

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

To: Suzanne Taheri and Kristi Burton Brown

From: Legislative Council Staff and Office of Legislative Legal Services

Date: February 27, 2026

Subject: Proposed Initiative Measure 2025-2026 #243, Concerning Voter Approval for Tax Expansions

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Legislative Council Staff 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 and questions to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council Staff and the Office of Legislative Legal Services is to provide comments and questions intended to aid designated representatives, and the proponents they represent, in determining the language of their proposal and to avail the public of the contents of the proposal. Our first objective is to be sure we understand your intended purposes of the proposal. We hope that the comments and questions in this memorandum provide a basis for discussion and understanding of the proposal. Discussion between designated representatives or their legal representatives and employees of the Legislative Council Staff and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

Purposes

Purposes for Proposed Initiative 2025-2026 #243

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

1. To require advance voter approval for any tax expansion on and after the effective date of the initiative; and
2. To create a definition of tax expansion that applies to the Taxpayer's Bill of Rights (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. Article V, section 1 (4)(a) of the Colorado Constitution requires that, when the majority of voters approve an initiative, the initiative is effective on and after the date of the official declaration of the vote and proclamation of the governor. Because the proposed initiative does not specify an effective date, this would be the default effective date. Does this default effective date satisfy your intent?
3. Regarding the scope of the definition of "tax expansion":
 - a. Is the definition intended to capture tax-related changes that could otherwise be considered new taxes or tax policy changes requiring voter approval under TABOR, had those tax-related changes not been both incidental and de minimis?
 - b. Is the definition of "tax expansion" intended to capture the removal of a tax exemption at the federal level that may be required to be "added back" at the state level for purposes of determining state taxable income? Does this definition apply even if the exemption at issue was not previously allowed at the state level? If this type of tax-related change is intended to

be covered by this definition, under which category of “tax expansion” is this covered?

4. Regarding terms used in the definition of “tax expansion”:
 - a. What is a “tax not previously assessed”?
 - b. What is a tax “exclusion”?
 - c. What is a “carryover loss”?
 - d. Does “tax classification” apply only to property tax classifications, or does it include something else? If so, what else does it include?
 - e. What is a “change in tax classification”? Does this include:
 - i. A change in the law that redefines or modifies a tax classification?
 - ii. A law that creates a new tax classification?
 - iii. An individual or agency interpretation that a specific item or parcel should be differently classified for tax purposes? If so, how would a district obtain advance voter approval for this?
5. For “the removal or partial removal” of the listed tax changes (collectively referred to as tax expenditures):
 - a. If a tax expenditure was created by the General Assembly to be temporary, would voter approval be required before its planned expiration?
 - b. If a tax expenditure was created by the General Assembly to include a trigger mechanism or a formula based on objective components that results in a temporary reduction or suspension of that tax expenditure, would voter approval be required before its temporary reduction or its suspension?
 - c. What is a “partial removal” of one of the listed tax expenditures?
 - i. Does this include any reduction in the available amount of a tax expenditure?
 - ii. Does this include any restriction on who is allowed to claim or qualify for the tax expenditure?

- iii. Does this include any restriction on what the tax expenditure is allowed for?
6. Regarding the phrase “net effect of raising the tax burden for any taxpayer”:
- a. What is included in the types of tax expansions that have “a net effect of raising the tax burden for any taxpayer”?
 - b. “Net” typically refers to something that remains from a total or a whole after certain deductions are made or exclusions are applied. What does “net” mean in this definition?
 - c. Does this phrase include a law or policy that adds a tax exemption and removes another but where the policy as a whole does not raise the tax burden for any taxpayer?
 - d. Regarding the cause (law or policy) and effect (raising the tax burden):
 - i. How closely tied do the cause and effect need to be?
 - ii. Does the law or policy need to directly cause the raised tax burden?
 - iii. If not, how indirect can the effect be?
 - e. What is a taxpayer’s “tax burden”?
 - f. If a law or policy makes a tax credit nonrefundable but allows the taxpayer to claim the same amount of the tax credit against their tax liability, does the nonrefundability change raise the tax burden?
 - g. It appears from the use of the phrase “for any taxpayer” that a tax expansion that lowers the tax burdens for nine out of ten taxpayers but raises the tax burden for one of the ten taxpayers would constitute a tax expansion requiring voter approval, given that the tax burden for the tenth taxpayer was raised. Is that correct?
7. If a district, as defined in subsection (2)(b) of TABOR, effectuates a tax expansion without advance voter approval:
- a. What are the legal consequences to the district?
 - b. Would the district be subject to the refund plus 10% interest penalty in subsection (1) of TABOR?

- c. Can the legal consequences be avoided if voter approval is obtained after the tax expansion occurs?

Technical Comments

The following comment addresses technical issues raised by the form of the proposed initiative. This comment will be read aloud at the public meeting only if the designated representatives so request. You will have the opportunity to ask questions about this comment at the review and comment meeting. Please consider revising the proposed initiative as follows:

1. It is common drafting practice to use commas to set off parenthetical and nonessential phrases. Consider offsetting the parenthetical “regardless of how small the increase” in the new language in subsection (4)(a) with commas.