

# 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:** January 17, 2019

**SUBJECT:** Proposed initiative measure 2019-2020 #183, concerning Policy Changes Pertaining to State Income Taxes

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 #179 to #182 and #184 to #195. 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 #179 to #182 and #184 to #195, 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 and the Colorado Revised Statutes appear to be:

1. To repeal the constitutional requirement that the income tax have a single rate;
2. To establish a graduated individual income tax that increases the tax rate for individuals with higher incomes;
3. To allow the state to retain and spend the additional revenue from the graduated income tax notwithstanding any constitutional limits; and
4. To require this additional tax revenue to be used to address the impacts of a growing population and a changing economy.

## **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. Do you intend for section 1 of the proposed initiative to be codified as part of the Colorado Constitution? Or is it a statement of intent only?
3. If section 1 is only a statement of legislative intent, does it have any legal effect?
4. The proposed initiative says the goal "should be" that all taxpayers should pay similar percentages of their income in total taxes. To what or to whom does this direction speak? Is the initiative's statement of what the goal should be different from the establishment of that goal?
5. Is a goal that all taxpayers should pay similar percentages of their income different from a goal that all taxpayers pay similar percentages of their income?
6. Is there a single tax system in the state?

7. To the extent that the tax system includes local taxes such as sales taxes and property taxes, then does it include the federal income tax, which has a graduated rate?
8. If sales taxes and property taxes result in disproportional tax impacts across the income distribution, would it be easier to accomplish the stated goal of the measure by repealing these taxes rather than by amending the income tax?
9. Insofar as proposed section 3 includes income tax rate increases, this measure appears to be a tax increase that requires voter approval under article X, section 20 (4)(a) of the Colorado Constitution (TABOR) and so it will need to begin "Shall state taxes be increased . . .".
10. The new tax and rates apply "except as otherwise provided in section 39-22-627." Section 39-22-627, C.R.S., which is a TABOR refund method, requires the tax rate to be reduced from 4.63% to 4.5%. You have not adjusted section 39-22-627 C.R.S., to reflect the new rates. Is it your intent that only the lowest bracket, which is subject to the 4.63% rate, should be used as the TABOR refund? If so, it will reduce the amount of revenue that is refunded through this refund mechanism.
11. What is a "graduated tax"?
12. If a "graduated tax" has a commonly understood meaning, is it necessary to add "with greater tax rates applying to higher income brackets"?
13. What does "each tax rate applying only to the income bracket for that tax rate" mean? If you removed this clause, would it change the meaning of the subsection?
14. If a bracket includes the amount for any taxes owed on income in the tax brackets below it, does a tax rate "apply" in some way to the income tax brackets above it?
15. What are the letters in parenthesis in the text of the proposed initiative? Do they make the calculation easier to understand?
16. Do the income amounts apply the same for individual and joint income tax filers?
17. Section 1 of the proposed initiative says that the goal should be that all taxpayers should pay similar percentages of their income in total taxes. Do the income tax rates in section 3 accomplish that goal?

18. If it is determined that the tax rates in section 3 result in higher income taxpayers paying higher shares of their income in total taxes than lower income taxpayers, should the General Assembly reduce the tax rates to meet the goal in section 1?
19. What calendar years are used to determine the percentage change in Colorado personal income? In other instances where something is supposed to grow by personal income, the law provides a little more detail about the years to be used. (See sections 22-54-104.1 (1)(a), 22-55-105 (1), and 39-22-123 (4)(c)(I), C.R.S.)
20. Given that tax forms must be completed well in advance of the income tax year, there could be a significant lag if you use the actual change in personal income. For example, if a personal income change is based on the actual personal income reported, the growth between 2018 and 2019 would need to be used for the 2021 income tax year. Alternatively, if you make it based on the growth between 2019 and 2020, it would have to be based on an estimate of 2020 that is known as of the time the income tax forms are finalized.
21. If Colorado personal income decreases from one year to the next, will the brackets be reduced?
22. Personal income grows faster than inflation during most economic expansions. In these circumstances, adjusting the income brackets in the table by personal income will cause tax revenue to be less than if the brackets were adjusted by inflation, or if they were not adjusted. Is this your intent?
23. Proposed subsection (1.8)(b) refers to "the above schedule." It is standard drafting procedure to cross-reference a provision by its subsection. For example, "in subsection (1.8)(a) of this section."
24. The following questions relate to section 4 of the proposed initiative:
  - a. What is the purpose of the first sentence?
  - b. If the tax is limited to the amount specified in the ballot title, does section 4 add anything to the voters approving the graduated income tax rate alone?
  - c. If the ballot title begins, "Shall state taxes be increased \$X annually", will the state keep above \$X in a year based on language in the ballot title that reflects section 4 of the proposed initiative?
  - d. Does "generated" mean collected by the state?

- e. The tax rate as of December 31, 2019, was 4.63%. Does this provision, therefore, apply to any revenue that is collected above what would have been collected if all income was taxed at a rate of 4.63%?
- f. In his state of the state address, Governor Polis announced his goal to "broaden the base and lower the rate" for the income tax. If this happened during the 2020 legislative session, then using the rate as of December 31, 2019, would not seem to describe the increased revenue due to the proposed initiative.
- g. Does the reference "to any calendar year" add anything to the meaning of the sentence?
- h. Does "such revenue" refer back to the revenue identified in the prior sentence?
- i. Is another way to describe this provision that it applies to all of the additional revenue that the state received as a result of the voters' approving the proposed initiative?
- j. What is an example of "address[ing] the impacts of a growing population and a changing economy"?
- k. Do you intend for the authority to be broad and authorizing a large number of uses or narrow and authorizing a limited scope of possible uses?
- l. Will the conjunction "and" limit the type of uses? For example, if the economy is relatively constant from one year to the next, can the General Assembly appropriate any money?
- m. Take the example of Medicaid funding: To comply with this requirement, could the General Assembly only use this revenue for the additional caseload within Medicaid?
- n. How will the General Assembly or joint budget committee know that a particular expenditure relates to "growing population and changing economy", as opposed to the existing population or that the economy was a factor?
- o. The following questions and comments relate to the "citizen's oversight committee":

- i. You have obviously not included any details about the size, scope, composition, or duties of the committee. Is it your intent that the General Assembly should fill in all those details, if it is inclined to create such a committee?
  - ii. Can a committee be delegated authority over the General Assembly's appropriation power that will actually allow it to "assure" a certain action? How will it "assure" that the money is spent appropriately?
  - iii. Given its uniqueness within a budget context, do you have any vision of how you'd like the committee to operate?
  - iv. In order for the director of research of legislative council to prepare the report required by section 4 of the proposed initiative, the revenue will need to either be segregated from other general fund revenue or the General Assembly would need to designate in the annual Long Bill which appropriations from the general fund are to be counted as being from those revenues. How do you intend for this to work?
25. Individual income tax revenue is currently allocated under section 39-22-623, C.R.S. Under that provision, a portion of that revenue is paid to local governments. This would not be consistent with the uses allowed by proposed section 24-77-103.3. How will these provisions work together?
26. To properly allocate and report the spending of the individual income tax revenue, it may be necessary to require that money to be deposited in an account within the general fund or another cash fund. Is it your intent that the General Assembly should make the necessary changes to the disposition of this revenue so that the provisions of proposed section 24-77-103.3 can be met?
27. Under section 1 (4)(a) of article V of the Colorado Constitution, the proposed initiative would "take effect from and after the date of the official declaration of the vote thereon by proclamation of the governor, but not later than thirty days after the vote has been canvassed." The Governor's proclamation sometimes occurs after January 1st following the election. Section 20 (8) of article X of the Colorado Constitution states that "an income tax increase... shall [not] apply before the next year." If the proposed initiative was approved at the next general election, but did not take effect until after January 1, 2021, then would the tax rate still apply for the 2021 income tax year, or would it need to begin with the 2022 income tax year?

28. Article V, section 1 (4)(b) of the Colorado Constitution requires an initiated constitutional amendment to be approved by at least 55% of the votes cast thereon unless the initiated constitutional amendment "is limited to repealing, in whole or in part, any provision of this constitution." The proposed initiative includes a repeal of a constitutional provision and also a statement of intent and a change to the Colorado Revised Statutes. What percentage of votes will need to be cast in favor of the proposed initiative in order for it to amend the constitution?

## **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. In section 4 of the proposed initiative, the citation in the first sentence is written as "pursuant section to sections 39-22-104 (1.8)...". This repetition is unnecessary and should be rewritten as "pursuant to sections 39-22-104 (1.8)...".