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Colorado General Assembly

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MEMORANDUM

To: Natalie Menten and Brandon Wark

From: Legislative Council Staff and Office of Legislative Legal Services

Date: March 18, 2026

Subject: Proposed Initiative Measure 2025-2026 #274, Concerning eliminating sales tax on food

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.

This proposed initiative **2005-2026 #274** was submitted by the same designated representatives as a part of a group of related proposed initiatives, including proposed initiatives **2025-2026 #274** and **#275**. The comments and questions raised in this memorandum do not include comments and questions that were addressed in the memorandum for proposed initiative **2025-2026 #275**, except as necessary to fully understand proposed initiative **2025-2026 #274**. Comments and questions addressed in

that memorandum may also be relevant, and those questions and comments are considered part of this memorandum.

Purposes

The major purposes of the proposed amendments to the Colorado Revised Statutes appear to be to:

1. Make findings and declarations of the people of the state of Colorado;
2. Eliminate state sales taxes on all food;
3. Redefine "food" as any food or drink intended for human consumption, whether liquid, solid, frozen, prepared, or unprepared, and whether sold for domestic home consumption or immediate consumption;
4. Specify that the classification of an item as food does not depend on packaging, labeling, or the absence of a federal or state labeling requirement;
5. Exclude alcohol beverages, products required to have a "supplement facts" panel, drugs or medical devices, marijuana products, and tobacco or nicotine products from the definition of food;
6. Specify that cover charges shall be included as part of the amount paid for alcohol beverages;
7. Preempt municipalities, counties, city and counties, home rule municipalities, and special districts from imposing or collecting any sales tax, use tax, fee, or other governmental assessment imposed on or measured by the sale or purchase of food;
8. Allow reasonable regulatory licensing or inspection fees on food establishments if imposed solely to recover the direct and indirect costs of administering a regulatory program;
9. Protect existing bonded indebtedness lawfully authorized and outstanding prior to January 1, 2028, by allowing local governments to continue

collecting sales or use taxes on food solely to satisfy scheduled principal and interest payments; and

10. Prohibit any bonded indebtedness issued on or after January 1, 2028, from pledging or relying upon revenue derived from the sale of food.

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 the proponents' intent that the findings and declaration of the people in section 1 of the proposed initiative appear in the Colorado Revised Statutes? If so, to which section of the C.R.S., will this section be added?
3. The following comments and questions relate to section 2 of the proposed initiative, which modifies the definition "food" for the purposes of state sales tax as it is currently defined in section 39-26-102 (4.5), C.R.S.:
 - a. Is it the proponents' intent to completely repeal the existing statutory definition of "food" and replace it with the definition of "food" specified in the proposed initiative? If so, to make that clear, consider using the correct language in the amending clause to indicate that effect, e.g., "**SECTION 2.** In Colorado Revised Statutes, 39-26-102, **repeal and reenact, with amendments**, (4.5) as follows:"
 - b. The proposed definition of "food" includes "ice intended for human consumption." How is a retailer expected to determine at the point of sale whether ice is purchased for human consumption as opposed to other purposes, such as cooling food or beverages in a cooler?
 - c. The proposed definition of "food" explicitly excludes "[a]ny product required to be labeled with a 'supplement facts' panel under federal law."

- i. If a product is unlawfully sold without the federally required "supplement facts" panel, is it the proponents' intent that the product remain taxable, or would it be treated as exempt food?
 - ii. How will retailers categorize products that are dual-labeled or ambiguous under federal dietary supplement guidelines?
- 4. The following comments and questions relate to section 3 of the proposed initiative, which amends section 39-26-707 (1)(a), C.R.S., to state that "All sales of food... are exempt from taxation under part 1 of this article 26.":
 - a. Is it the proponents' intent to completely repeal section 39-26-707 (1)(a), C.R.S., as it currently exists and replace it with the sales tax exemption on all sales of food as specified in the initiative? If so, to make that clear, consider using the correct language in the amending clause to indicate that effect, e.g., "**SECTION 3.** In Colorado Revised Statutes, 39-26-707, **repeal and reenact, with amendments,** (1)(a) as follows:"
 - b. Under section 39-26-707 (1)(e), current law exempts "all sales of food" from sales tax. Given the change, in section 2 of the measure, to the definition of "food," is this change to paragraph (1)(a) necessary? Doesn't the current paragraph (1)(e), with the broader definition of "food" under section 2 of the measure, effectuate the broader exemption of food for human consumption, regardless of whether consumed at home or at a dining establishment?
 - c. Part 1 of article 26, C.R.S., concerns state sales tax, whereas part 2 of article 26 concerns the state use tax. Section 39-26-707 (2), C.R.S., currently exempts certain food from use tax. Is it the proponents' intent that food not specifically exempt in part 2 of article 26 remain subject to the state use tax?
 - d. If the proponents' intent is to eliminate both sales and use tax on food at the state level, consider making any necessary changes to section 39-26-707 (2), C.R.S.
 - e. The proposed initiative repeals section 39-26-707 (1.5)(a), C.R.S. Have the proponents reviewed the interaction of this repeal with other existing tax

exemptions and definitions currently established in the Colorado Revised Statutes to ensure no unintended statutory conflicts arise?

5. The following comments and questions relate to section 4 of the proposed initiative, which amends section 39-26-104 (1)(e), C.R.S., to specify that “a tax” shall be levied on the amount paid for “alcoholic beverages” in certain venues:
 - a. Is it the proponents’ intent to completely repeal section 39-26-104 (1)(e), C.R.S., as it currently exists and replace it with the requirement that a tax be levied on “alcoholic beverages” in certain circumstances as specified in the proposed initiative? If so, to make that clear, consider using the correct language in the amending clause to indicate that effect, e.g., “**SECTION 4.** In Colorado Revised Statutes, 39-26-104, **repeal and reenact, with amendments**, (1)(e) as follows:”
 - b. The proposed initiative specifies that “alcoholic beverages” has the same meaning as in section 44-3-103 (2), C.R.S. However, that section defines “alcohol beverage”. Is that the term the proponents intended to use?
 - c. Alcohol is subject to the standard state sales tax in Colorado. What kind of tax does the proposed initiative levy on alcohol beverages? Is this a tax in addition to the standard sales tax?
 - d. The proposed initiative specifies that “cover charges shall be included as part of the amount paid” for alcohol beverages:
 - i. What is the proponents’ intent in including this language in the proposed initiative?
 - ii. Is this language related to the taxation of any alcohol beverage?
6. The following comments and questions relate to section 5 of the proposed initiative, which preempts municipalities, counties, city and counties, home rule municipalities, and special districts from imposing or collecting sales tax, use tax, fee, or other governmental assessment imposed on or measured by the sale or purchase of food:
 - a. A proposed initiative must indicate where the text of the proposed initiative will be located in the Colorado Constitution or the Colorado Revised Statutes. To which section of the Colorado Constitution or the

Colorado Revised Statutes do the proponents intend to add the language in section 5 of the proposed initiative?

- b. Section 5 (1) prohibits local governments from imposing any "sales tax, use tax, fee, charge, or other governmental assessment imposed on or measured by the sale or purchase of food". Would this language prohibit local governments from imposing general retail delivery fees, bag fees, or packaging fees on grocery deliveries or takeout orders that contain food?
 - c. Section 5 (2) of the proposed initiative states that the proposed initiative is not intended to prohibit the implementation of regulatory licensing or inspection fees on food establishments under certain conditions. Does section 5 (2) apply only to local governments? Or does it also apply to the state?
 - d. Article XX, section 6 of the Colorado Constitution grants home rule municipalities the power to legislate upon, provide, regulate, conduct, and control local and municipal matters, which the Colorado Supreme Court has historically recognized includes the power to levy and collect sales and use taxes.
 - i. Does this provision conflict with the article XX, section 6 of the Colorado Constitution?
 - ii. Does the proposed initiative attempt to preempt the constitutionally granted taxing authority of home rule municipalities through a statutory enactment?
 - iii. Is it the proponents' intent that declaring the taxation of food "a matter of statewide concern" in Section 5 (4) of the proposed initiative is sufficient to supersede home rule constitutional authority?
7. The following comments and questions relate to section 6 of the proposed initiative that protects existing bonded obligations:
- a. As stated above, a proposed initiative must indicate where the text of the proposed initiative will be located in the Colorado Constitution or the Colorado Revised Statutes. To which section of the Colorado Constitution

or the Colorado Revised Statutes do the proponents intend to add the language in section 6 of the proposed initiative?

- b. Section 6 (3) of the proposed initiative allows a local government that previously pledged sales or use tax revenues derived from food to secure bonded indebtedness to continue to impose and collect such tax "solely to the extent necessary to satisfy scheduled principal and interest payments on that indebtedness":
 - i. How is a local government expected to practically implement this provision?
 - ii. Is the local government required to continuously calculate and adjust the tax rate on food to exactly match the debt obligation, or are they expected to collect the tax at the normal rate until the debt amount is reached and then abruptly cease collection for the remainder of the year?
 - iii. Who is responsible for overseeing and enforcing that the tax collected does not exceed the amount "solely" necessary for the scheduled payments?
 - c. The heading for section 6 of the proposed initiative states that the section includes an automatic sunset. What is an automatic sunset? Which subsection in section 6 includes the automatic sunset?
8. What fiscal or other impacts may result from the enactment of the proposed initiative on the state and local governments in Colorado? To the extent that the enactment of the proposed initiative leads to a significant loss of state and local government revenue currently used to fund essential services, how do the proponents anticipate the state and local governments will replace this revenue?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiatives. These comments will be read aloud at the public meeting only if the designated representatives 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 follows:

1. Each statutory section being amended, repealed, added, or repealed and reenacted is preceded by a separate clause, referred to as the “amending clause,” that explains how the law is being changed. Amending clauses are written in lowercase type and follow a specific format. For example, when amending a specific subsection, such as in section 3 of the proposed initiative, the section heading and amending clause should be formatted as follows: “**SECTION 3.** In Colorado Revised Statutes, 39-26-707, **amend** (1)(a); and **repeal** (1.5)(a) as follows:”
2. Each section in the Colorado Revised Statutes has a headnote. Headnotes briefly describe the content of the section and are written in bolded text. For example: “**39-26-707. Food, meals, beverages, and packaging - definitions.**” Please show the headnotes in the proposed initiative in bold font. In addition, the proposed initiative does not include the complete current headnote for section 39-26-104, and the headnote for section 39-26-102 does not match the headnote that appears in current law. If this is unintentional, consider aligning the headnotes in the proposed initiative with current law.
3. It is standard drafting practice to show language being removed from the Colorado constitution or the Colorado Revised Statutes in stricken type, e.g., ~~stricken type~~.
4. It is standard drafting practice to use small capital letters to show the language being added to the C.R.S. The headnote should remain in lowercase letters. If a measure is repealing a section of law and replacing it with new language, the new language should be shown in small capital letters. To find small capital letters in Microsoft Word, go to the Home tab, click the arrow in the bottom right corner of the Font group, and in the Font dialog box, check the Small Caps checkbox under Effects.
5. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs. This structure should be followed to ensure consistency in the structure of the statutes. In section 4 of the proposed initiative, the paragraph that begins “Cover charges shall be...” must have its own subsection, paragraph, subparagraph, or

sub-subsection designation if it is a separate paragraph from (1)(e). If it is part of paragraph (1)(e), it should be connected to the end of that paragraph rather than shown as a separate paragraph.

6. The proposed initiative amends section 39-26-104 (1)(e), C.R.S. Subsection (1) includes the following introductory portion that was excluded from the proposed initiative: “(1) There is levied and there shall be collected and paid a tax in the amount stated in section 39-26-106 as follows:”. It is standard drafting practice to include the introductory portion of a statute when amending the statute. Also, since that introductory language appears in current law in the introductory portion of subsection (1), the first portion of the sentence of paragraph (1)(e) in the measure is repetitive, and if it becomes law, would appear in statute as follows:

39-26-104. Property and services taxed - definitions.

(1) There is levied and there shall be collected and paid a tax in the amount stated in section 39-26-106 as follows:

(e) There is levied and shall be collected a tax upon the amount paid for alcoholic beverages . . .

This same issue appears in section 3 of the measure. If that section becomes law, the statute would also contain redundant language as follows:

39-26-707. Food, meals, beverages, and packaging - definitions.

(1) The following shall be exempt from taxation under the provisions of part 1 of this article 26:

(a) All sales of food, as defined in section 39-26-102 (4.5), are exempt from taxation under part 1 of this article 26.