when it seeks voter approval?
  11. What happens if a district enacts a tax measure without voter approval based on estimates suggesting that the resulting revenue will be less than 5% of prior fiscal year spending, but the actual amount of revenue generated by the tax measure exceeds this threshold?
  12. What happens if revenue resulting from the new tax measure cannot be identified by the tax collecting authority? For example, revenue resulting from repeal of a sales tax exemption generally is not known unless retailers are required to identify revenue specifically attributable to sales tax levied on previously exempted goods.
  13. Based on the provisions of TABOR that are repealed in the proposed initiative, the state could only seek voter approval for a tax measure at a general election. Is that your intent?
  14. For purposes of the newly created exception:
    - a. What does "all such measures in any year in which such measures take effect" mean?

- b. Does the reference to "section (2)(a)" mean "subsection (2)(a) of this section"? If so, you should use this suggested phrasing.
- c. What does "The requirement for voter approval in this section (2)(a) shall not be required" mean? Is it the same as "The requirement for voter approval in section (2)(a) shall not apply"?
- d. What is "approval of the [t]ax [m]easure"? The other two times the word "approval" is used in subsection (2), it refers to "voter approval". But if the exception applies, then there is no voter approval of the tax measure and this language would not identify a fiscal year. Is it the approval by the governing body of the district?
- e. Is the fiscal year spending amount for the last complete fiscal year prior to the approval of the tax measure the actual amount or an estimate? For example, the state's total fiscal year spending would not be known to the General Assembly, if it passed a bill with a tax measure during the 2022 session that would be referred to the voters at the 2022 election.
- f. It is possible that an estimate for both projected increase in revenue from a tax measure and for fiscal year spending may change over time. If the exception applies based on the estimate at the time a tax measure is enacted, may the district rely on it? Would a change in an estimate change whether voter approval was required under the proposed initiative?
- g. What happens if the actual revenues exceed the specified amount for a tax measure that was projected to not need voter approval based on the projected increase in revenue and the amount of fiscal year spending?
- h. If the General Assembly were to double the state sales and use tax rate, effective June 29, 2021, the resulting increase in revenue during state fiscal year 2020-21 would not exceed 5% of fiscal year spending for state fiscal year 2019-20 because the new tax rate would only be in effect for two days during state fiscal year 2020-21. Would such a tax measure require voter approval under the proposed initiative?
- i. If the General Assembly were to enact a law increasing the state income tax rate by one-third of one percentage point each year beginning in 2022, the state income tax rate would double in 14 years. However, because the tax rate increases would take effect incrementally, there would be no single year when marginal new revenue would exceed 5%

of fiscal year spending for the prior fiscal year. Would such a tax measure require voter approval under the proposed initiative?

- j. If a district has three tax measures, each of which has a projected increase in revenue that is equal to 2% of the fiscal year spending for the last complete fiscal year prior to the approval of the tax measure, then would the district require prior voter approval for all three tax measures? If the district sought voter approval for one of the measures, so that the other two tax measures only have a projected increase of 4% of fiscal year spending, would voter approval still be required under the proposed initiative? Does the phrase "such measure" clearly reflect your intent, whatever it may be?

## 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. For example, "In the constitution of the state of Colorado, **repeal and reenact, with amendments**, section 20 of article X as follows:".
2. It is standard drafting practice to not bold subsection numbers.
3. Defined terms are not initial capped. For example, "Tax Measure" in section 20 (2)(a) should be "tax measure".