

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Scott Wasserman and Javier Mabrey
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 5, 2022
SUBJECT: Proposed initiative measure 2021-2022 #106, concerning New Fee Assessment on Luxury Residential Real Property

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 2021-2022 #104 and #105. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2021-2022 #104 and #105, 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 appear to be:

1. To impose a supplemental fee in the amount of 1.1% of the amount by which the appraised actual value of each luxury residential real property, as defined by the measure, exceeds the baseline for that property's qualification as a luxury residential real property.
2. To require that the fee be charged and determined by the division of housing in the department of local affairs and remitted to the Colorado affordable housing fund.
3. To establish the Colorado affordable housing fund in the department of the treasury.
4. To require the revenue raised from the supplemental fee on luxury residential real property to be disseminated and disbursed by the department of the treasury to political subdivisions of the state for the specific and exclusive purpose of addressing shortages in and enhancing the availability of affordable housing on an equitable and need-driven basis throughout the state.
5. To require that all funds disseminated and disbursed from the Colorado affordable housing fund and received by the political subdivisions of the state be used only for the purpose of addressing shortages in and enhancing the availability of affordable housing within the jurisdiction of each such political subdivision according to the specific criteria and direction to be provided by the division of housing.
6. To authorize the General Assembly, in its discretion, to designate that a portion of the funds raised from the fee be disseminated and applied to offset in part any reduction in local district revenue resulting from a reduction in the residential or nonresidential assessment rates.
7. To authorize the General Assembly to supplement revenue received from the fee increase by appropriation on an annual basis from the general fund.
8. To specify that the amount of any appropriation received and spent by the state is to be treated as a voter approved revenue change under section 20 (7)(d) of the TABOR amendment to the state constitution.

Substantive Comments and Questions

There are no new substantive comments and questions.

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. Before the amending clause, number each section, part, etc. that is being amended or added with a section number (e.g., SECTION 1., SECTION 2.). For example:

SECTION 1. In Colorado Revised Statutes, **add** article 26.5 to title 29 as follows:

2. When adding a new article to the Colorado Revised Statutes, it is standard drafting practice to add an article heading before the statutory language. For example:

Article 26.5
Luxury Rental Real Property
Fee Assessment

3. It is standard drafting practice when referencing statutory sections to include the word "section" before the number. For example, "section 24-35-204.5."
4. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty."
5. In proposed section 29-26.5-101, it is standard drafting practice to start an introductory portion for a legislative declaration with (1), and then letter the paragraphs below it as (a), (b), and so forth, rather than have an unnumbered introductory portion that leads into (1), (2), and so on.

6. In proposed section 39-26.5-103, since there are no other subsections in this section, the (1) should be removed.
7. It is standard drafting practice that the phrase "except that" be preceded by a semicolon.
8. The following words are misspelled: "Statues" should be spelled "Statutes", "one-million" should be "one million".
9. The following is the standard drafting language used for creating a legislative declaration: "The people of the state of Colorado hereby find and declare that...".
10. The following is the standard drafting language used for creating a definition: "As used in this [section][subsection][paragraph], unless the context otherwise requires, '[term]' means (the definition for the term)...".
11. State funds are typically created in the "state treasury" and not in the "department of the treasury."