

STATE OF COLORADO

Colorado General Assembly

Natalie Mullis, Director
Legislative Council Staff

Colorado Legislative Council
200 East Colfax Avenue Suite 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
TDD 303-866-3472



Sharon L. Eubanks, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 East Colfax Avenue Suite 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Facsimile 303-866-4157
Email: olls.ga@state.co.us

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 #5, 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 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 appear to be:

1. To repeal all of article X, section 20 of the Colorado Constitution, which is commonly referred to as "TABOR";
2. To repeal the requirement, commonly referred to as the "Gallagher Amendment", that the General Assembly adjust the property tax residential assessment rate in accordance with a formula designed to maintain the percentage of the aggregate statewide valuation that is attributable to residential property in the state; and
3. To repeal the requirement that the nonresidential property tax assessment rate is 29%.

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 to make any changes to article X, section 3 (1)(a) of the Colorado Constitution? If not, it is unnecessary to include it in the proposed initiative.
3. Is it your intent that the all of the changes to article X, section 3 (1)(b) of the Colorado Constitution constitute a repeal of the constitutional provision, in part, for purposes of article V, section 1 (4)(b) of the Colorado Constitution?
4. Is it your intent that, if the Gallagher Amendment is repealed, then the residential assessment would be the rate established in section 39-1-104.2 (3), C.R.S., or any other provision of law?
5. If the Gallagher Amendment is repealed, does it eliminate the duty of the General Assembly to establish the residential assessment rate under section 39-1-104.2 (5), C.R.S.?
6. If the nonresidential assessment rate is repealed from the state constitution, the rate would still be 29% under section 39-1-104 (1), C.R.S. Is that your intent?

7. With the repeal of the language from subsection (1)(b) and the repeal of TABOR, is it your intent that the General Assembly has the discretion to lower or raise, without prior voter approval, residential and nonresidential assessment rates, at any time?
8. Insofar as the Colorado courts have interpreted the General Assembly as having the authority to make classifications for property tax purposes, could the General Assembly establish different assessment rates for different classes of property? For example, a nonresidential rate of 15% for agricultural land, while the remainder of nonresidential property has a rate of 29%.
9. If a single residential assessment rate is no longer required under the Colorado Constitution, could the General Assembly establish a different residential assessment rate for second homes or for homes that are used for short-term rentals?
10. If the proposed initiative is passed, could the General Assembly eliminate assessment rates altogether and simply tax the actual value of property?

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 in the following standard format, for example:

SECTION 1. In the constitution of the state of Colorado, **repeal** section 20 of article X.

SECTION 2. In the constitution of the state of Colorado, **amend** section 3 (1)(b) of article X as follows:

2. It is standard drafting practice to use SMALL CAPITAL LETTERS 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. Section headnotes should appear in bold.

3. The proposed initiative amends section 3 (1)(b) of article X of the Colorado constitution, but it is only labeled as "(b)." It should be labeled as "(1)(b)" for clarity.