

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Patsy Dishmon and Sherry Parks-Harris
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: May 1, 2024
SUBJECT: Proposed initiative measure 2025-26 #3, concerning Make Homeowners Association Fees Tax Deductible

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 purpose of the proposed initiative appears to be:

1. To make homeowners' association (HOA) fees tax deductible.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5) of the Colorado constitution and section 1-40-105, C.R.S., require the proponents to submit for review and comment the full text of the measure being proposed, which, if passed, becomes the actual language of the constitution or statutes. The proponents have submitted an idea, rather than the actual language that would be added to the Colorado constitution or Colorado Revised Statutes. Please amend your proposal to include the actual text of your proposed constitutional or statutory change.
2. Under article V, section 1 (2) of the Colorado constitution, proposed initiatives amend either the Colorado constitution or state law (i.e., the Colorado Revised Statutes). Is the proposed initiative intended to amend the Colorado constitution or the Colorado Revised Statutes? The Colorado constitution and the Colorado Revised Statutes are accessible from the General Assembly's website, here: <https://leg.colorado.gov/laws>.
3. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado". To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative.
4. Additionally, an amending clause should be used to show where in the Colorado constitution or Colorado Revised Statutes a proposed initiative's provisions should be inserted. Where will the proposed initiative be placed? (Please indicate through an amending clause where the proposed initiative will be placed. See Technical Comment #2 for an example of an amending clause.)
5. 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?
6. There are several types of HOA fees including, by way of example: service fees for services such as trash removal, water and wastewater management, and security; amenities fees for amenities such as fitness centers or swimming pools; general maintenance and repair fees for common areas of a common interest community governed by an HOA; reserve fund fees for reserves to fund unanticipated expenses; and special assessments for major non-routine maintenance and other expenses. Do the proponents intend that all kinds of

HOA fees be tax deductible or would some types of HOA fees not be tax deductible?

7. What does it mean to make HOA fees "tax deductible"? Does it mean that the full amount of HOA fees paid during a year can be deducted from a taxpayer's taxable income for the purpose of determining the taxpayer's income tax liability?
8. Would the proposed initiative provide any benefit to a taxpayer who does not itemize deductions but instead claims the standard deduction on the taxpayer's income tax return?

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. First, decide whether you want the proposed initiative to amend the Colorado constitution or change the Colorado Revised Statutes. Once you have done so, consider looking at legislation that will give you an idea as to how such an amendment or change should be formatted. Here are links to examples of:
 - a. A concurrent resolution to amend the Colorado constitution:
https://leg.colorado.gov/sites/default/files/documents/2024A/bills/2024a_hcr1003_01.pdf
 - b. A bill to change the Colorado Revised Statutes:
https://leg.colorado.gov/sites/default/files/documents/2024A/bills/2024a_213_01.pdf
2. Each section, part, etc. that is being amended or added begins with a section number in **bold text** (e.g., **SECTION 1.**) followed by an amending clause. For example:

SECTION 1. In Colorado Revised Statutes, **add** 38-33.3-315.5 as follows:
3. 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, if the proposed initiative is intended to add a new section to the Colorado constitution, "In the constitution of the state of

Colorado, **add** section __ to article X as follows:". [OR "In Colorado Revised Statutes, **add** article __ to title 39 as follows:".]

4. Each section in the Colorado Revised Statutes and the Colorado constitution has a headnote that follows the section number. Headnotes briefly describe the content of the section. Here is an example of a current statutory section with its headnote following the section number in **bold text**:

1-1-101. Short title. Articles 1 to 13 of this title shall be known and may be cited as the "Uniform Election Code of 1992" ...

5. 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

6. 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.